

COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON CLAUSES

Section 20: Public interest disclosure

120. The section lays down the circumstances under which disclosures of information in the public interest by the new department will be lawful, following the creation of the new department, the commencement of the new all embracing duty of confidentiality under section 18(1).
121. *Subsection (1)* provides that a disclosure is lawful for the purposes of section 18(2) (confidentiality) if it
- is made on the instructions, either general or specific, of the Commissioners,
 - is a disclosure of a kind to which *subsections (2) to (7)* apply (specified kinds of public interest disclosure described on the face of the Bill), or is specified in regulations of the Treasury, made under *subsection (8)*, and
 - the Commissioners are satisfied it is in the public interest.
122. The lawful kinds of disclosure specified by *subsections (2) to (7)* are as follows:
123. *Subsection (2)*- to a person exercising public functions, whether in the UK or abroad, for the purpose of preventing or detecting crime, in order to comply with an obligation of the United Kingdom or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services. The reference to "person exercising public functions" draws on the definition of "public authority", under the Human Rights Act 1998, and the agreements in question will typically be Memoranda of Understanding, drawn up by or on behalf of the Commissioners or their predecessors, with public authorities abroad, for the purposes of securing the due administration of their respective customs laws, (cf section 9(b) CEMA).
124. *Subsection (3)* – to a body regulating a profession, in relation to misconduct on the part of a member, which relates to a Revenue and Customs function. This would cover a disclosure about the misconduct of a person preparing accounts or returns for tax purposes, but would also extend to other professionals whose misconduct related to a function of the new department, eg in relation to the valuation of assets, or to a professional determination in relation to more recent taxes such as landfill tax, aggregates levy or climate change levy.
125. *Subsection (4)* – to a constable who is exercising functions relating to the movement of persons or goods into or out of the UK, or for the prevention or detection of crime. This will cover the provision of criminal intelligence to such officers collocated with frontier staff of the new department, and with immigration service staff, in joint intelligence cells, formed at the larger ports and airports to enhance control of the UK frontier for all purposes, through intelligence and other closer working.

*These notes refer to the Commissioners for Revenue and Customs
Act 2005 (c.11) which received Royal Assent on 7 April 2005*

126. *Subsection (5)* – to the National Criminal Intelligence Service (NCIS), to allow NCIS to undertake its statutory role of providing a criminal intelligence service to all law enforcement agencies.
127. *Subsection (6)* – to a person exercising public functions in relation to public safety or public health, for the purpose of those functions. This is designed to cover disclosures to health and safety or environmental bodies of information acquired by staff of the new department about imminent threats to public health or safety, eg discovery of the marketing of poisonous food, or of unsafe working practices at an oil depot, acquired in the course of their duties.
128. *Subsection (7)* - to the Police National Computer, which is maintained by the Police Information Technology Organisation (PITO), on behalf of all participating law enforcement agencies. This holds the national record of outstanding warrants, suspected persons, arrests, seizures, convictions etc.
129. *Subsection (8)* sets out the arrangements which are to apply where the Treasury propose to add to the list of categories of lawful public interest disclosures, by means of regulations under *subsection (1)(b)(ii)*. Under *paragraph (a)*, the Treasury must be satisfied that any new category of disclosure relates to national security, public safety, public health or the prevention or detection of crime. *Paragraph (b)* then sets out a list of ways in which the disclosures to be authorised under the regulations may be limited or restricted, that is - the nature of the information to be disclosed, the person or class of person to whom disclosure may be made, the person by whom the disclosure is made, or some combination of factors. *Paragraph (c)* provides that the regulations shall be made by statutory instrument, and *paragraph (d)* that they must be laid in draft before and be approved by each House of Parliament, before coming into force (the affirmative procedure).
130. Finally, *subsection (9)* provides that information disclosed both under subsections (2) to (7) and under any Treasury regulations made under the section may not be disclosed further without the consent of the new Commissioners, which may be general or specific. It also gives immediate statutory expression to the Commissioners' consent to further disclosure of information disclosed to the Police National Computer under *subsection (7)*, as the purpose of the Police National Computer is the secure sharing of such information, between participating law enforcement agencies, subject to confidentiality controls and checks overseen by PITO.