

COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON CLAUSES

Section 21: Disclosure to prosecuting authority

131. The section codifies the arrangements for disclosure of HMRC information to the three territorial prosecutors who will deal with HMRC prosecutions in their respective parts of the UK where disclosure is for the purposes specified in *subsection (1)*. Once HMRC information is in their hands, it may only be further disclosed, or made public, for a purpose connected with the exercise of the prosecutor's functions, or with HMRC consent, eg disclosure in open court in the course of a prosecution, or for associated civil proceedings, e.g. for an interlocutory injunction.
132. *Subsection (1)* provides that disclosure by HMRC will be lawful in accordance with section 18, if made to a "prosecuting authority", as defined in *subsection (2)*, for the purpose of enabling the authority to decide whether to institute criminal proceedings in its jurisdiction within the United Kingdom in relation to an RCPO investigation, or to advise in relation to such an investigation.
133. *Subsection (2)* defines "prosecuting authority" as the Director of Revenue and Customs Prosecutions, in England and Wales, as the Lord Advocate or a Procurator Fiscal, in Scotland, and as the Director of Public Prosecutions for Northern Ireland, in that jurisdiction.
134. *Subsection (3)* then provides that once HMRC information is in the hands of a prosecutor, it may only be further disclosed, or made public, for a purpose connected with the exercise of the prosecutor's functions, or with the consent of HMRC. This would include disclosure in open court in the course of a prosecution, or for associated civil proceedings, e.g. for an order freezing the suspected proceeds of crime. An onward disclosure with consent would cover a disclosure to another specialised prosecutor, like the Department of Trade and Industry, who have special functions in relation to fraud in an insolvency, if an HMRC investigated fraud was found to be insolvency related.
135. *Subsection (4)* makes it an offence to contravene *subsection (3)*, and *subsection (5)* gives a person charged with the offence various defences, which parallel those provided in section 19(3) in relation to HMRC. In particular, he will not be guilty of the offence if he proves that he reasonably believed that the disclosure was lawful, that is that the disclosure fell within the terms of *subsection (1)*. Similarly, he would not be guilty if he proved that he reasonably believed that the information had already been made available to the public, and that this had been done lawfully; it would be no defence as regards a subsequent unlawful disclosure to say that the information had been disclosed previously, if that previous disclosure was itself unlawful.
136. *Subsection (6)* lays down the penalties for those found guilty of the offence under *subsection (4)*. The offence is triable either way, that is:

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

- either summarily, when the maximum penalty will be 12 months imprisonment, or a fine not exceeding the statutory maximum (currently £5,000), or both; *or*
 - on indictment, when the maximum penalty will be two years imprisonment, or an unlimited fine, or both.
137. *Subsection (7)* provides that a prosecution for the offence may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions, or with the consent of the Director of Public Prosecutions.
138. *Subsection (8)* provides that prosecutions for the offence may be instituted in Northern Ireland (where the Director of Revenue and Customs Prosecutions has no functions) only by the Commissioners, or with the consent of the Director of Public Prosecutions for Northern Ireland.
139. No comparable provision is needed in Scotland, because the Procurator Fiscal and the Crown Office automatically have exclusive cognisance of summary and indictable offences in Scotland, under the law relating to Scotland, without the need for specific enabling provision.
140. *Subsection (9)* provides that the maximum penalty on summary conviction in Scotland and Northern Ireland is to be six months, rather than twelve, to accord with their arrangements for maximum summary penalties.
141. It should also be noted that section 55(2) makes a temporary change to the maximum penalty of imprisonment on summary conviction in England and Wales, provided for under *subsection (6)(b)*, reducing it to six months from twelve months, pending the coming into force of a general amending provision about the maximum penalties on summary conviction (section 282 Criminal Justice Act 2003).