

COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON CLAUSES

Section 19: Wrongful disclosure

109. *Section 18* lays down a code of confidentiality for the new Commissioners and their officers. *Section 19* establishes a criminal offence, in relation to disclosures about identifiable persons, to buttress the duty of confidentiality, which widens the ambit of the existing offence, and lays down how such an offence will be prosecuted. The section is based on the existing offence provision of section 182 Finance Act 1989, which applied to both predecessor departments, but now extended to cover all functions of the new department.
110. *Subsection (1)* makes it an offence for any person to contravene the non-disclosure provisions of section 18(1), or of section 20(9), in relation to “revenue and customs information relating to a person” whose identity is revealed by the disclosure. The term “person” includes both natural and legal persons, and, for example, the tax affairs of a limited company are also protected by the provisions of the subsection.
111. *Subsection (2)* then defines “revenue and customs information relating to a person” to mean information acquired or held in connection with the exercise of a function of the Revenue and Customs, as defined in section 18(4)(c), in respect of the person, but *excluding* information about HMRC internal administrative arrangements, and the activities of its contractors .
112. *Subsection (3)* provides certain defences for a person charged with the *subsection (1)* offence. 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 section 18(2) and (3). 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.
113. *Subsection (4)* lays down the penalties for those found guilty of the offence under *subsection (1)*. The offence is triable either way, that is:
- either summarily, when the maximum penalty will be 12 months imprisonment, or a fine not exceeding the statutory maximum (currently £5000), or both; *or*
 - on indictment, when the maximum penalty will be two years imprisonment, or an unlimited fine or both.
114. *Subsection (5)* 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.

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

115. *Subsection (6)* 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.
116. 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.
117. *Subsection (7)* 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.
118. It should also be noted that section 55(1) makes a temporary change to the maximum penalty of imprisonment on summary conviction in England and Wales, provided for under *subsection (4)(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).
119. *Subsection (8)* provides that the prosecution of the *subsection (1)* offence is without prejudice to other remedies for unlawful disclosure contrary to the section 18(1) and section 20(9) duties of confidentiality e.g. the seeking of an injunction to restrain an unlawful disclosure.