



Health and Care Act 2022

2022 CHAPTER 31

PART 4

THE HEALTH SERVICES SAFETY INVESTIGATIONS BODY

Protection of material held by the HSSIB

122 Prohibition on disclosure of HSSIB material

- (1) The HSSIB, or an individual connected with the HSSIB, must not disclose protected material to any person.
- (2) In this Part “protected material” means any information, document, equipment or other item which—
 - (a) is held by the HSSIB, or an individual connected with the HSSIB, for the purposes of the HSSIB’s investigation function,
 - (b) relates to a qualifying incident (whether or not investigated by the HSSIB), and
 - (c) has not already been lawfully made available to the public.
- (3) In this Part “individual connected with the HSSIB” means—
 - (a) a member of the HSSIB,
 - (b) a member of a committee or sub-committee of the HSSIB,
 - (c) an investigator, or
 - (d) an individual (other than an investigator) who works for the HSSIB.
- (4) For the purposes of subsection (3)(d) an individual “works for” the HSSIB if the individual works—
 - (a) under a contract of employment with the HSSIB,
 - (b) under a contract of apprenticeship with the HSSIB,
 - (c) under a contract under which the individual undertakes to do or perform personally any work or services for the HSSIB, or

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- (d) as an agency worker within the meaning of the Agency Workers Regulations 2010 (S.I. 2010/93) in circumstances where the HSSIB is the hirer within the meaning of those Regulations.
- (5) An individual who was, but has ceased to be, connected with the HSSIB must not disclose to any person, other than the HSSIB or an individual connected with the HSSIB, any information, document, equipment or other item held by that individual—
 - (a) which the individual obtained because they were connected with the HSSIB,
 - (b) which, at the time they ceased to be connected with the HSSIB, was protected material, and
 - (c) which has not already been lawfully made available to the public.

Commencement Information

- I1** S. 122 not in force at Royal Assent, see [s. 186\(6\)](#)
- I2** S. 122 in force at 1.10.2023 by [S.I. 2023/1035](#), [reg. 2\(a\)](#)

123 Exceptions to prohibition on disclosure

- (1) Section 122(1) does not apply to a disclosure which is required or authorised by—
 - (a) Schedule 14,
 - (b) any other provision of this Part, or
 - (c) regulations made by the Secretary of State.
- (2) Regulations under subsection (1)(c) may, for example, require or authorise disclosures of protected material by reference to—
 - (a) the kind of material that it is (for example, a particular kind of equipment),
 - (b) the matters to which it relates,
 - (c) the person from whom it was obtained,
 - (d) the purpose for which it was produced or is held, or
 - (e) the purpose for which it is disclosed.
- (3) But regulations under subsection (1)(c) may not require or authorise disclosures of protected material by reference to the qualifying incident to which the material relates.
- (4) Regulations under subsection (1)(c) may provide for a person to exercise a discretion in dealing with any matter.
- (5) Subject to subsection (6), regulations under subsection (1)(c) may provide that disclosures which are required or authorised by the regulations do not breach—
 - (a) obligations of confidence owed by the person making the disclosure, or
 - (b) any other restrictions on disclosure.
- (6) Nothing in regulations under subsection (1)(c) operates to require or authorise disclosures which would contravene the data protection legislation (but, for the purposes of this subsection, in determining whether any disclosure required or authorised by the regulations would do so, take the requirement or authorisation into account).

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Commencement Information

- I3** S. 123 not in force at Royal Assent, see [s. 186\(6\)](#)
I4 S. 123 in force at 1.10.2023 by [S.I. 2023/1035, reg. 2\(a\)](#)

124 Offences of unlawful disclosure

- (1) A person commits an offence if the person—
 - (a) breaches the prohibition in section 122(1) by knowingly or recklessly disclosing protected material to another person, and
 - (b) knows or suspects that the disclosure is prohibited.
- (2) An individual who was, but has ceased to be, connected with the HSSIB commits an offence if the individual—
 - (a) breaches the prohibition in section 122(5) by knowingly or recklessly disclosing any information, document, equipment or other thing to another person, and
 - (b) knows or suspects that the disclosure is prohibited.
- (3) Subsection (4) applies where protected material is disclosed to a person not connected with the HSSIB—
 - (a) in a draft report sent to the person under section 115(1),
 - (b) under paragraph 2, 3 or 4 of Schedule 14 (disclosures for purposes of an investigation, offence or safety risk), or
 - (c) under regulations under section 123(1)(c).
- (4) The person not connected with the HSSIB to whom protected material is disclosed as specified in subsection (3) commits an offence if the person—
 - (a) knowingly or recklessly discloses the protected material to another person without reasonable excuse, and
 - (b) knows or suspects that it is protected material.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine.

Commencement Information

- I5** S. 124 not in force at Royal Assent, see [s. 186\(6\)](#)
I6 S. 124 in force at 1.10.2023 by [S.I. 2023/1035, reg. 2\(a\)](#)

125 Restriction of statutory powers requiring disclosure

- (1) A power under any enactment (whenever passed or made) other than this Part to require the disclosure of, or to seize, any information, document, equipment or other item may not be used—
 - (a) to require the disclosure of protected material by the HSSIB, or
 - (b) to seize protected material from the HSSIB.

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- (2) Subsection (1) applies to a power to require disclosure, or to seize, however it is expressed (and, for example, it applies if the power is to require a person to give, supply, furnish or produce any information, document, equipment or other item).
- (3) Subsection (1) does not apply to a power to the extent that the provision conferring it is within the legislative competence of a devolved legislature.
- (4) A provision is within the legislative competence of a devolved legislature if—
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (including any provision that could only be made with the consent of a Minister of the Crown);
 - (c) the provision—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and
 - (ii) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (5) In this section “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.
- (6) References to the HSSIB in subsection (1) include—
- (a) an individual connected with the HSSIB, and
 - (b) an individual who was, but has ceased to be, connected with the HSSIB.

Commencement Information

17 S. 125 not in force at Royal Assent, see [s. 186\(6\)](#)

18 S. 125 in force at 1.10.2023 for E.W. by [S.I. 2023/1035, reg. 2\(a\)](#)

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