

## STATUTORY INSTRUMENTS

# 2012 No. 1848

## The Customs Disclosure of Information and Miscellaneous Amendments Regulations 2012

### PART 2 U.K.

#### Unauthorised disclosure of information

#### Interpretation U.K.

2. In regulation 3—

“general customs official” and “customs revenue official” have the meaning given by section 38 of the Borders, Citizenship and Immigration Act 2009<sup>M1</sup>;

“market surveillance”, “market surveillance authority” and “product” have the same meaning as in Article 27 of RAMS;

“RAMS” means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93<sup>M2</sup>; and

“restricted information” means any information which either identifies a person or enables that person's identity to be deduced.

#### Marginal Citations

M1 2009 c.11.

M2 OJ No L218, 13.8.2008, p30.

#### Offence of disclosure of restricted information U.K.

3.—(1) This regulation applies where a specified person discloses restricted information to a market surveillance authority pursuant to Article 27(2) of RAMS.

(2) The following are specified persons—

- (a) the Secretary of State,
- (b) a general customs official,
- (c) a customs revenue official,
- (d) the Commissioners for Her Majesty's Revenue and Customs, and
- (e) an officer of Her Majesty's Revenue and Customs.

(3) It is an offence for a person who receives the restricted information to disclose it except for the purposes for which it was originally received unless the subsequent disclosure is required for the purposes of market surveillance in respect of a product.

(4) It is a defence for a person to show a reasonable belief held by that person at the time the alleged offence took place—

- (a) that the disclosure was lawful, or
- (b) that the information had previously been made available lawfully.

#### Penalties for offence of disclosure of restricted information **U.K.**

4.—(1) A person who commits an offence under regulation 3 is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum <sup>M3</sup> or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment to a fine or to imprisonment for a period not exceeding two years or both.

(2) In England and Wales a prosecution for an offence under regulation 3 may be instituted [<sup>F1</sup>only by or with the consent of the Director of Public Prosecutions.]

(3) In Northern Ireland a prosecution for an offence under regulation 3 may be instituted only—

- (a) by the Commissioners for Her Majesty's Revenue and Customs, or
- (b) with the consent of the Director of Public Prosecutions for Northern Ireland.

#### Textual Amendments

**F1** Words in [reg. 4\(2\)](#) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 3 para. 36](#)

#### Marginal Citations

**M3** The “statutory maximum” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#) as amended by paragraph 17 of Schedule 4 to the [Criminal Procedure \(Consequential Provisions\) \(Scotland\) Act 1995 \(c.40\)](#). It is currently £5,000.

#### Review **U.K.**

5.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 2 to 4,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to the rules on penalties applicable to the misuse of information disclosed under Article 27(2) of RAMS (which is implemented by means of regulations 2 to 4) and the measures taken to implement them in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the rules on penalties applicable to the misuse of information disclosed under Article 27(2) of RAMS established by those regulations and the measures taken to implement them,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

**Changes to legislation:**

There are currently no known outstanding effects for the The Customs Disclosure of Information and Miscellaneous Amendments Regulations 2012, PART 2.