

HEALTH ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I - the National Health Service

Section 24: Restrictions on disclosure of information

213. *Section 24* provides that it is a criminal offence for any person, including a member or employee of the Commission, to knowingly or recklessly disclose confidential information obtained by the Commission which relates to and identifies an individual, except in certain specified circumstances. Subsection (3) provides that such an offence may be tried in either the magistrates' court or the Crown Court. In the magistrates' court the maximum penalty on conviction is a fine not exceeding the statutory maximum (currently £5000) and a prison term of 6 months. In the Crown Court a person convicted is liable to a maximum prison term of 2 years, or a fine, or both.
214. Under subsection (7), the restriction of the disclosure of personal confidential information obtained by the Commission extends to confidential information which does not itself identify the individual, but which does identify the individual when considered in combination with other information obtained by the Commission, or a person authorised by the Commission under section 23(1).
215. Subsections (4) and (6) set out the circumstances in which disclosure of confidential information relating to an individual is permitted. Subsection (4) allows the disclosure of confidential information where it is in a form in which the identity of the individual is protected. The test of whether information is in such a form is contained in subsection (8); the effect is that if the Commission wishes to disclose confidential information about an individual, it must ensure that the individual is not identified from the information itself and cannot be identified from that information in combination with other information which the Commission, or a person authorised by the Commission under section 23(1), has disclosed.
216. Subsection (6) details the other circumstances in which disclosure of this information is permitted. For example, paragraph (a) permits disclosure where the individual to whom the information relates had consented, and paragraphs (d) and (f) permit disclosure, if the disclosure was in accordance with any Act of Parliament or court order, or was for the purposes of criminal proceedings. Paragraph (g) enables the Commission to disclose this information where the information appears to the Commission to reveal that a health professional's performance has fallen substantially below expected standards, or that they have been guilty of serious professional misconduct, or that their fitness to practise may be seriously impaired. In such a case, the Commission would be able to disclose this information only to those who could take appropriate action, normally the employer or appropriate regulatory body.