

# **BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part 1: Border Functions**

##### **Use and disclosure of information**

##### *Section 16: Exceptions to section 15 prohibition*

72. [Section 16](#) sets out the limited number of circumstances where the disclosure of personal customs information is permitted.
73. Subsection (1) allows the disclosure of personal customs information where provided for in subsections (3) to (8) and when, in the case of customs revenue information, such disclosure does not contravene any restriction imposed by the Commissioners.
74. Subsection (2) ensures that the Commissioners' restrictions do not apply to information which is known to have been acquired otherwise than in the exercise of customs revenue functions.
75. Subsection (3) allows a disclosure to be made for the purposes of a customs function, a function relating to immigration, asylum or nationality, a function relating to national security, or a function relating to the prevention or detection of crime.
76. Subsection (4) allows a disclosure to be made to a person exercising public functions, whether in the UK or abroad, in order to assist them in carrying out those functions. Accordingly, disclosures to public bodies such as the Independent Police Complaints Commission ("IPCC"), as well as to HMRC and RCPO, would be permitted under this section, as would a disclosure by a customs official to the local licensing authority of information relating to a publican convicted of evading excise duty.
77. Subsection (5) allows a disclosure to be made for the purposes of civil proceedings, a criminal investigation or criminal proceedings (whether or not within the UK). Disclosures relating to civil proceedings must be for proceedings relating to a function set out in subsection (3). This would cover, for example, information required in relation to proceedings for recovery of a debt owed to another customs authority. Disclosures for the purposes of criminal investigations or proceedings are not limited and may relate, for example, to an investigation of a robbery. Subsection (5) also allows a disclosure in pursuance of an order of a court such as disclosure made in accordance with a witness summons.
78. Subsection (6) enables a disclosure to be made with the consent of each person to whom the information relates. This would cover for example an individual case where a person raised their circumstances with their Member of Parliament, asked them to take the case up with the relevant Government Minister, and authorised a relevant official to disclose what they knew of the case to the Minister for that purpose.

*These notes refer to the Borders, Citizenship and Immigration  
Act 2009 (c.11) which received Royal Assent on 21 July 2009*

79. Subsection (7) allows a disclosure to be made in order to comply with an obligation of the UK, or Her Majesty's Government, under an international or other agreement. The agreements in question will typically be Memoranda of Understanding with public authorities abroad for the purposes of securing the due administration of their respective customs laws.
80. Subsection (8) allows for disclosure to persons specified under regulations made jointly by the Secretary of State and the Treasury or disclosures of a kind specified in such regulations.