

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 - Criminal Law**

##### ***Section 31 – Failure to report serious organised crime***

144. **Section 31** places certain classes of individual under a duty to report to the police any knowledge or suspicion of another person’s involvement in serious organised crime. It is an offence for an individual under such a duty to fail to disclose that knowledge or suspicion.
145. Subsections (1) and (2) describe the circumstances in which section 31 applies. Subsection (1) provides that this section applies where a person knows or suspects that another person has committed an offence under section 28 or 30 or an offence aggravated under section 29 in cases where that knowledge or suspicion arises from information obtained in one of two sets of circumstances, namely: (a) in the course of a person’s trade, profession, business or employment or (b) as a result of a close personal relationship between the person holding the knowledge or suspicion and the person who has allegedly committed the offences. By virtue of subsection (2), section 31 only applies by virtue of a close personal relationship where the person holding the knowledge or suspicion has obtained material benefit as a result of the commission of serious organised crime by the alleged offender.
146. **Section 31(3)** describes the offence. It provides that where this section applies it is an offence to fail to disclose to a constable any knowledge or suspicion described above and the information on which that is based.
147. **Section 31(4)** provides that it will be a defence to prove that the accused had a reasonable excuse for failing to disclose a knowledge or suspicion or the information on which it is based.
148. Subsections (5) and (6) provide that disclosure is not required by a professional legal adviser in relation to information they have received in privileged circumstances and set out what is meant by “privileged circumstances”.
149. **Section 31(7)** makes it clear that the reference to a constable in subsection (3) includes a reference to a police member of the Scottish Crime and Drug Enforcement Agency.
150. The penalty for failing to report serious organised crime is stated in subsection (8) to be a maximum of five years imprisonment, a fine or both in proceedings tried on indictment or a maximum of 12 months imprisonment or a fine not exceeding the statutory maximum or both on summary conviction.