

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Criminal Justice

Section 98 - Sharing information with anti-fraud organisations

483. The Serious Crime Act 2007 (“the 2007 Act”) allows public authorities (within the meaning of section 6 of the Human Rights Act 1998) throughout the UK to disclose information as a member of a specified anti-fraud organisation for the purposes of preventing fraud or a particular kind of fraud.
484. Sections 68 to 72 of the 2007 Act provide the framework for the scheme. The information may be information of any kind, including personal and documentary information. Sections 68(5) and (6), 69(3) and 71(4) of the 2007 Act provide that the information sharing scheme, by which certain information may be shared for the purposes of preventing fraud, shall extend to reserved information but not to information the subject matter of which is devolved (“devolved information”) held by public authorities with devolved functions (“Scottish public authorities”). By repealing these sections of the 2007 Act (by virtue of section 98 of this Act), Scottish public authorities will be permitted to disclose devolved information, for the purposes of the prevention of fraud or a particular kind of fraud, to a specified anti-fraud organisation.
485. Section 68(5) and (6) of the 2007 Act, excludes Scottish public authorities from the information sharing scheme in respect of devolved information. Section 98 of this Act repeals sections 68(5) and (6) of the 2007 Act and as a result will allow Scottish public authorities to disclose and share such devolved information with anti-fraud organisations in the same way as public authorities may do in relation to reserved information.
486. Section 69(1) of the 2007 Act makes it an offence for a person to further disclose protected information which had been disclosed by a public authority member of an anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation. “Protected information” is any revenue and customs information disclosed by HM Revenue and Customs which reveals the identity of the person to whom the information relates, and specified information disclosed by other public authorities. Section 69(3) provides that this offence does not apply where the original disclosure was by a relevant public authority (i.e. an authority not covered by section 68) and related to devolved matters. As the power in section 68 is being extended to cover devolved information of Scottish public authorities, this exclusion can be removed and the offence in section 69(1) will apply to all protected information.
487. Section 71 of the 2007 Act provides that the Secretary of State must prepare, and keep under review, a code of practice with respect of the disclosure, for the purposes of preventing fraud or a particular type of fraud, of information by public authorities.

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

Section 98 of this Act repeals section 71(4) of the 2007 Act so that the code of practice will apply for disclosures of devolved information made for the purposes of the prevention of fraud by Scottish public authorities. Section 71(4) of the 2007 Act provides that this does not apply in relation to disclosures, relating to devolved information, by Scottish public authorities. This section of the Act also repeals, in part, section 71(6) of the 2007 Act to remove the now redundant definition of “relevant public authority”.