



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 2

CRIMINAL LAW

Serious organised crime

28 Involvement in serious organised crime

- (1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.
- (2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person—
 - (a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and
 - (b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.
- (3) For the purposes of this section and sections 29 to 31—

“serious organised crime” means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,

“serious offence” means an indictable offence—

 - (a) committed with the intention of obtaining a material benefit for any person, or
 - (b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and

“material benefit” means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.
- (4) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

29 Offences aggravated by connection with serious organised crime

- (1) This subsection applies where it is—
 - (a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with serious organised crime, and
 - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated by a connection with serious organised crime if the person committing the offence is motivated (wholly or partly) by the objective of committing or conspiring to commit serious organised crime.
- (3) It is immaterial whether or not in committing the offence the person in fact enables the person or another person to commit serious organised crime.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with serious organised crime.
- (5) Where subsection (1) applies, the court must—
 - (a) state on conviction that the offence is aggravated by a connection with serious organised crime,
 - (b) record the conviction in a way that shows that the offence was so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.

30 Directing serious organised crime

- (1) A person commits an offence by directing another person—
 - (a) to commit a serious offence,
 - (b) to commit an offence aggravated by a connection with serious organised crime under section 29.
- (2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).
- (3) For the purposes of subsections (1) and (2), a person directs another person to commit an offence if the person—
 - (a) does something, or a series of things, to direct the person to commit the offence,
 - (b) intends that the thing or things done will persuade the person to commit the offence, and
 - (c) intends that the thing or things done will—
 - (i) result in a person committing serious organised crime, or
 - (ii) enable a person to commit serious organised crime.

Status: This is the original version (as it was originally enacted).

- (4) The person directing the other person commits an offence under subsection (1) whether or not the other person in fact commits—
 - (a) a serious offence, or
 - (b) an offence aggravated by a connection with serious organised crime under section 29.
- (5) In this section “directing” a person to commit an offence includes inciting the person to commit the offence.
- (6) A person guilty of an offence under subsection (1) or (2) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

31 Failure to report serious organised crime

- (1) This section applies where—
 - (a) a person (“the person”) knows or suspects that another person (“the other person”) has committed—
 - (i) an offence under section 28 or 30, or
 - (ii) an offence which is aggravated by a connection with serious organised crime under section 29, and
 - (b) that knowledge or suspicion originates from information obtained—
 - (i) in the course of the person’s trade, profession, business or employment, or
 - (ii) as a result of a close personal relationship between the person and the other person.
- (2) In the case of knowledge or suspicion originating from information obtained by the person as a result of a close personal relationship between the person and the other person, this section applies only where the person has obtained a material benefit as a result of the commission of serious organised crime by the other person.
- (3) The person commits an offence if the person does not disclose to a constable—
 - (a) the person’s knowledge or suspicion, and
 - (b) the information on which that knowledge or suspicion is based.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person had a reasonable excuse for not making the disclosure.
- (5) Subsection (3) does not require disclosure by a person who is a professional legal adviser (an “adviser”) of—
 - (a) information which the adviser obtains in privileged circumstances, or
 - (b) knowledge or a suspicion based on information obtained in privileged circumstances.
- (6) For the purpose of subsection (5), information is obtained by an adviser in privileged circumstances if it comes to the adviser, otherwise than for the purposes of committing serious organised crime—
 - (a) from a client (or from a client’s representative) in connection with the provision of legal advice by the adviser to that person,

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- (b) from a person seeking legal advice from the adviser (or from that person's representative), or
 - (c) from a person, for the purpose of actual or contemplated legal proceedings.
- (7) The reference in subsection (3) to a constable includes a reference to a police member of the Scottish Crime and Drug Enforcement Agency.
- (8) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.