



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 2

CRIMINAL LAW

Serious organised crime

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,
 - (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.