
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force section 98 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) on 8 November 2021.

Section 98 of the 2010 Act amends the Serious Crime Act 2007 (“the 2007 Act”).

The 2007 Act allows public authorities (within the meaning of section 6 of the Human Rights Act 1998) throughout the United Kingdom to disclose information as a member of a specified anti-fraud organisation (see section 68(8) of the 2007 Act) for the purposes of preventing fraud.

Sections 68 to 72 of the 2007 Act provide the framework for the information sharing scheme. Sections 68(5) and (6), 69(3) and 71(4) of the 2007 Act had the effect that the information sharing scheme does not extend to information the subject matter of which is devolved (“devolved information”) held by public authorities with devolved functions. Section 98 of the 2010 Act repeals sections 68(5) and (6), 69(3) and 71(4) of the 2007 Act. The effect of this repeal is that public authorities exercising devolved functions are permitted to disclose devolved information, for the purposes of preventing fraud or a particular kind of fraud, to a specified anti-fraud organisation.

The repeal of those subsections of the 2007 Act also has the effect of extending the scope of the offence in section 69(1) of the 2007 Act. It is an offence under section 69(1) for a person to further disclose “protected information” (which is defined in section 69(5) of the 2007 Act). Prior to its repeal, section 69(3) of the 2007 Act provided that the offence did not apply where the original disclosure was by a public authority with devolved functions and where the information was devolved information. The repeal of section 69(3) means that the offence in section 69(1) will apply in respect of such information.

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 of information under the scheme. The repeal of section 71(4) of the 2007 Act means that the code of practice will apply in respect of disclosures of devolved information made for the purposes of the prevention of fraud by public authorities with devolved functions. Public authorities are required to have regard to the code when disclosing information.

Section 98 of the 2010 Act also repeals, in part, section 71(6) of the 2007 Act to remove the now redundant definition of “relevant public authority”.