

## POLICY NOTE

### THE CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010 (COMMENCEMENT NO. 16) ORDER 2021

SSI 2021/355 (C. 27)

The above instrument was made in exercise of the powers conferred by section 206(1) of the Criminal Justice and Licensing (Scotland) Act 2010. The instrument is subject to no Parliamentary procedure.

**The purpose of this instrument is to commence section 98 of the Criminal Justice and Licensing (Scotland) Act 2010, which will permit Scottish public authorities operating in devolved areas to disclose devolved information to a specified anti-fraud organisation for the purposes of the prevention of fraud or a particular kind of fraud.**

#### Policy Objectives

1. The Serious Crime Act 2007 (“the 2007 Act”) allows public authorities 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. 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. Currently 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, does not extend to information the subject matter of which is devolved (“devolved information”) held by public authorities with devolved functions (“Scottish public authorities”). Therefore, in Scotland, the scheme currently only applies in respect of “reserved information”.
2. Section 98 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) will, once in force, repeal certain provisions (as specified above) in the 2007 Act. The effect of commencing section 98 of the 2010 Act will be that Scottish public authorities who operate in devolved areas 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. This will have the effect of bringing public authorities operating in a devolved Scottish sphere within the overarching framework for fraud prevention contained in the 2007 Act.
3. Under section 71 of the 2007 Act, the UK Government Secretary of State is required to produce a Code of Practice for public authorities. Section 71(3) of the 2007 Act provides that “a public authority must have regard to the Code of Practice in (or in connection with) disclosing information”. Section 98 of this Act will, among other things, repeal section 71(4) of the 2007 Act so that the Code of Practice will apply in relation to disclosures of devolved information by Scottish public authorities made for the purposes of the prevention of fraud. Therefore, when section 98 is commenced Scottish public authorities, who operate in devolved areas will have a duty to have regard to the Code of Practice when they undertake this work. Section 98 of the 2010 Act also repeals, in part, section 71(6) of the 2007 Act to remove (when commenced) the redundant definition of “relevant public authority”.

## **Consultation**

4. As this instrument makes provision in consequence of the 2010 Act no formal consultation was necessary.

## **Impact Assessments**

5. All the necessary impact assessment were completed during the 2010 Act's passage through the Scottish Parliament.

## **Financial Effects**

6. The impact of this policy on business is nil. The Cabinet Secretary for Justice and Veterans confirms that no BRIA is necessary as this instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Justice Directorate

October 2021