

# PROCEEDS OF CRIME ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 10: Information

#### England and Wales and Northern Ireland

#### *Section 435: Use of information by Director*

577. *Section 435* ensures that the Director can use information obtained in connection with any one of his functions to assist him in exercising any of his other functions. For example, information obtained in the course of a criminal confiscation investigation may be used by the Director in a civil recovery investigation.

#### *Section 436: Disclosure of information to Director*

578. *Section 436* enables information to be disclosed to the Director by a person (a 'permitted person') listed in *subsection (5)*. The reference to a constable in *subsection (5)(a)* will include any person with the powers of a constable including, for example, officers of the British Transport Police and the Ministry of Defence Police. Under *subsection (6)*, the Secretary of State will be able to add to the list of permitted persons by order which, by virtue of *section 459(6)(a)*, will be subject to approval by each House of Parliament. *Subsection (7)* narrows the designation power to specific functions; for example when designating the Secretary of State for Trade and Industry, the Secretary of State would be required to designate a relevant function within that department such as its insolvency function. *Subsections (8) and (9)* deal with information provided by the Commissioners of Inland Revenue and Commissioners of Customs and Excise. For information to be passed from either to the Director, the Commissioners, or a person to whom they have delegated the power to disclose, must authorise the disclosure. This is to ensure that there are safeguards in place to protect sensitive personal information held by both bodies.

579. Disclosures of information that contravene the Data Protection Act 1998, or are prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, are not permitted (*subsection (3)*). It is also implicit that the provisions of the Human Rights Act 1998 would need to be taken into account before any disclosure is made by a permitted person or body.

#### *Section 437: Further disclosure*

580. *Subsections (1) to (4)* restrict the onward transmission from the Director of information received from either the Commissioners of Inland Revenue or Commissioners of Customs and Excise (or persons who have disclosed on their behalf). As with *section 436(8) and (9)*, these measures are an acknowledgement of the personal nature of the information. They ensure that it can only be used for purposes connected with the exercise of the Director's functions and with the permission of the providing body.

581. *Subsection (6)* enables a provider of information to the Director other than the Commissioners of Inland Revenue or the Commissioners of Customs and Excise to attach conditions relating to its further disclosure, for example where it may contain sensitive operational details.

***Section 438: Disclosure of information by Director***

582. *Section 438* provides that the Director may disclose information to any person or body for any of the purposes set out in *subsection (1)(a) to (i)*. *Subsections (2) and (3)*, however, prohibit disclosure of any information obtained by the Director under Part 6 of the Act (Revenue Functions) except to the Commissioners of Inland Revenue, or to the Lord Advocate for the exercise of his functions under Part 3 of the Act. These measures again recognise the delicate nature of information relating to the tax affairs of an individual. The purpose of enabling such information to be disclosed to the Lord Advocate is to ensure that he is on the same footing in relation to his Part 3 functions as the Director would be in relation to his Part 2 functions – the Director would be able to use such information for his Part 2 functions by virtue of *section 435*. Similarly, *subsection (4)* allows the Lord Advocate to disclose such information to Scottish Ministers for the purpose of their functions under Part 5 of the Act; this is so that Scottish Ministers will be on the same footing as the Director, who, by virtue of *section 435*, would be able to use such information in connection with his Part 5 functions.
583. *Subsection (5)* provides for the Director to impose conditions on the further disclosure of any information disclosed by him. *Subsection (6)* prohibits the disclosure of the information in contravention of these conditions. Under *subsection (9)*, the Secretary of State will be able to add to the list of disclosure purposes by order which, by virtue of *section 459(6)(a)*, will be subject to approval by both Houses of Parliament.
584. As with *section 436(3)*, exchanges of information which contravene the Data Protection Act 1998, or are prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, are not permitted and any disclosure would be subject to the provisions of the Human Rights Act 1998.

**Scotland**

***Section 439: Disclosure of information to Lord Advocate and to Scottish Ministers***

585. *Section 439* enables information to be disclosed to the Scottish Ministers or to the Lord Advocate by a person (a ‘permitted person’) listed in *subsection (5)*. The reference to a constable in *subsection 5(a)* will include any person with the powers of a constable, including for example the British Transport Police and the Ministry of Defence Police. Under *subsection (6)*, the Scottish Ministers will be able to add to the list of permitted persons by order which, by virtue of *section 459(6)(b)*, will be subject to approval by the Scottish Parliament. *Subsection (7)* narrows the designation power to specify functions; for example, when designating a Government department, the Scottish Ministers would be required to designate a relevant function within that department. *Subsections (8) and (9)* deal with information provided by the Commissioners of Inland Revenue and Commissioners of Customs and Excise. For information to be passed from either to the Scottish Ministers or to the Lord Advocate, the Commissioners, or a person nominated by them, must authorise the disclosure. This is to ensure that there are safeguards in place to protect sensitive personal information held by both bodies.
586. Disclosures of information that contravene the Data Protection Act 1998, or are prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, are not permitted (*subsection (3)*). It is also implicit that the provisions of the Human Rights Act 1998 would need to be taken into account before any disclosure is made by a permitted person or body.

***Section 440: Further disclosure***

587. *Subsections (1) to (4)* relates to the onward transmission from the Scottish Ministers or the Lord Advocate of information received from either the Commissioners of Inland Revenue or Commissioners of Customs and Excise (or persons to whom authority has been delegated). As with *section 439(8) and (9)*, these measures are an acknowledgement of the personal nature of the information. They ensure that it can only be used for purposes connected with the exercising of the functions of the Scottish Ministers or of the Lord Advocate under the Act with the permission of the providing body.
588. *Subsection (6)* enables a provider of information to the Scottish Ministers or to the Lord Advocate to attach conditions relating to its further disclosure for example, where it may contain sensitive operational details.

***Section 441: Disclosure of information by Lord Advocate and by Scottish Ministers***

589. *Section 441* provides that the Scottish Ministers and the Lord Advocate may disclose information to any person or body for any of the purposes set out in *subsection (1) (a) to (i)*. Under *subsection (8)*, the Scottish Ministers will be able to add to the list of disclosure purposes by order.
590. As with *section 439(3)*, exchanges of information which contravene the Data Protection Act 1998, or are prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, are not permitted and any disclosure would be subject to the provisions of the Human Rights Act 1998.

**Overseas purposes**

***Section 442: Restriction on disclosure for overseas purposes***

591. *Section 442* brings the power to disclose information for overseas purposes within the scope of the provisions of the Anti-Terrorism, Crime and Security Act 2001. Section 18 of that Act provides power for the Secretary of State to restrict disclosure of information for overseas purposes. The power may be exercised where it appears to the Secretary of State that the overseas investigation or proceeding relates to a matter where it would be more appropriate for any investigation to be carried out by the authorities of the United Kingdom or a third country.
592. *Subsection (1)* provides that the provisions of section 18 apply to a disclosure made under *section 438(1)(a) or (b)*, or under *section 441(2)(a) or (b)*. *Subsection (2)* disapplies section 20 of the ATCS Act in relation to disclosures under Part 10; section 20 contains interpretation provisions for Part 3 of the Act which are not needed for the Act.