

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Information

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.