# POLICY NOTE

# THE PROCEEDS OF CRIME ACT 2002 (AMENDMENT OF SCHEDULE 4) (SCOTLAND) ORDER 2014

## SSI 2014/XXX

1. The above instrument was made in exercise of the powers conferred by section 142(6) of the Proceeds of Crime Act 2002 ("POCA"). The instrument is subject to the affirmative procedure.

## Policy Objectives

2. The Scottish Government is committed to tackling serious organised crime, and follows a multi-agency approach with partners to map and target individuals and groups responsible for harming communities through organised crime. The Order adds to the list of offences in Schedule 4 to POCA that are deemed to be lifestyle offences for the purposes of Scottish confiscation proceedings. This aims to maximise the tools available to law enforcement and the Crown Office and Procurator Fiscal Service (COPFS) under POCA, to help disrupt organised crime, deprive criminals of the proceeds of their crime and prevent such proceeds being used to fund further criminal activity.

3. Part 3 of POCA provides for confiscation orders to be made against certain offenders. In making a confiscation order, the court must decide whether the offender has a criminal lifestyle and, if so, whether the offender has benefited from his or her general criminal conduct. An offender is regarded as having a criminal lifestyle if the offence of which he or she has been convicted (or, in the case of summary proceedings, has been discharged absolutely without proceeding to conviction) is an offence specified in Schedule 4.

4. The criminal lifestyle regime is based on the principle that if there are grounds to indicate that offenders are living off the proceeds of criminal activity, they should be required to account for their assets, and have their criminal profits confiscated. Where an offender is deemed to have a criminal lifestyle, the court must assume (unless the contrary is shown) that the offender's assets over the previous six years have been obtained from criminal activity and calculate the amount to be confiscated accordingly.

5. The Scottish Ministers may by order amend the list of lifestyle offences in Schedule 4 to POCA. Since POCA came into force, the Scottish Ministers have twice extended the list of offences deemed to be indicative of a criminal lifestyle.

6. In March 2011, the Scottish Ministers added to the list of offences in Schedule 4 an offence under section 39(1) of the Consumer Credit Act 1974 (offences against Part III) in so far as it concerns the carrying on of a consumer credit business (as defined in section 189(1) of that Act). This made illegal money lending a criminal lifestyle offence. This aimed to tackle the problem of illegal money lenders preying upon and exploiting vulnerable individuals and communities, which can lead to those who borrow money from them living in fear and being subjected to intimidation and potentially severe repercussions.

7. In April 2014, however, the consumer credit regulatory regime changed. The majority of the Consumer Credit Act 1974 was repealed, including the section 39 offence that was

used for prosecuting illegal money lenders. Accordingly, this Order deals with the consequential repeal of the provision which specified that offence as a lifestyle offence in Schedule 4 to POCA.

8. Consumer credit-related activity is now authorised and regulated under the Financial Services and Markets Act 2000 (FSMA). This Order amends Schedule 4 to POCA to respecify the consumer credit-related offence in its new guise, as an offence under section 23(1) of FSMA in so far as it concerns the carrying on, or purported carrying on, of a credit-related regulated activity (as defined by section 23(1B) of FSMA).

9. A "credit-related regulated activity" is a regulated activity of a kind designated by the Treasury by order. The Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014 (SI 2014/334) designates such kinds of activity. The offence therefore covers unauthorised debt-collecting in relation to credit agreements, and entering into regulated credit agreements as the lender (or exercising the lender's rights and duties under such agreements) without the required authorisation. It captures those offences that are enforced by Trading Standards (illegal money lending), rather than offences that are enforced by the Financial Conduct Authority as a breach of authorisation.

10. The Order applies only to offences committed on or after the day on which it comes into force. Any offence committed under section 23(1) of FSMA on or after 1 April 2014, but before this Order comes into force, will not constitute a lifestyle offence for the purpose of any Scottish confiscation proceedings.

**Consultation**

11. There is no statutory requirement to consult before making an order under section 142 of POCA. When the list of criminal lifestyle offences was extended in 2011 there was a full consultation, and support for inclusion of illegal money lending. Trading Standards and COPFS were consulted on the proposal for this Order and are fully supportive of it.

**Impact Assessments**

12. An equality impact assessment has not been completed because the Order intends to reinstate a criminal lifestyle offence that has been in place in Scotland since March 2011, and has no impact in itself on any of the equalities groups. A "No EQIA required declaration" form is provided at Annex A. We expect no change on the impact on the private, public or voluntary sectors, or on the environment or on environmental issues with regard to reinstating the criminal lifestyle offence.

**Financial Effects**

13. The Cabinet Secretary for Justice has confirmed that a BRIA is not required, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate
16 May 2014

# EQUALITY IMPACT ASSESSMENT NOT REQUIRED DECLARATION

| | |
|---|---|
| Policy title | **The Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014** |
| Which National Outcome(s) does the policy contribute to? | **We live our lives safe from crime, disorder and danger** |
| Directorate: Division: team | Safer Communities: Police Division: Organised Crime Unit |
| Policy lead responsible for taking the decision | Lucy Smith |

Please record why you are not carrying out an EQIA and what your justification is for making that decision.

The Order will reinstate a lifestyle offence onto Schedule 4 to POCA, which was inadvertently repealed through UK legislation earlier this year. It is not a new policy, and has no affect on individuals' access to any services or functions, or on their employment.

The policy will potentially have a very minimal or no additional cost to the public purse as it will be part of the day to day work already being carried out.

The policy does not impact on any other policy which affects people.

**I confirm that the decision to <u>not</u> carry out an EQIA has been authorised by:**

| Name and job title of Deputy Director (or equivalent) | Date authorisation given |
|---|---|
|  | 13 May 2014 |