



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

19th Meeting, 2014 (Session 4)

Tuesday 17 June 2014

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Subordinate legislation:** The Committee will take evidence on the Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014 [draft] from—

Roseanna Cunningham, Minister for Community Safety and Legal Affairs, Dr Lucy Smith, Head of Organised Crime Strategy, and Carla McCoy-Stevens, Solicitor, Legal Directorate, Scottish Government.

2. **Subordinate legislation:** Roseanna Cunningham (Minister for Community Safety and Legal Affairs) to move—

S4M-10291—That the Justice Committee recommends that the Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014 [draft] be approved.

3. **Courts Reform (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 2).

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The papers for this meeting are as follows—

Agenda item 1

Paper by the clerk

J/S4/14/19/1

[Proceeds of Crime Act 2002 \(Amendment of Schedule 4\)
\(Scotland\) Order 2014 \[draft\]](#)

Agenda item 2

[Copy of the Bill and accompanying documents](#)

Justice Committee

19th Meeting, 2014 (Session 4), Tuesday 17 June 2014

Subordinate legislation

Note by the clerk

Introduction

1. This paper invites the Committee to consider the following affirmative instrument:
 - Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014 [draft]

**Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014
[draft]**

Purpose of instrument

2. This draft Order was laid under section 142(6) of the Proceeds of Crime Act 2002.
3. The purpose of this instrument is to amend Schedule 4 to the 2002 Act to respecify the consumer credit-related offence of illegal money lending, in its new guise as an offence under section 23(1) of the Financial Services and Markets Act 2000 (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 the FSMA).
4. Further details on the purpose of the instrument can be found in the policy note in the Annexe to this paper and an electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/sdsi/2014/9780111023464/contents>

Consultation

5. The policy note confirms that there is no statutory requirement to consult before making an order under section 142 of the Proceeds of Crime Act 2002. 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 the Crown Office and Procurator Fiscal Service were consulted on the proposal for this Order and are fully supportive of it.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 27 May 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee is required to report to the Parliament on this instrument by 27 June 2014.

8. The instrument is subject to affirmative procedure (Rule 10.6. of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-10291 proposing that the Committee recommends the approval of the instrument. The Minister for Community Safety and Legal Affairs will attend the Committee meeting on 17 June to answer any questions on the instrument, and then, under a separate agenda item, will be invited to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 27 June 2014.

9. The Parliament will then be invited to approve the instrument.

10. The Committee is asked to delegate to the Convener authority to approve the report for publication.

ANNEXE**Policy Note****Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014
[draft]**

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

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.

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.

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.

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.

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.

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.

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).

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.

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

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

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. 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

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