

Draft Order laid before the Scottish Parliament under section 459(6)(b) of the Proceeds of Crime Act 2002 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

PROCEEDS OF CRIME

**The Proceeds of Crime Act 2002 (Amendment
of Schedule 4) (Scotland) Order 2014**

Made - - - - 2014
Coming into force - - 2014

The Scottish Ministers make the following Order in exercise of the powers conferred by section 142(6) of the Proceeds of Crime Act 2002⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 459(6)(b) of that Act⁽²⁾, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014 and comes into force on the day after the day on which it is made.

Application

2. This Order applies only to offences committed on or after the day on which it comes into force.

Amendment of the Proceeds of Crime Act 2002

3. In Schedule 4 to the Proceeds of Crime Act 2002 (lifestyle offences: Scotland)⁽³⁾, after paragraph 9A insert—

(1) [2002 c.29](#).

(2) Section 459(6)(b) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)).

(3) Schedule 4 was amended by paragraph 32 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 ([c.41](#)), section 14(4) of the Gangmasters (Licensing) Act 2004 ([c.11](#)), section 5(8) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ([c.19](#)), article 3 of [S.S.I. 2003/594](#), article 4 of [S.S.I. 2011/231](#) and paragraph 8 of Part 1 of the Schedule to [S.I. 2013/1881](#).

“Consumer credit

9AA. An offence under section 23(1) of the Financial Services and Markets Act 2000⁽⁴⁾ (contravention of the general prohibition) if it concerns the carrying on, or purported carrying on, of a credit-related regulated activity (as defined by section 23(1B) of that Act⁽⁵⁾.”

St Andrew’s House,Edinburgh
Date

Name
A member of the Scottish Government

⁽⁴⁾ 2000 c.8. Section 23 was amended by paragraph 3 of Part 2 of Schedule 9 to the Financial Services Act 2012 (c.21).
⁽⁵⁾ S.I. 2014/334 designates certain kinds of regulated activity as credit-related regulated activities for the purpose of section 23(1B) (which was inserted by paragraph 3(2) of Part 2 of Schedule 9 to the Financial Services Act 2012).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (“the Act”) by adding an offence to the list of lifestyle offences in Schedule 4 to the Act.

Section 92 of the Act provides for the making of confiscation orders against certain offenders. Where a court acts under that section it must, in terms of subsection (5), decide whether the offender has a criminal lifestyle and, if so, whether the offender has benefited from his or her general criminal conduct.

Under section 142(1)(a) of the Act, an offender has 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 Order—

- (a) applies only to offences committed on or after the day on which it comes into force (article 2); and
- (b) amends Schedule 4 to the Act to specify as a lifestyle offence an offence under section 23(1) of the Financial Services and Markets Act 2000 in so far as it concerns the carrying on, or purported carrying on, of a credit-related regulated activity (article 3).