

2011 No. 231

PROCEEDS OF CRIME

**The Proceeds of Crime Act 2002 Amendment (Scotland) Order
2011**

Made - - - - *21st March 2011*

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 142(6) and (7) of the Proceeds of Crime Act 2002(a) and all other powers enabling them to do so.

In accordance with section 459(6) of that Act, 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 (Scotland) Order 2011 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 section 142(3) of the Proceeds of Crime Act 2002 (criminal lifestyle), for “£5000” substitute “£1000”.

4. In Schedule 4 to the Proceeds of Crime Act 2002 (lifestyle offences: Scotland)(b)—

(a) in paragraph 2(2)(b) (drug trafficking), for “exploration” substitute “exportation”;

(b) in paragraph 7(1) (intellectual property), after paragraph (c) insert—

“(ca) section 296ZB(1) or (2) (devices and services designed to circumvent technological measures);”;

(a) 2002 c.29.

(b) Schedule 4 has been amended by the Nationality and Asylum Act 2002 (c.41), Schedule 7, paragraph 32; the Gangmasters (Licensing) Act 2004 (c.11), section 14(4); the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19), section 5(8); and S.S.I. 2003/594, article 3.

- (c) in paragraph 8 (pimps and brothels), after paragraph (a) insert—
 “(aa) section 11(4) (aiding, abetting or compelling prostitution for gain);”;
- (d) immediately before paragraph 9A insert—
 “*Gangmasters*”;
- (e) after paragraph 9A insert—

“Consumer credit

9B. An offence under section 39(1) of the Consumer Credit Act 1974 (offences against Part III) if it concerns the carrying on of a consumer credit business (as defined in section 189(1) of that Act).

Distribution of obscene material

9C. An offence under section 51(2) of the Civic Government (Scotland) Act 1982(a) (obscene material).

Unclassified video recordings

9D. An offence under either of the following provisions of the Video Recordings Act 1984(b)—

- (a) section 9(1) (supplying video recording of unclassified work);
- (b) section 10(1) (possession of video recording of unclassified work for the purposes of supply)(c).

Private security industry

9E. An offence under section 5(1) of the Private Security Industry Act 2001(d) (using an unlicensed security operative).

Serious organised crime

9F.—(1) An offence under either of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010(e)—

- (a) section 28(1) (involvement in serious organised crime);
- (b) section 30(1) or (2) (directing serious organised crime).

(2) An offence to which section 29(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (offences aggravated by connection with serious organised crime) applies.”; and

(a) 1982 c.45. Section 51 has been amended by the Broadcasting Act 1990 (c.42), sections 4(6), 87(6), 163(3) and (4)(b) and 203(3) and Schedule 21; the Criminal Justice and Public Order Act 1994 (c.33), section 87; and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 44(2) (subject to the transitional provisions, transitory modifications and savings specified in Schedule 3 to that Act).

(b) 1984 c.39.

(c) Sections 9 and 10 of the Video Recordings Act 1984 were repealed and brought back into force by section 1(1) of the Video Recordings Act 2010 (c.1).

(d) 2001 c.12. Schedule 15 to the Serious Organised Crime and Police Act 2005 (c.15) extended the provisions of the Private Security Industry Act 2001 to Scotland.

(e) 2010 asp 13.

(f) in paragraph 10(1) (inchoate offences), after “an offence of” insert “attempting,”.

St Andrew's House,
Edinburgh
21st March 2011

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (“the Act”) by adding offences 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.

In terms of section 142(1) 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 Act also provides that an accused has a criminal lifestyle if he or she commits an offence which constitutes conduct forming part of a course of criminal activity or commits an offence over a period of at least six months from which he or she has benefited (section 142(1)(b) and (c)). But these offences only constitute a criminal lifestyle if the accused obtains a benefit from those offences of a value specified in section 142(3). This Order reduces that value from £5000 to £1000.

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

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