

POLICY NOTE

THE PROCEEDS OF CRIME ACT 2002 (DISCLOSURE OF INFORMATION TO AND BY LORD ADVOCATE AND SCOTTISH MINISTERS) AMENDMENT ORDER 2014

SSI 2014/49

1. The above instrument was made in exercise of the powers conferred by section 441(9) of the Proceeds of Crime Act 2002 (“POCA”). The instrument is subject to the affirmative procedure.

Policy Objectives

2. Tackling serious organised crime is a top priority for the Scottish Government. It will continue to pursue a multi-agency approach to map and target individuals and groups responsible for harming communities through organised crime, and apply POCA so as to seize assets obtained through criminal activity. This Order is aimed at strengthening POCA as it applies to Scotland.
3. POCA confers functions on the Lord Advocate, in relation to the confiscation of the proceeds of crime under Part 3, and on the Scottish Ministers, in relation to the civil recovery of the proceeds of unlawful conduct under Part 5. The Crown Office and Procurator Fiscal Service (COPFS) and the Civil Recovery Unit (CRU) carry out these functions on behalf of the Lord Advocate and the Scottish Ministers, respectively.
4. Under section 441(2) of POCA, the Lord Advocate and the Scottish Ministers can disclose information which they obtain in connection with their respective functions under POCA for certain purposes. These purposes generally relate to the exercise of public functions (for example, criminal investigative and prosecutorial functions).
5. Section 441(9) of POCA gives the Scottish Ministers the power to designate further functions which they think are of a public nature and for the purposes of which information may be disclosed. The functions so designated are contained in article 3 of the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003 (“the principal Order”). These are: (a) protecting public health, and (b) the functions of certain bodies under the Financial Services and Markets Act 2000.
6. There have been cases where the CRU and COPFS, in exercising functions under POCA, have obtained information which suggests that a solicitor has contravened the rules of conduct of that profession in a way that falls short of criminal conduct. POCA does not currently provide for the disclosure of that information to the appropriate regulator, the Law Society of Scotland (LSS), for the purposes of considering whether disciplinary action should be taken against the solicitor concerned. As it is important to ensure that consumers of legal services provided by solicitors are protected, the purpose of this Order is to remedy this.
7. Accordingly, the Order amends the principal Order to designate the regulatory functions of the Council of the LSS as defined by sections 3F and 3G of the Solicitors

(Scotland) Act 1980, and the LSS' functions as a supervisory authority under the Money Laundering Regulations 2007, as public functions for the purposes of which information obtained by COPFS and the CRU may be disclosed.

8. This will enable COPFS and the CRU to disclose information to the LSS in appropriate cases, and allow the Council of the LSS to investigate whether professional misconduct has taken place. It will also allow the LSS to more effectively discharge its functions as a supervisory authority under the Money Laundering Regulations 2007. Making this legislative change provides a further opportunity to disrupt the operation of organised crime groups in Scotland.

Consultation

9. There is no statutory requirement to consult before making an Order under section 441(9) of POCA. However, the LSS, the Scottish Legal Complaints Commission, COPFS and the CRU were consulted on the proposal for this Order, and are all fully supportive of it.

Impact Assessments

10. An equality impact assessment has not been completed because the Order enables information to be shared, and has no impact in itself on any of the equalities groups. A 'No EQIA required declaration' form is attached at Annex A. As there are no impacts on the private, public or voluntary sectors, or on the environment or on environmental issues, no Business and Regulatory Impact Assessment or Strategic Environmental Assessment is required to support the Order.

Financial Effects

11. 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
18 December 2013

EQUALITY IMPACT ASSESSMENT NOT REQUIRED DECLARATION

Policy title	The Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Amendment 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, Organised Crime Unit
Policy lead responsible for taking the decision	Alastair Hamilton

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

The Policy does not affect individuals' access to any services or functions and has no impact 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 not carry out an EQIA has been authorised by:

Name and job title of Deputy Director (or equivalent)	Date authorisation given
Gillian Russell Head of Police Division 	16 December 2013

