

## **POLICY NOTE**

### **THE CRIMINAL FINANCES ACT 2017 (COMMENCEMENT) (SCOTLAND) REGULATIONS 2017**

#### **SSI 2017/456 (C. 34)**

1. The above instrument is made in exercise of the power conferred by section 58(2) of the Criminal Finances Act 2017 (“the 2017 Act”). It is not subject to any parliamentary procedure.

#### **Policy Objectives**

2. These Regulations bring into force, on 31 January 2018, certain provisions of the 2017 Act concerning the confiscation of proceeds of crime in Scotland.

3. The 2017 Act contains various provisions to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious organised crime. Much of this has been achieved by updating existing legislation, including the Proceeds of Crime Act 2002 (“POCA”). The new provisions support implementation of Scotland’s strategy for tackling serious organised crime. Part of this is to reinforce the powers available to both prosecutors and the Civil Recovery Unit at the Crown Office so as to counter the increasingly sophisticated ways in which criminals try to prevent the recovery of their criminal profits and assets.

4. The Bill for the 2017 Act was introduced in the House of Commons on 13 October 2016 and received Royal Assent on 27 April 2017. Various provisions have since been brought into force, in relation to other parts of the United Kingdom as well as Scotland, by regulations made before the date of these Regulations. These Regulations therefore form part of an implementation package for the 2017 Act, which is being commenced in stages. They are the first and only commencement regulations to be made under the 2017 Act by the Scottish Ministers, who have responsibility for commencing the amendments to POCA which relate to Scottish confiscation proceedings.

5. A summary of the various provisions of the 2017 Act being commenced by these Regulations is given below.

#### Section 28

6. Section 28 of the 2017 Act amends Part 3 of POCA (confiscation: Scotland) to make provision for the payment of money from bank and building society accounts, or cash seized by law enforcement authorities, in satisfaction of confiscation orders.

7. The policy intention is to secure swift payment of confiscation orders by tackling the problem of accused persons not paying, or delaying payment of, their confiscation orders. This often occurs despite accused persons holding money in a bank or building society account, or having cash which has been seized by a law enforcement authority for the purposes of a criminal investigation or prosecution (but which is not subject to forfeiture).

8. Section 28 therefore introduces a new court order providing for the High Court of Justiciary or the sheriff (as the case may be) to order any realisable property in the form of money held in a bank or building society account, or money which has been seized and detained by (for example) the Police Service of Scotland, Her Majesty's Revenue and Customs or the National Crime Agency, to be paid to the appropriate clerk of court in full or part satisfaction of a confiscation order.

### Section 30

9. Part 3 of POCA allows for management and enforcement administrators to be appointed, as required, in the course of confiscation proceedings. Section 30 of the 2017 Act simply redefines the types of institution (i.e. banks and building societies) in which appointed administrators must deposit money received in the exercise of their functions.

### Section 32(4)

10. Section 32(4) of the 2017 Act amends section 109 of POCA, which provides for the discharge of a confiscation order where the outstanding balance is less than £1,000 and the amount the accused has available to pay the order (calculated in accordance with section 95) is inadequate to meet this.

11. However, the "available amount" may subsequently increase (e.g. if an accused person is discovered to have obtained further property which may be realised to satisfy the original value of confiscation order in full.) The amendments therefore allow for the reconsideration of a confiscation order that has previously been discharged on the grounds of an insufficient amount available to pay the order, to secure full payment so far as possible.

12. By virtue of section 32(7) of the 2017 Act, the amendments apply in relation to a confiscation order whether made before or after 31 January 2018, but only where discharge of the order occurs after that date.

### Section 34(3)

13. Section 34(3) of the 2017 Act amends the definition of "free property" in section 148 of POCA. Free property can be taken into account when calculating the "available amount" for satisfying a confiscation order, which ultimately determines the "recoverable amount" (as defined in section 93 of POCA). It is any property that is not already subject to certain other kinds of forfeiture or detention proceedings. This prevents any form of double-counting. As the 2017 Act introduces new types of forfeiture and detention proceedings, section 34(3) simply excludes property which is subject to such proceedings from the definition of "free property".

### Appointed day

14. The 31 January 2018 is appointed as the day on which the above provisions come into force. This is to coincide with the day on which it is intended that the Secretary of State will commence the majority of the remaining provisions of the 2017 Act (including sections 32(1) and (7) and 34(1)).

## **Consultation**

15. The Secretary of State has been consulted in accordance with section 58(2) of the 2017 Act. The Scottish Government has not undertaken any formal public consultation in relation to these Regulations. However, during the Bill's parliamentary passage, it consulted key stakeholders whose views were taken into account in finalising the provisions summarised above and in determining the timetable for implementation. These included the Crown Office and Procurator Fiscal Service, the Police Service of Scotland, the Lord President's Office and the Scottish Courts and Tribunal Service.

## **Impact Assessments**

16. There is no equality, children's, privacy or environmental impact issues arising from these Regulations. The UK Government undertook Impact Assessments in relation to the Bill for the 2017 Act. These can be found at: [\[insert link\]](#).

## **Financial Effects**

17. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Safer Communities Directorate  
Scottish Government  
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