

## **POLICY NOTE**

### **THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL INVESTIGATIONS) (SCOTLAND) ORDER 2015**

**SI 2015/xxx**

- 1.1. The above instrument was made in exercise of the powers conferred by sections 445 and 459(2) of the Proceeds of Crime Act 2002 (the “2002 Act”). The instrument is subject to annulment by resolution of either House of Parliament (section 459(4) of the 2002 Act). In accordance with section 459(7) of the 2002 Act, a copy of the instrument will be laid before the Scottish Parliament as soon as practicable after making.

#### **Policy Objectives**

- 2.1. This Order makes provision to assist an external investigation (ancillary to a criminal investigation or proceeding) by obtaining orders and warrants from the High Court of Justiciary in relation to applications for disclosure orders and the sheriff court in relation to applications for production orders, search warrants, customer information orders and account monitoring orders. It contains provisions which correspond (subject to modifications) to those concerning confiscation investigations under Part 8 of the Proceeds of Crime Act 2002; namely production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders.
- 2.2. The investigation powers will be available in respect of overseas equivalents to confiscation investigations. A confiscation investigation is an investigation into whether a person benefited from his crime(s) or the extent and whereabouts of that benefit. Such an investigation gathers evidence for the purposes of supporting an application for a court order, following a criminal conviction, to confiscate the proceeds of crime.

#### **Background**

- 3.1. Part 8 of the Proceeds of Crime Act 2002 provides various powers to trace the proceeds of criminal and unlawful conduct.
- 3.2. This Order makes provision in respect of Scotland equivalent to provision made in respect of the England, Wales and Northern Ireland by the Proceeds of Crime Act 2002 (External Investigations) Order 2014 (SI 2014/1893). The intention behind this Order is to complete provision across the United Kingdom so as to ensure that all parts the United Kingdom can assist an investigation by an overseas authority by obtaining orders and warrants in the United Kingdom. This might be because the proceeds of criminal conduct or evidence relating to such proceeds are located in the United Kingdom.
- 3.3. Requests to carry out financial investigations connected to a criminal case were previously processed using the provisions under the existing Crime (International Co-operation) Act 2003. This Act provides for evidence to be obtained for primary use in

criminal prosecutions, although it could also be used in ancillary proceedings such as confiscation. There is a weakness, however, within this legislative approach in that requests for evidence which are solely in respect of the confiscation process are not covered by the Crime (International Co-operation) Act 2003 because these are not requests for evidence to be used in a criminal prosecution. This Order, in making provision in respect of Scotland, creates legal certainty and completes provision so that the UK will be able to assist in all cases.

- 3.4. Articles 5, 18 and 25 create new offences in Scotland broadly equivalent to those in sections 342, 393 and 400 of the Proceeds of Crime Act 2002, namely offences of prejudicing an external investigation and failure to comply with certain requirements under a disclosure order and a customer information order. This is to ensure compliance with those investigative powers.
- 3.5. UK Government policy is that the United Kingdom should be able to assist overseas authorities in tracing the proceeds of criminal conduct. There are also obligations under international law and the United Kingdom is party to international agreements which require the ability to provide such investigative assistance, including the UN Convention Against Corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the recent mutual legal assistance treaty with Jordan. Section 445 of the Proceeds of Crime Act 2002, the Crime (International Co-operation) Act 2003, the Proceeds of Crime Act 2002 (External Investigations) Order 2013, the Proceeds of Crime Act 2002 (External Investigations) Order 2014 and this Order delivers that policy aim in respect of financial investigations relating to criminal prosecutions.

### **Legislative Context**

- 4.1. This Order is made in exercise of the powers conferred under sections 445 and 459(2) of the Proceeds of Crime Act 2002. It sets out how the United Kingdom may assist an external criminal investigation or proceedings brought by an overseas authority into the proceeds of criminal conduct. These investigations are for the purposes of obtaining an order to confiscate the proceeds of crime following a criminal conviction. The overseas requests to investigate that are civil in nature will continue to be dealt with through the provisions in the Proceeds of Crime Act 2002 (External Investigations) Order 2014.

### **Territorial Extent and Application**

- 5.1. This instrument extends to Scotland only.
- 5.2. The Proceeds of Crime Act 2002 (External Investigations) Order 2014 makes similar provision for England, Wales and Northern Ireland.

### **Consultation**

- 6.1. This Order was developed in consultation with the Scottish Government and Crown Office. The Proceeds of Crime Act 2002 (External Investigations) Order 2014, on which the drafting of this Order was largely based, was developed in consultation with the National Crime Agency and the Department of Justice in Northern Ireland.

## **Impact Assessments**

- 7.1. No impact assessment on the private, public or voluntary sector is foreseen, and, as a result, no impact assessments have been prepared. The requests that this Order covers were previously dealt with under existing legislation (Crime (International Co-operation) Act 2003). This Order provides legal certainty that all such cases can be acceded to. This instrument will not lead to an increase in cases, but will provide a new and more secure set of legal provisions. It is also of note that businesses are already subject to similar provisions under Part 8 of the Proceeds of Crime Act 2002 and so will have an understanding and processes in place to deal with investigation orders issued by the High Court of Justiciary.

## **Monitoring & review**

- 8.1. Requests for investigative assistance will be made through the Secretary of State. The Home Office will therefore be able to closely monitor the number of cases and the standard of these requests with the burden they place on investigators, the courts and respondents to the investigation orders.

## **Guidance**

- 9.1. The Codes of Practice providing guidance on the use of investigation powers issued by the Scottish Ministers under section 410 of the Proceeds of Crime Act 2002 shall apply by virtue of article 35 of the Order.

## **Contact**

- 10.1. Stephen Goadby at the Home Office Tel: 020 7035 1559 or email: [stephen.goadby@homeoffice.gsi.gov.uk](mailto:stephen.goadby@homeoffice.gsi.gov.uk). 244 3229 can answer any queries regarding the instrument.
- 10.2. The Scottish Government contact in respect of this Order is Lucy Smith Tel: 0131 244 3229 or email: [Lucy.Smith@scotland.gsi.gov.uk](mailto:Lucy.Smith@scotland.gsi.gov.uk) or Craig French Tel: 0131 244 1493 or email: [Craig.French@scotland.gsi.gov.uk](mailto:Craig.French@scotland.gsi.gov.uk).

Scottish Government  
Safer Communities Directorate  
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