

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Assets Recovery Agency

Section 1: The Agency and its Director

11. This section establishes the Assets Recovery Agency (ARA) to be headed by a new office-holder, the Director, who will be appointed by the Secretary of State. In practice, functions of the Secretary of State relating to the Agency will be carried out by the Home Secretary, in consultation with the Secretary of State for Northern Ireland and the Scottish Ministers (for the Director's revenue functions in Scotland) as necessary. The section enables the Director to employ staff to assist him in carrying out his functions, and to enter into contractual arrangements for this purpose. It also enables the Director to delegate the exercise of his functions to his staff and to others working on a contractual basis for him. The effect of providing that the Director is a corporation sole (*subsection (3)*) is that the office of the Director has legal personality and the Director (in his capacity as office-holder) can hold property, bring legal proceedings and employ staff. The Agency will be a Non-Ministerial Department (NMD); it is normal for the Minister for the Civil Service to have a formal role in determining the number of staff employed by such bodies, and this is provided for at *subsection (5)*.

Schedule 1: Assets Recovery Agency

12. *Paragraphs 1 and 2* concern the terms of appointment of the Director. The effect of *paragraph 3* is that the Director must appoint a deputy, and also an assistant director to have specific responsibility for his functions in Northern Ireland. Before the latter is appointed, the Director must consult the relevant Secretary of State i.e. the Secretary of State for Northern Ireland.
13. *Paragraph 5* requires the Agency to be funded directly by Parliament, as is normal for a NMD. Subject to specific exceptions in the Act (e.g. *section 57*), monies received by the Director in the course of carrying out his functions must be paid into the Consolidated Fund. As an NMD, the Agency will automatically be subject to Government accounting rules.
14. *Paragraph 6* sets out what the Director will be required to include in his annual plan, which will be subject to the approval of the Secretary of State. Express provision is made for the inclusion of details as to how the Director will carry out his functions in Northern Ireland.
15. *Paragraph 7* imposes a duty on the Director to prepare an annual report on his activities over the previous year and to submit it to the Secretary of State who, in turn, is required to lay it before Parliament and arrange for it to be published.

Section 2: Director's functions: general

16. *Subsection (1)* requires the Director to exercise his functions in the way he considers best calculated to contribute to the reduction of crime. In considering this matter, the Director must have regard to any guidance given to him by the Secretary of State (*subsection (5)*). The guidance must indicate that the reduction in crime is in general best secured by criminal investigations and prosecutions (*subsection (6)*). *Subsection (2)* requires him to exercise his functions efficiently and effectively. In doing so he must have regard to his current annual plan, which under *Schedule 1* has to be approved by the Secretary of State.
17. *Subsection (3)* empowers the Director to carry out investigations, and take any other steps, which he considers appropriate for facilitating, or incidental or conducive to, the exercise of his functions, such as negotiating Memoranda of Understanding with other agencies or arranging publicity in the field of asset recovery. The Director's functions are set out in other sections of the Act, the principal ones being the recovery of criminal assets through confiscation, civil recovery, the exercise of Revenue functions and the accreditation and training of financial investigators.

Section 3: Accreditation and training

18. *Section 3* requires the Director to establish a system for the accreditation of financial investigators. Certain accredited financial investigators will have powers to apply in England, Wales and Northern Ireland for restraint orders and certain ancillary orders under Parts 2 and 4, and for certain investigation orders under Part 8. *Subsections (3)* and *(4)* provide that the Director may provide different classes of accreditation for different purposes. *Subsection (7)* requires the Director to make provision for the training of persons both in financial investigation and in the operation of the provisions of the Act. The section does not require that the training should be delivered directly by ARA, but the Director must ensure that training is made available.

Section 4: Co-operation

19. *Section 4* requires the Director and other persons with investigation or prosecution functions to co-operate with each other in the exercise of their functions under the Act. Such persons would include police officers, officers of HM Customs & Excise and members of the Crown Prosecution Service and the National Criminal Intelligence Service.

Section 5: Advice and assistance

20. *Section 5* requires the Director to give such advice and assistance to the Secretary of State as he may reasonably require, in relation to the matters set out in *section 5(a)* and *5(b)*. The Director might, for example, if required to do so, propose amendments to the Government's strategy and targets for recovering the proceeds of crime. He might also be required to advise and assist the Secretary of State on matters connected with his own functions.