

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL
INVESTIGATORS) (ENGLAND AND WALES) ORDER 2015

2015 No. 1853

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Police officers, immigration officers and officers of HM Revenue and Customs (and in certain circumstances National Crime Agency officers) have automatic access to powers under the Proceeds of Crime Act 2002 (“the Act”).
- 2.2 Other financial investigators who have been trained and accredited by the National Crime Agency (or formerly by the National Policing Improvement Agency or Assets Recovery Agency) can also have access if they are a person or a member of staff of a body listed by the Secretary of State. This Order lists those who are accredited financial investigators for the purposes of the relevant powers which the Act provides. Accredited financial investigators are listed in relation to existing powers and new powers inserted by amendments to the Act made by the Policing and Crime Act 2009 which came into force on 1 June 2015.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under section 3 of the Act, as amended by paragraph 111 of Schedule 8 to the Crime and Courts Act 2013, the National Crime Agency (“the NCA”) has provided a system for the accreditation of financial investigators. The NCA took over this role from the National Policing Improvement Agency following its abolition on 1 October 2013. The NCA is able to provide different classes of accreditation for different purposes.
- 4.2 The Act provides that a number of powers in the Act can be exercised by an accredited financial investigator; namely,
- the power to apply to the court for a restraint order to effectively freeze property which may become subject to a confiscation order following a conviction (section 42 of the Act),

- the power to search for, seize and retain property with a view to its future realisation. This will support enforcement of a (future) confiscation order (section 47A of the Act),
 - the powers to search for, seize, detain and seek the forfeiture of cash suspected of being the proceeds of crime or intended for use in such (Chapter 3 of Part 5 of the Act),
 - the ability to apply to the court for investigation orders and warrants in financial investigations, namely confiscation investigations, money laundering investigations and detained cash investigations (section 378 of the Act), and
 - the power to execute search warrants in financial investigations (sections 352 and 353 of the Act).
- 4.3 Under sections 453 and 459(2) of the Act the Secretary of State has the power to provide by Order that a specified reference in the Act to an accredited financial investigator is a reference to an accredited financial investigator as described in the Order.
- 4.4 The Order replaces the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (S.I. 2009/975 as amended by S.I. 2009/2707) (“the previous Order”) in respect of England and Wales. The previous Order remains in force in relation to accredited financial investigators operating in Northern Ireland. This Order replicates much of the list in the previous Order in relation to England and Wales, adds new agencies to existing powers and lists the bodies whose accredited financial investigators can have access to new powers under the Act. The Schedule of the Order lists the relevant powers under the Act and provides a list of persons and members of staff of agencies whose accredited financial investigators can exercise those powers.
- 4.5 The Order lists, inter alia, accredited financial investigators who are members of staff of agencies that already had access to some of the powers; for example the Serious Fraud Office, the Gambling Commission and the Royal Mail. They will have access to the specific powers against which they are listed.
- 4.6 The Order specifically gives the following agencies access to powers they did not have previously; namely the Department of Health, the Food Standards Agency, the Marine Management Organisation (a body sponsored by the Department for Environment, Food and Rural Affairs) and the Security Industry Authority.
- 4.7 Some agencies and departments have changed their names and so the Order consequentially amends their references, for example the Vehicle and Operator Services Agency has been substituted with references to the Driver and Vehicle Standards Agency.
- 4.8 Some agencies whose accredited financial investigators already had access to some of the powers, have had these expanded. An example of this is that accredited financial investigators in the Environment Agency previously had access to the restraint order powers and the confiscation investigation powers. They will now also have access to the cash forfeiture powers and the detained cash investigation and money laundering investigation powers.
- 4.9 There has been some variation across organisations in relation to the seniority of grades which may authorise use of some of the powers. These are all still at or above the civil service grading level of senior executive officer. An example of this is the

change in the Counter Fraud and Security Management Service from grade 8D to 8C, an equivalent to Grade 6 in civil service grading terms.

- 4.10 New powers were introduced on 1 June to allow for the search, seizure, retention and sale of property to assist in the settlement of a (future) confiscation order (see, in particular, sections 47A to 47S and 67A to 67D of the Act). This Order provides that suitably accredited financial investigators in police forces, local authorities, the Serious Fraud Office and the NCA can have access to these powers.
- 4.11 The Office of Communications has been removed from the lists as their accredited financial investigators have not been using the powers.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The objective is to make an Order that will list accredited financial investigators working for various public sector law enforcement and investigation bodies so they are able to exercise powers under the Act in relation to restraint, confiscation, cash recovery and investigation. By providing the Order-making power in section 453, the Act ensures that it is the Secretary of State (and not, for example, the NCA) who decides ultimately which persons and members of staff of agencies, bodies and Government departments should have access to the various investigation and ancillary powers under the Act.
- 7.2 Current policy is to limit access to these intrusive powers to appropriate public (rather than private) bodies involved in financial investigation addressing public harm. NCA will train, accredit and monitor individual financial investigators within those bodies.
- 7.3 Listing descriptions of accredited financial investigators in the Order will enable the organisations of which they are members to operate more flexibly and independently of the police in pursuit of the proceeds of crime. It is an aim to embed the recovery of the proceeds of crime and financial investigation techniques in the criminal justice system.
- 7.4 The persons and members of staff of bodies listed in this Order were either included in the previous Order or requested their inclusion in this Order, and the Secretary of State considers that they are appropriate persons and members of staff of bodies to have these powers. Bodies listed in the Order will have a number of trained internal financial investigators who will be familiar with, and therefore more effective at, pursuing criminality both within their own organisation and in their wider field of operation. New bodies listed in the Order will be less reliant on more traditional law enforcement agencies, notably the police.

8. Consultation outcome

- 8.1 A full public consultation entitled “The Proceeds of Crime Act: Changes to Bodies Granted Investigatory and Other Powers” ran from 24 July to 4 September 2015. Three responses were received from bodies with financial investigation capacity and capability. There were no responses challenging the approach set out in that consultation document. The approach set out in the consultation document then formed the basis for the drafting of the Order.

9. Guidance

- 9.1 Training of financial investigators is provided or approved by the NCA. Once financial investigators are trained and accredited, the continued correct use of their powers is closely monitored and reviewed by the NCA.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is neutral. Most of the agencies listed already have accredited financial investigators. The new bodies listed will have previously had to rely upon the police to perform their investigations and so the actual manpower time will not increase. Investigation bodies will also receive a share of money recovered as additional funding to incentivise further work in recovering the proceeds of crime.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small business.

12. Monitoring & review

- 12.1 Section 3 of the Act requires the NCA to monitor the performance of accredited financial investigators. This monitoring takes the form of bi-monthly activities, work based evidence submissions via the NCA’s financial investigation professional register and their Regulator’s communication and liaison with individual financial investigators and bodies. A sample of all evidence submitted in support of the continued correct use of the powers will mean that the actual casework is examined. Any incorrect use of the powers will result in the withdrawal of accredited status.
- 12.2 The NCA publishes an annual report which details that it has discharged its statutory obligations and objectives set by its annual plan. On a more informal basis, the Secretary of State can also request a report from the NCA on specific matters.

13. Contact

- 13.1 Stephen Goadby at the Home Office Tel: 020 7035 1559 or email stephen.goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.