

EXPLANATORY MEMORANDUM TO

THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (DISCLOSURE OF INFORMATION BY SOCA) (REVOCATION AND RE-ENACTMENT) ORDER 2008

2008 No.

1. 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order ensures that the Serious Organised Crime Agency (SOCA), which took over some of the Asset Recovery Agency's (ARA) functions under the Proceeds of Crime Act 2002 (POCA), can disclose information in its possession to the bodies and for the purposes that ARA could.

2.2 This Order revokes the earlier Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008 (SI 2008 no. 1908). This draft Order and the earlier Order contain the same provisions and achieve the same purpose, but the Government wishes there to be an opportunity for fresh debate so that the full effect of the Order can be stated and considered.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 A previous Order in substantially similar terms came into force on 23 July 2008 - the Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008. That Order is now to be revoked and replaced by the new draft Order so as to allow for full consideration of its effect. This was not the case during the earlier debates.

3.2 The matter which was not fully explored in earlier Parliamentary consideration is that the ability to disclose information is not limited to information obtained by SOCA in connection with the functions that were transferred from ARA under POCA. It also applies to information obtained by SOCA in connection with the exercise of any of its existing functions under sections 2 and 3 of the Serious Organised Crime and Police Act 2005, namely other matters relating to serious organised crime and information relating to crime. Accordingly, information which came into SOCA's possession in the exercise of any of its functions can be disclosed onwards under the new provisions created by this Order.

4. Legislative Context

4.1 This Order is made under section 33(2)(f) of the Serious Organised Crime and Police Act 2005. Section 33 (as amended by paragraph 172 of Schedule 8 to the Serious Crime Act 2007) already makes provision for disclosure by SOCA for certain

permitted purposes. This Order adds two more functions of a public nature: for protecting public health and for the functions of the Financial Services Authority under the Financial Services and Markets Act 2000, which means that when a disclosure is made for the purpose of exercising those functions it will be for a permitted purpose.

4.2 ARA and its Director were created by POCA. An order under section 74 of the Serious Crime Act 2007 abolished ARA and its Director on 1 April 2008 (the Assets Recovery Agency (Abolition) Order 2008 (S.I. 2008 No. 575)). Under section 74 of, and Schedule 8 to, the 2007 Act some of the functions of ARA and the Director were transferred to other persons, including SOCA. Schedule 8 to the 2007 Act makes the necessary amendments to references to the Director and ARA in POCA and other related primary legislation, significantly the Serious Organised Crime and Police Act 2005.

4.3 Part 10 of POCA provided the disclosure of information arrangements for the Director of ARA. Additional information gateways available to the Director of ARA were provided by the Proceeds of Crime Act 2002 (Disclosure of Information) Order 2003 (S.I. 2003 No. 335). This Order replicates the comparable provision in the 2003 Order by adding to the designated functions for which SOCA may make a disclosure under section 33 of the Serious Organised Crime and Police Act 2005, namely for the purposes of protecting public health and for the functions of the Financial Services Authority under the Financial Services and Markets Act 2000.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The relevant provisions in POCA and the Serious Organised Crime and Police Act 2005 extend to the whole of the United Kingdom. Insofar as the Order affects Scotland, those provisions are not within the legislative competence of the Scottish Parliament.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for the Home Department, Alan Campbell, has made the following statement regarding Human Rights:

In my view the provisions of the Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) (Revocation and Re-enactment) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Order provides additional information gateways to SOCA which has inherited the civil recovery proceedings and investigation functions in Parts 5 and 8 of POCA from the abolished Director of ARA. The gateways provided by this Order mean that SOCA has at least comparable information gateways available as were provided for ARA. It is the policy that those undertaking civil recovery functions shall have comparable provisions applying to them as applied to ARA.

7.2 The abolition of ARA with most of its functions, including civil recovery proceedings and investigations, and a number of its staff transferring to SOCA maximises the skills and expertise of both agencies in going after the profits of criminals. There are similarities between ARA's business and that of SOCA and advantages for both sides in linking the two more closely. Many of ARA's cases were linked to serious organised crime and so SOCA taking on this work will benefit them in understanding how such crime operates. Furthermore, the civil recovery functions will support SOCA in its responsibility for reducing the harm caused to the UK by serious organised crime.

7.3 It is also an entirely sensible and appropriate policy that SOCA's disclosure of information powers should be consistent for all of their functions.

8. Consultation outcome

The Organised Crime White Paper, *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (Cmd 6167) was published on 29 March 2004 and was open to public consultation until 30 July 2004. It put forward proposals for the formation of SOCA, including issues surrounding development of partnerships with other agencies such as prosecutors and better use of intelligence. The Paper discussed the flow of intelligence and therefore information between agencies. The creation of the Assets Recovery Agency (in 2003) was subject to a Cabinet Office 2000 report, *Recovering the Proceeds of Crime*, and specifically identified improvement of communication and information sharing as part of a national asset confiscation strategy. There were no specific comments in response to these public statements on information-sharing for SOCA or ARA. The transfer of functions from ARA to SOCA was subject to a written Ministerial statement on 11 January 2007.

9. Guidance

The Serious Organised Crime Agency has made available on its public website a [Statement of Information Management Practice](#). The statement of practice covers all information received or generated by SOCA.

10. Impact

10.1 There will be no impact on business, charities or voluntary businesses as a result of this Order.

10.2 The impact on the public sector is neutral. The ability for the Director of ARA to disclose information has been transferred to SOCA. Any other impact regarding SOCA's new powers to disclose information which came into its possession whilst exercising one of its other functions will be minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and review

SOCA is governed by a board which is responsible for ensuring that SOCA discharges its statutory responsibilities and meets the priorities set by the Home Secretary. It is required to prepare an annual report which is laid in the House. It is open for questions to be asked about its operation in Parliament and for SOCA to appear before the Home Affairs Select Committee. SOCA is also subject to inspection by HM Inspectorate of Constabulary. This provides for a monitoring and review mechanism.

13. Contact

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