

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Other Measures to Prevent or Disrupt Serious and Other Crime **Chapter 2: Proceeds of Crime**

Assets Recovery Agency

Schedule 8: Abolition of Assets Recovery Agency and its Director

254. **Schedule 8** amends POCA and other relevant legislation to repeal or transfer functions currently conferred on the Assets Recovery Agency ('ARA') and its Director.
255. Under Part 1 of the Schedule, the role of the Director of ARA under Parts 2 and 4 of POCA in respect of confiscation and restraint orders in England and Wales and Northern Ireland, respectively, is repealed. A confiscation order is an order made by the court following conviction for a defendant to pay the proceeds of his crimes. References to receivers of the Director under Parts 2 (for example sections 52 and 53) and 4 of POCA are also repealed. Part 1 of the Schedule also makes consequential amendments to Part 9 of POCA (which concerns the relationship between confiscation and insolvency).
256. Under Part 2 of Schedule 8, the powers of the Director of ARA under Chapter 2 of Part 5 of POCA to bring civil recovery proceedings in the High Court in England and Wales and Northern Ireland are transferred to the Serious Organised Crime Agency ("SOCA"). These powers are also transferred, as respects England and Wales, to the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office and, as respects Northern Ireland, to the Director of Public Prosecutions for Northern Ireland and the Director of the Serious Fraud Office (see the amendment made by paragraph 91 of Schedule 8). The Directors will be able to delegate any of their new functions under POCA to a member of their staff or contract out these functions to a person providing services under an arrangement (see new section 2C at paragraph 124 of Schedule 8).
257. Under Part 3 of Schedule 8, the powers under Part 6 of POCA are transferred to SOCA. Part 6 enables the Director of ARA to serve on HM Revenue & Customs a notice that she intends to carry out certain Revenue functions. Paragraph 102 of Schedule 8 creates a power for the Secretary of State to repeal by order Part 6 of POCA (as amended by Schedule 8). Such an order is subject to the affirmative resolution procedure (see section 89(3)).
258. Under Part 4 of Schedule 8, powers under Part 8 of POCA are transferred from ARA to SOCA. Part 8 enables the Director of ARA to apply for various orders to investigate confiscation cases and civil recovery cases. Part 4 also provides the Directors of the main prosecution agencies with investigation powers in support of their new abilities to bring civil recovery proceedings and requires the Attorney General, in the case of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office, and the Advocate General for Northern

*These notes refer to the Serious Crime Act 2007 (c.27)
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Ireland, in the case of the Director of Public Prosecutions for Northern Ireland, to issue a Code of Practice to provide guidelines for the operation of these new prosecutor's investigation powers. This mirrors the existing requirement in section 377 of POCA on the Secretary of State to produce a Code of Practice for the Director of ARA, the staff of ARA, accredited financial investigators, constables and customs officers. Section 377 is amended by paragraph 114 of Schedule 8 to refer to SOCA rather than ARA. Under section 377A(10) the reference to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland until such time as section 27(1) of the Justice (Northern Ireland) Act 2002 comes into force.

259. [Paragraph 118](#) of Schedule 8 inserts a new section 449A into POCA to allow staff of the prosecution agency Directors to operate under POCA using pseudonyms. This mirrors the existing provision in section 449 of POCA, which is amended by paragraph 140 of Schedule 8 to refer to SOCA.
260. In addition, Part 4 of Schedule 8 makes amendments to limit the ability to apply for a disclosure order in confiscation proceedings. A disclosure order is an order authorising the applicant for the order to give a notice in writing to any person the applicant considers to have information relevant to the investigation underway requiring that person to answer questions, provide information or produce documents. At the moment only the Director of ARA can apply for a disclosure order. Under paragraph 108 of Schedule 8 amendments are made to section 357 of POCA. In relation to civil recovery investigations, SOCA or one of the Directors of the prosecution agencies will be able to apply for an order. In relation to a confiscation investigation, a prosecutor will be able to make an application but only following a request from an appropriate officer. The identity of the prosecutor depends on the identity of the appropriate officer as set out in new subsection (8) of section 357 (see paragraph 108(7) of Schedule 8).
261. Under Part 5 of Schedule 8, the role of the ARA to train, accredit and monitor performance of financial investigators under section 3 of POCA is transferred to the National Policing Improvement Agency. This Agency was established under Part 1 of the Police and Justice Act 2006 with the function of training and developing police officers.
262. [Part 6](#) of Schedule 8 makes other amendments to POCA. Under a new section (section 2A), which paragraph 124 of Schedule 8 inserts into POCA, SOCA and the Directors referred to in paragraph 256 above are required to exercise their functions under POCA in the way best calculated to contribute to the reduction of crime. In doing so they must have regard to guidance issued under section 2A; that guidance must in particular indicate that such reduction is in general best secured by means of criminal investigations and proceedings. Paragraphs 131-134 of Schedule 8 amend the provisions in sections 435-438 of POCA on the use and disclosure of information so as to effectively refer to some of the new bodies undertaking civil recovery, namely the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland. These bodies do not have existing information gateways in their parent legislation: broadly equivalent provisions are included in respect of SOCA and the Director of Revenue and Customs Prosecutions in the provisions referred to in paragraph 263 below.
263. [Part 7](#) of Schedule 8 makes amendments to other legislation. These include amendments to section 33 of the Serious Organised Crime and Police Act 2005 (disclosure of information by SOCA) by paragraph 172 of Schedule 8 to extend the circumstances when disclosure may be made to reflect types of disclosure which are authorised by section 438 of POCA but would otherwise not be authorised by section 33. Similar amendments are made to section 40 of the Commissioners for Revenue and Customs Act 2005 by paragraph 167 of Schedule 8 in relation to the disclosure of information by the Revenue and Customs Prosecutions Office.