

EXPLANATORY MEMORANDUM TO

THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 AND SERIOUS CRIME ACT 2007 (CONSEQUENTIAL AND SUPPLEMENTARY AMENDMENTS TO SECONDARY LEGISLATION) ORDER 2008

2008 No. 574

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

2. Description

2.1 This Order is made under the Serious Organised Crime and Police Act 2005 and the Serious Crime Act 2007 (“the 2007 Act”). It provides that references to the Assets Recovery Agency (“ARA”) and its Director and supporting provisions relating to them in secondary legislation are either amended or omitted. This is in consequence of the abolition of ARA and its Director by the 2007 Act. The Order also makes a small number of minor amendments in relation to the creation of the Serious Organised Crime Agency (“SOCA”).

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

3.1 None.

4. Legislative Background

4.1 This instrument is made under the powers in section 173(1) of the Serious Organised Crime and Police Act 2005 and section 90(1) of the 2007 Act. It is primarily necessary due to amendments and omissions made by the 2007 Act to the Proceeds of Crime Act 2002 (“the 2002 Act”) and to other related enactments.

4.2 ARA and its Director were created by the 2002 Act. Under section 74 of, and Schedule 8 to, the 2007 Act ARA and its Director are to be abolished and some of their functions are to be transferred to other persons. Schedule 8 to the 2007 Act makes the necessary amendment to references to the Director and ARA in the 2002 Act and other related primary legislation, such as the Criminal Appeal Act 1968, the Limitation Act 1980 and the Access to Justice Act 1999. The majority of the provisions in section 74 and Schedule 8 are not yet in force but they will be brought into force on 1st April 2008. A small number of changes were brought into force by the Serious Crime Act 2007 (Commencement No. 1) Order 2008 (SI 2008/219 (C. 5)).

4.3 There are references to the Director and ARA and connected provisions in various pieces of secondary legislation which have not been addressed by the 2007 Act. This Order deals with those outstanding references – for example, all of the references to the Director of the Assets Recovery Agency in the Crown Court Rules (Northern Ireland) Order 1979 are omitted.

4.4 The effect of the amendments in the 2007 Act relating to the abolition of ARA and its Director are set out in the following paragraphs.

4.5 The Director of ARA's functions of confiscation under Parts 2 and 4 of the 2002 Act are being abolished (see Part 1 of Schedule 8 to the 2007 Act).

4.6 The functions of civil recovery under Part 5 of the 2002 Act are being transferred to, in England and Wales, SOCA, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office, and in Northern Ireland, SOCA, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland (see Part 2 of Schedule 8 to the 2007 Act).

4.7 The revenue functions under Part 6 of the 2002 Act are transferring to SOCA (see Part 3 of Schedule 8 to the 2007 Act).

4.8 The investigation functions under Part 8 of the 2002 Act are transferring to SOCA in respect of confiscation investigations (with the exception of applications for a disclosure order which will be applied for by a prosecutor). Civil recovery investigation powers are transferring to, in England and Wales, SOCA, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office, and in Northern Ireland, SOCA, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland (see Part 4 of Schedule 8 to the 2007 Act).

4.9 The accreditation and training functions of ARA are transferring to the National Policing Improvement Agency (see Part 5 of Schedule 8 to the 2007 Act).

4.10 Various other ancillary functions are transferred to the successor bodies as appropriate (see Parts 5 and 6 of Schedule 8 to the 2007 Act).

4.11 This Order also makes use of the powers to make consequential amendments in the Serious Organised Crime and Police Act 2005, which created SOCA. The exercise to identify amendments to take account of the abolition of ARA also identified a number of minor changes needed to take account of the creation of SOCA. There has already been an Order under section 173(1) of the 2005 Act, which dealt with many of the necessary changes (see SI 2006/594). The amendments that relate to SOCA appear in sub-paragraphs 6(2)(d), 6(3)(e)(i), 8(2)(b), 8(3)(b), 8(4)(b) and 8(5) of the Schedule to the Order.

5. Extent

5.1 The power in section 90(1) of the 2007 Act extends to the whole of the United Kingdom but is limited by section 90(3), which prevents the Secretary of State from exercising the power in relation to matters that would be within the legislative competence of the Scottish Parliament. This Order amends several instruments the extent of which varies. The majority of the instruments amended only effect England and Wales or Northern Ireland. Insofar as any of the instruments amended effect Scotland the amendments are not within the legislative competence of the Scottish Parliament.

6. European Convention on Human Rights

6.2 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Order makes consequential amendments and omissions to various pieces of secondary legislation required due to the abolition and transfer of functions of the Director of ARA and ARA itself.

7.2 The abolition of ARA with most of its functions transferring to SOCA maximises the skills and expertise of both agencies in going after the profits of criminals. It will also help to deliver the stretching new targets on asset recovery set out in the Government's Public Service Agreement No.24 to "Deliver a more effective, transparent and responsive Criminal Justice System for victims and the public". SOCA has come into existence since the 2002 Act. 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 are linked to serious organised crime and so SOCA taking on this work will benefit them in understanding how such crime operates. Furthermore, the functions of ARA will support SOCA in its responsibility for reducing the harm caused to the UK.

7.3 Civil recovery investigation and proceedings powers are also being transferred to the Directors of the main prosecution agencies. In effect, the Directors will delegate these powers to their prosecutors and, where appropriate, other staff. Prosecutors have since the commencement of the 2002 Act acquired valuable skills and experience in asset recovery. Where prosecutors have decided that a case does not pass their tests for prosecution and subsequent confiscation, it may be more efficient for them to pursue civil recovery action than pass the work to another agency as they will have experience and knowledge of that instant case.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as the Order merely makes consequential changes to existing secondary legislation. The potential work generated will be a redistribution of work already available under existing law and so any additional impact on business, charities or voluntary businesses will be negligible.

8.2 The impact on the public sector as a direct result of this Order is nil as it merely updates references in secondary legislation which is rendered necessary as a result of changes to the 2002 Act and other enactments made by the 2007 Act. An impact assessment under the 2007 Act has already been produced.

9. Contact

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