

2008 No. 755 (C.34)

POLICE, ENGLAND AND WALES

PROCEEDS OF CRIME

PUBLIC AUDIT

SERIOUS CRIME PREVENTION ORDERS

The Serious Crime Act 2007 (Commencement No. 2 and
Transitional and Transitory Provisions and Savings) Order 2008

Made - - - -

17th March 2008

This Order is made in exercise of the powers conferred by sections 91(2) and 94(1) of the Serious Crime Act 2007(a).

In accordance with section 94(2) of that Act, the Secretary of State has consulted the Scottish Ministers before making this Order.

Accordingly, the Secretary of State makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Serious Crime Act 2007 (Commencement No. 2 and Transitional and Transitory Provisions and Savings) Order 2008.

(2) In this Order—

“the 2002 Act” means the Proceeds of Crime Act 2002(b);

“the 2007 Act” means the Serious Crime Act 2007;

“the Agency” means the Assets Recovery Agency;

“the Director” means the Director of the Assets Recovery Agency;

“modification” includes amendment or repeal; and

“SOCA” means the Serious Organised Crime Agency.

Commencement: abolition of the Agency and its Director

2.—(1) Subject to articles 3 to 14, the following provisions of the 2007 Act shall come into force on 1st April 2008—

- (a) section 74(2)(a), (b), (c), (d) (to the extent not already in force), (e), (f) and (g) (to the extent not already in force) together with Schedule 8 (to the extent not already in force) (abolition of the Agency and its Director);
- (b) section 74(4) (definition of SOCA);
- (c) section 92 (repeals and revocations) in so far as it relates to the entries in Schedule 14 in sub-paragraph (d); and
- (d) in Schedule 14 (repeals and revocations) the entries relating to—
 - (i) the Parliamentary Commissioner Act 1967(a);
 - (ii) the Criminal Appeal Act 1968(b);
 - (iii) the Criminal Appeal (Northern Ireland) Act 1980(c);
 - (iv) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(d);
 - (v) the Bankruptcy (Scotland) Act 1985(e);
 - (vi) the Insolvency Act 1986(f);
 - (vii) the Insolvency (Northern Ireland) Order 1989(g);
 - (viii) the Police Act 1996(h);
 - (ix) the Police (Northern Ireland) Act 1998(i);
 - (x) the Access to Justice Act 1999(j);
 - (xi) the 2002 Act;
 - (xii) the Crime (International Co-operation) Act 2003(k);
 - (xiii) the Access to Justice (Northern Ireland) Order 2003(l);
 - (xiv) section 21(1)(b) of, and paragraph 98 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005(m);
 - (xv) the Serious Organised Crime and Police Act 2005(n);
 - (xvi) the Gambling Act 2005(o);
 - (xvii) the Tribunals, Courts and Enforcement Act 2007(p); and
 - (xviii) the Corporate Manslaughter and Corporate Homicide Act 2007(q).

(2) Section 77 of, and paragraph 9(1), (5) and (6) of Schedule 10 to, the 2007 Act (further provisions about detained cash investigations) shall come into force on 1st April 2008 for the purpose of civil recovery investigations and the amendment made by paragraph 107(3) of Schedule 8 to that Act.

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- (a) 1967 c. 13.
 - (b) 1968 c. 19.
 - (c) 1980 c. 47.
 - (d) S.I. 1981/228 (N.I. 8).
 - (e) 1985 c. 66.
 - (f) 1986 c. 45.
 - (g) S.I. 1989/2405 (N.I. 19).
 - (h) 1996 c. 16.
 - (i) 1998 c. 32.
 - (j) 1999 c. 22.
 - (k) 2003 c. 32.
 - (l) S.I. 2003/435 (N.I. 10).
 - (m) 2005 c. 11.
 - (n) 2005 c. 15.
 - (o) 2005 c. 19.
 - (p) 2007 c. 15.
 - (q) 2007 c. 19.

Transfer from the Agency and its Director to SOCA and National Policing Improvement Agency

3.—(1) The modifications made by virtue of Schedule 8 to the 2007 Act do not affect the validity of anything done (or having effect as if done) by or in relation to the transferor before 1st April 2008.

(2) Anything which, on 1st April 2008, is in the process of being done by or in relation to the transferor may, so far as it relates to any function transferred by Part 2, 3, 4 or 5 or paragraph 140 of that Schedule or to any investigation, be continued by or in relation to the transferee.

(3) Anything done (or having effect as if done) by or in relation to the transferor for the purposes of or in connection with any function transferred by Part 2, 3, 4 or 5 or paragraph 140 of that Schedule or any investigation shall, if in force or effective on 1st April 2008, have effect as if done by or in relation to the transferee so far as that is required for continuing its effect on and after 1st April 2008.

(4) Any enactment, instrument or other document passed or made before 1st April 2008 shall have effect, so far as necessary for the purposes of or in consequence of paragraph (2) or (3), as if any references (however expressed) to the transferor were references to the transferee.

(5) The references in paragraphs (2) and (3) to things done include references to things omitted to be done.

(6) Paragraphs (2) to (5) do not apply in relation to—

- (a) section 325 of the 2002 Act (declarations); or
- (b) subject to article 9(3), any function relating to a confiscation investigation and transferred to a prosecutor (within the meaning given by section 357(8) of the 2002 Act) by paragraphs 108(1), (2), (3) and (7) and 110(1) and (2) of Schedule 8 to the 2007 Act (transfer to prosecutors of powers to apply for disclosure orders in relation to confiscation investigations and for their variation and discharge)(a).

(7) In this article —

“the transferee” means—

- (a) in the case of Part 5 of Schedule 8 to the 2007 Act, the National Policing Improvement Agency;
- (b) in any other case, SOCA, a member of SOCA’s staff, a senior member of SOCA’s staff, an authorised member of SOCA’s staff or (as the case may be) a person providing services under arrangements made by SOCA; and

“the transferor” means the Director, a member of staff of the Agency or a person providing services under arrangements made by the Director.

Transfer of confiscation functions

4.—(1) The modifications made by virtue of Part 1 of Schedule 8 to the 2007 Act and relevant provisions (abolition of Director’s confiscation functions) do not apply in relation to—

- (a) any function relating to an application made on or after 1st April 2008, or possible application to be made on or after that date, for a confiscation order where the application is connected to—
 - (i) an investigation begun by the Director before that date;
 - (ii) a restraint order obtained by the Director before that date; or
 - (iii) an agreement entered into by the Director before that date with any person for the Director to proceed with confiscation;
- (b) any function relating to an application which was made before 1st April 2008 for a confiscation order and which is in progress on that date;

(a) Subsections (7) and (8) of section 357 are inserted by paragraph 108 of Schedule 8 to the 2007 Act.

- (c) any function relating to a confiscation order made on the application of the Director before 1st April 2008 or on an application of the kind mentioned in sub-paragraph (a), or any function relating to a decision not to make such an order; and
- (d) any function under section 19, 20, 169 or 170 of the 2002 Act (reconsideration) which is exercisable within a period of six years which began before 1st April 2008 and ends on or after that date (and any function relating to any such function or any resulting order).

(2) Parts 2 and 4 of the 2002 Act and relevant enactments continue to apply in relation to such cases without the modifications made by virtue of Part 1 of Schedule 8 to the 2007 Act and relevant provisions but as if—

- (a) references (however expressed) to the Director, a member of staff of the Agency or a person providing services under arrangements made by the Director were references to SOCA, a member of SOCA's staff or (as the case may be) a person providing services under arrangements made by SOCA; and
- (b) paragraphs (2) to (5) of article 3 applied to functions transferred by virtue of sub-paragraph (a) of this paragraph as they apply to the functions mentioned in paragraphs (2) and (3) of article 3.

(3) In paragraph (1) —

- (a) references to functions include references to enforcement functions and functions relating to restraint orders or similar prohibitions; and
- (b) references to confiscation orders include references to orders under section 6 or 156 of the 2002 Act (making of confiscation order) as applied by section 27 or 28 or (as the case may be) 177 or 178 of that Act (defendant absconds: defendant convicted or committed or neither convicted nor acquitted).

(4) In this article—

“relevant enactments” means enactments (other than Parts 2 and 4 of the 2002 Act) which, but for paragraph (1), would be modified by virtue of Part 1 of Schedule 8 to the 2007 Act or relevant provisions; and

“relevant provisions” means—

- (a) paragraphs 144 to 146 of Schedule 8 to the 2007 Act (changes to criminal appeals legislation);
- (b) paragraphs 148, 159 and 163 of that Schedule to that Act (changes relating to legal aid); and
- (c) paragraphs 150, 151 and 154 of that Schedule to that Act (bankruptcy and insolvency).

Remuneration and expenses of receivers

5. Nothing in the application of section 57(6) or 205(6) of the 2002 Act (sums received by Director) by virtue of article 4(2) shall mean that the remuneration or expenses, in relation to a period before 1st April 2008, of a receiver—

- (a) can be paid from a sum received under section 56 or (as the case may be) 204 of that Act if the receiver was, at the relevant time during the period before 1st April 2008, a member of staff of the Agency or a person providing services under arrangements made by the Director; or
- (b) cannot be so paid by SOCA if the receiver is a member of SOCA's staff or a person providing services under arrangements made by SOCA but was not, at the relevant time during the period before 1st April 2008, a member of staff of the Agency or a person providing services under arrangements made by the Director.

Remuneration of trustee for civil recovery

6. Nothing in the amendment of section 280(4) of the 2002 Act(a) by paragraph 88 of Schedule 8 to the 2007 Act (applying realised proceeds etc.) shall mean that the remuneration, in relation to a period before 1st April 2008, of a trustee for civil recovery—

- (a) can be paid from a sum received under section 280(2) of the 2002 Act if the trustee was, at the relevant time during the period before 1st April 2008, a member of staff of the Agency; or
- (b) cannot be so paid by SOCA if the trustee is a member of SOCA's staff but was not, at the relevant time during the period before 1st April 2008, a member of staff of the Agency.

Declarations under section 325 of the 2002 Act

7. The requirement in section 325(2) of the 2002 Act (as substituted by paragraph 100 of Schedule 8 to the 2007 Act) (declarations by members of SOCA's staff) to make a declaration does not apply in relation to a member of SOCA's staff who—

- (a) made a declaration under section 325(2) of the 2002 Act before 1st April 2008 as a member of staff of the Agency in respect of an authorisation to carry out functions of the Director under Part 6 of that Act (Revenue functions);
- (b) was so authorised immediately before that date; and
- (c) continues, on and after that date, to be assigned to carry out functions under that Part.

Search and seizure warrants and written authorities

8.—(1) A search and seizure warrant which—

- (a) was issued under section 352 of the 2002 Act(b) before 1st April 2008 on an application made by the Director;
- (b) authorised a named member of staff of the Agency; and
- (c) is treated by virtue of article 3(2) to (4) as having been issued on an application made by a member of SOCA's staff;

is to be treated, so far as required for continuing its effect on and after that date, as continuing to authorise the same person if that person is a member of SOCA's staff but otherwise is to be treated as not authorising any person.

(2) Any written authority given before 1st April 2008 by the Director under section 356(6) of the 2002 Act(c) (search and seizure warrants: accompanying persons) to members of staff of the Agency is to be treated, so far as required for continuing its effect on and after that date, as applying to those persons if they are members of SOCA's staff but otherwise is to be treated as not applying to them.

Disclosure orders

9.—(1) A member of SOCA's staff may apply for a disclosure order in relation to a confiscation investigation which is treated by virtue of article 3(2) to (4) as having been commenced by a member of SOCA's staff (and, accordingly, the amendments made by paragraph 108(1), (2), (3) and (7) of Schedule 8 to the 2007 Act do not apply in such cases).

(2) A member of SOCA's staff may apply to vary or discharge a disclosure order made before 1st April 2008 in relation to a confiscation investigation carried out by the Director (and, accordingly, the amendments made by paragraph 110(1) and (2) of Schedule 8 to the 2007 Act do not apply in such cases).

(a) Section 280(4) was inserted by section 99 of the Serious Organised Crime and Police Act 2005 (c. 15).
(b) Section 352 is amended by paragraph 105 of Schedule 8 to the 2007 Act.
(c) Section 356(6) is repealed by paragraph 107 of Schedule 8 to the 2007 Act.

(3) Paragraphs (2) to (5) of article 3 apply to—

- (a) functions transferred by virtue of paragraph (1) or (2); and
- (b) functions in relation to confiscation investigations transferred to a prosecutor (within the meaning given by section 357(8)(b), (c) or (d) of the 2002 Act) by paragraphs 108(1), (2), (3) and (7) and 110(1) and (2) of Schedule 8 to the 2007 Act;

as they apply to the functions mentioned in paragraphs (2) and (3) of article 3 but as if, in the case of functions falling within sub-paragraph (b), the transferee were the prosecutor concerned.

Saving: section 376 of the 2002 Act

10.—(1) The modifications made by virtue of paragraph 113 of Schedule 8 to the 2007 Act (repeal of section 376 of the 2002 Act etc: evidence overseas) do not apply in relation to confiscation investigations begun before 1st April 2008 and carried on by SOCA on or after that date.

(2) Accordingly, section 376 of the 2002 Act, and paragraphs 82 and 83 of Schedule 5 to the Crime (International Co-operation) Act 2003(a), continue to apply in relation to such investigations but as if—

- (a) references (however expressed) to the Director were references to SOCA; and
- (b) paragraphs (2) to (5) of article 3 applied to functions transferred by sub-paragraph (a) as they apply to the functions mentioned in paragraphs (2) and (3) of article 3.

Orders in Council under section 444 of the 2002 Act

11. Any modifications made by an Order in Council under section 444 of the 2002 Act (external requests and orders) which correspond to modifications made by Schedule 8 to the 2007 Act are to be treated as subject to transitional, transitory or saving provisions which correspond to those to which the modifications made by Schedule 8 to the 2007 Act are subject by virtue of this Order.

Annual report of the Director

12.—(1) The repeal of paragraph 7 of Schedule 1 to the 2002 Act (annual report of the Director) made by virtue of paragraph 142 of Schedule 8 to the 2007 Act does not apply in relation to a report for the financial year ending with 31st March 2008.

(2) Accordingly, paragraph 7 of Schedule 1 to the 2002 Act continues to apply in relation to such a case but as if it required SOCA to prepare the report and send it to the Secretary of State.

Accounts of the Agency

13.—(1) SOCA must prepare a statement of accounts of the Agency in respect of the financial year ending with 31st March 2008.

(2) SOCA must send a copy of the statement of accounts to the Secretary of State.

Police on service with the Agency

14. For the purposes of section 97 of the Police Act 1996 and section 27 of the Police (Northern Ireland) Act 1998 (police officers or members of the Police Service of Northern Ireland engaged on other service) the transfer on 1st April 2008 of a person from temporary service with the Agency to temporary service as a member of SOCA's staff or to temporary service with the National Policing Improvement Agency is not to be taken as interrupting the period of relevant service.

(a) 2003 c. 32.

Commencement: serious crime prevention orders

15.—(1) Subject to paragraphs (2) and (3), the following provisions of the 2007 Act shall come into force on 6th April 2008—

- (a) section 1 (serious crime prevention orders);
- (b) section 2 together with Part 1 of Schedule 1 (involvement in serious crime: England and Wales orders);
- (c) section 3 together with Part 2 of Schedule 1 (involvement in serious crime: Northern Ireland orders);
- (d) sections 4 to 23 (further provisions relating to serious crime prevention orders);
- (e) section 24(1) to (8), (11) and (12) (appeals from Crown Court);
- (f) sections 25 to 36 (enforcement, particular types of persons and proceedings in the High Court and Crown Court);
- (g) section 37 (to the extent not already in force) (functions of applicant authorities);
- (h) paragraphs 1 to 3, 5 to 17 and 19 to 21 of Schedule 2 (functions of applicant authorities under Part 1);
- (i) sections 38 and 39 (disclosure and compliance);
- (j) section 40(3) and (5) to (8) (costs in relation to authorised monitors);
- (k) sections 41 to 43 (retention of documents and interpretation);
- (l) section 91(1) (transitional and transitory provisions and savings) in so far as it relates to the provisions in sub-paragraph (m); and
- (m) paragraphs 1 to 4 of Schedule 13 (transitional and transitory provisions and savings).

(2) In the application of section 24(6) to (8) and (12) to England and Wales (right of appeal to Supreme Court and effect of section 33(3) of the Criminal Appeal Act 1968^(a)) before the commencement of paragraph 16(3)(b) of Schedule 9 to the Constitutional Reform Act 2005^(b) (amendment of section 33(2) of the Criminal Appeal Act 1968), references to the Supreme Court are to be read as references to the House of Lords.

(3) In the application of section 24(6) to (8) to Northern Ireland (right of appeal to the Supreme Court) before the commencement of paragraph 33(2)(a) of Schedule 9 to the Constitutional Reform Act 2005 (amendment of section 31(1) of the Criminal Appeal (Northern Ireland) Act 1980^(c)), references to the Supreme Court are to be read as references to the House of Lords.

Commencement: data matching

16. The following provisions of the 2007 Act shall come into force on 6th April 2008—

- (a) section 73 together with Schedule 7 (to the extent not already in force) (data matching);
- (b) section 91(1) (transitional and transitory provisions and savings) in so far as it relates to the provision in sub-paragraph (c); and
- (c) paragraph 9 of Schedule 13 (transitional and transitory provisions and savings).

Commencement: miscellaneous amendments to the 2002 Act

17.—(1) Subject to paragraphs (2) and (3), the following provisions of the 2007 Act shall come into force on 6th April 2008—

- (a) section 75(1) to (3) (use of production orders for detained cash investigations);
- (b) section 76(1) to (3) (use of search warrants etc. for detained cash investigations);

(a) 1968 c. 19.
(b) 2005 c. 4.
(c) 1980 c. 47.

- (c) section 77 (further provision about detained cash investigations) in so far as it relates to the provisions in sub-paragraph (d);
 - (d) in Schedule 10 (further provisions about detained cash investigations)—
 - (i) paragraph 1 in so far as it relates to the following paragraphs of that Schedule;
 - (ii) paragraphs 2 to 8, 9 (to the extent not already in force), 10 to 13 and 24;
 - (iii) paragraph 25 in so far as it does not extend to Scotland; and
 - (iv) paragraphs 26 to 28;
 - (e) section 78 (powers to seize property to which restraint orders apply);
 - (f) section 79 together with Schedule 11 (powers to recover cash);
 - (g) sections 80 and 81 (powers in relation to certain investigations and supplementary provisions in relation to new powers); and
 - (h) sections 82 to 84 (miscellaneous provisions about the proceeds of crime).
- (2) Section 78 applies in relation to restraint orders whenever made.
- (3) Section 82 does not apply in relation to applications made under section 49, 51, 197 or (as the case may be) 199 of the 2002 Act before 6th April 2008.

Commencement: incidents involving serious violence: powers to stop and search

18. Section 87 of the 2007 Act (incidents involving serious violence: powers to stop and search) shall come into force on 6th April 2008.

Home Office
17th March 2008

Vernon Coaker
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order commences provisions of the Serious Crime Act 2007 (“the 2007 Act”). The provisions referred to in article 2 are commenced on 1st April 2008. The commencement in article 2 is subject to the provisions in articles 3 to 14. The provisions commenced by article 2 relate to the abolition of the Assets Recovery Agency (“the Agency”) and its Director. Article 3 relates to the transfer of functions under the Proceeds of Crime Act 2002 in relation to Part 5 (civil recovery), Part 6 (revenue), Part 8 (investigations) and section 3 (accreditation and training of civilian financial investigators). It ensures that the cases of the Agency or its Director in relation to those matters will be continued by specified successors. The successors are the National Policing Improvement Agency in relation to accreditation and training of civilian financial investigators and the Serious Organised Crime Agency for all other cases. Article 4 relates to the cases being dealt with by the Agency and its Director in relation to the confiscation of the proceeds of crime. It ensures that those cases will be continued by the Serious Organised Crime Agency. Articles 5 to 14 make further transitional and transitory provision and savings in relation to the abolition of the Agency and its Director.

Article 15 brings into force certain provisions relating to serious crime prevention orders on 6th April 2008. Article 16 brings into force certain provisions relating to data matching by certain audit bodies on 6th April 2008. Article 17 brings into force certain amendments to the Proceeds of Crime Act 2002 on 6th April 2008. Article 18 brings into force an extension of powers of stop and search on 6th April 2008.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 24(9) and (10)	1st March 2008	2008/219 (C. 5)
Section 37 (partially)	1st March 2008	2008/219 (C. 5)
Section 40(1), (2) and (4)	1st March 2008	2008/219 (C. 5)
Section 68(8)	1st March 2008	2008/219 (C. 5)
Section 71(1), (2), (4) and (5)	1st March 2008	2008/219 (C. 5)
Section 73 (partially)	1st March 2008	2008/219 (C. 5)
Section 74(1)	1st March 2008	2008/219 (C. 5)
Section 74(2)(d) and (g) (partially)	1st March 2008	2008/219 (C. 5)
Section 74(3)	1st March 2008	2008/219 (C. 5)
Section 85	15th February 2008	2008/219 (C. 5)
Section 88	15th February 2008	2008/219 (C. 5)
Section 92 (partially)	15th February 2008	2008/219 (C. 5)
Schedule 2 (partially)	1st March 2008	2008/219 (C. 5)
Schedule 7 (partially)	1st March 2008	2008/219 (C. 5)
Schedule 8 (partially)	1st March 2008	2008/219 (C. 5)
Schedule 9	1st March 2008	2008/219 (C. 5)
Schedule 12	15th February 2008	2008/219 (C. 5)
Schedule 14 (partially)	15th February 2008	2008/219 (C. 5)

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