

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL
INVESTIGATORS) ORDER 2009

2009 No. 975

1. 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 and officers of HM Revenue and Customs (and in certain circumstances members of SOCA's staff) have automatic access to apply for the investigation and other powers within the Proceeds of Crime Act 2002 ("the Act"). Other financial investigators who have been trained and accredited by the National Policing Improvement Agency (or formerly by the Assets Recovery Agency) can also have access if they are a member of staff of a body listed by the Secretary of State. This Order lists appropriate bodies under each of the powers which the Act provides.

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

3.1 None.

4. Legislative Background

4.1 Under section 3 of the Act, as amended by paragraph 120 of Schedule 8 to the Serious Crime Act 2007, the National Policing Improvement Agency (NPIA) has provided a system for the accreditation of financial investigation. They took over this role from the Assets Recovery Agency following its abolition on 1 April 2008. The NPIA 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,
- the ability to seize property subject to a restraint order to prevent its removal from the country,
- 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,
- 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, and
- the power to execute search warrants in financial investigations.

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 lists, inter alia, accredited financial investigators who are members of staff of the Serious Fraud Office, the Gambling Commission, the Royal Mail and the Office of Fair Trading. They will have access to the specific powers under which they are listed. These lists are further broken down, where necessary, into powers available in England and Wales and Northern Ireland.

4.5 The Order also revokes earlier Orders conveying powers on agencies dating back to 2003 and so is a full list of all agencies whose accredited financial investigators have access to the various powers under the Act. The previous Orders revoked are the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003 (S.I. 2003/172) and four amending Orders (S.I. 2004/8, S.I. 2004/3339, S.I. 2005/386 and S.I. 2006/57).

5. Territorial Extent and Application

5.1 England, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 The objective is to introduce 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 in relation to restraint, cash recovery and investigation under the Act. By providing the Order making power in section 453, the Act ensures that it is the Secretary of State (and not NPIA) who decides ultimately who should have access to the various investigation and ancillary powers under the Act.

7.2 Listing these particular descriptions of investigators 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 mainstream recovering the proceeds of crime in every law enforcement and investigation body.

7.3 The listed bodies have either been previously included under the now revoked Orders or requested their own inclusion. This will enable them to have a body 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. This will also have the effect of making them less reliant on more traditional law enforcement agencies, notably the police.

8. Consultation outcome

8.1 Interest in this Order was expressed during the debate in the Eighth Delegated Legislation Committee when considering various draft statutory instruments made

under the Act on Wednesday 19 March 2008. The Members who expressed an interest have been shown the Order in draft form. No comments have been received.

9. Guidance

9.1 Training of financial investigators is provide or approved by the National Policing Improvement Agency. Once trained and accredited the continued correct use of the powers is monitored.

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. Most of the agencies listed already have accredited financial investigators as the Order consolidates a number of previous Orders. The bodies added 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 small business.

12. Monitoring & review

12.1 Section 3 of the Act (as amended by paragraph 120 of Schedule 8 to the Serious Crime Act 2007) requires the NPIA to monitor the performance of accredited financial investigators. This monitoring takes the form of monthly activities and work based evidence submissions via the Agency's financial investigation professional register. 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 NPIA publishes an annual report which details that it has discharged its statutory obligations and objectives set by its annual plan. The Secretary of State must be consulted during the preparation of the annual plan and she must be sent a copy of the annual report. The Secretary of State can also request a report from the Agency on specific matters.

12.3 This provides for a monitoring and review mechanism.

13. Contact

13.1 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.