

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL
INVESTIGATORS) (AMENDMENT) ORDER 2017

2017 No. 74

1. Introduction

- 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, immigration officers and officers of HM Revenue and Customs (and in certain circumstances National Crime Agency officers) have automatic access to powers under the Proceeds of Crime Act 2002 (“the Act”).
- 2.2 Other financial investigators who have been trained and accredited by the National Crime Agency (or formerly by the National Policing Improvement Agency or Assets Recovery Agency) can also have access if, by Order, they fall within a description specified by the Secretary of State. This description includes a list of bodies whose accredited financial investigators can have access to the powers; effectively a designation process. The Order is made under section 453 of the Act. This Order makes amendments to two previous ones that contained the lists; one relating to England and Wales and one to Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under section 3 of the Act (as amended), the National Crime Agency (“the NCA”) has provided a system for the accreditation of financial investigators. The NCA took over this role from the National Policing Improvement Agency following its abolition on 1 October 2013. The NCA is able to provide different classes of accreditation to allow access to some or all of the powers provided by the Act.
- 4.2 The concept of accredited financial investigators was introduced by the Act in 2002. The first order designating bodies with staff who have accredited financial investigators that can access the powers in the Act came into force on 24 February 2003; see The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003 (SI 2003/172)(now revoked). There have been more orders since that initial one, expanding the bodies who can access the powers and providing access to powers that have been introduced in the Act since 2003.

- 4.3 The Act provides a number of powers that 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 (section 42 of the Act in England and Wales, section 191 of the Act in Northern Ireland);
 - The power to search for, seize and retain property with a view to its future realisation. This will support enforcement of a (future) confiscation order (sections 47A to 47R of the Act in England and Wales, sections 195A to 195R in Northern Ireland);
 - 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 unlawful conduct (sections 289 to 303A of the Act);
 - The ability to apply to the court for investigation orders and warrants in confiscation investigations, money laundering investigations and detained cash investigations (section 378 of the Act); and
 - The power to execute search warrants in financial investigations (sections 352 and 353 of the Act).
- 4.4 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.
- 4.5 This Order amends two existing ones - the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015 (S.I. 2015/1853) (“the 2015 Order”) and the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (“the 2009 Order”). The 2009 Order applies to Northern Ireland.
- 4.6 This Order provides, for the first time, access to the powers in the Act for the Ministry of Defence and Velindre National Health Trust. The latter body is a recently created Welsh agency who will be performing similar functions to those previously performed in Wales by health bodies already designated with powers, namely the Department of Health and the Medicines and Healthcare Products Regulatory Agency.
- 4.7 The Order also lists agencies whose staff already had access to some of the powers and will now have access to further specific powers against which they are listed. For example, this Order provides accredited financial investigators who are members of staff of the Financial Conduct Authority, the Security Industry Authority and the Intellectual Property Office with powers to make applications for restraint orders in Northern Ireland. Also, accredited financial investigators in the Environment Agency previously had access to the restraint order powers and the confiscation investigation powers. They will now also have access to the cash forfeiture powers and the detained cash investigation and money laundering investigation powers.
- 4.8 Some agencies and departments have changed their names and so the Order makes consequential amendments to these references in the 2009 and 2015 Orders. For example references to the Department for Agriculture and Rural Development in Northern Ireland which has had its functions transferred to the Department for Agriculture, Environment and Rural Affairs in Northern Ireland; and the reference to

the Department for Social Development in Northern Ireland has been replaced by a reference to the Department for Communities in Northern Ireland for the same reason.

- 4.9 The Order also makes amendments to the 2009 Order and the 2015 Order by removing some bodies from the list of authorised bodies who could previously access (some of) the powers under the Act. For example, the Office of Communications has been removed as it was not using the powers and so its inclusion was unnecessary.
- 4.10 The Crime and Courts Act 2013 provides immigration officers with direct access to powers under the Act. This Order therefore makes amendments to the 2009 to remove references to immigration officers, as they no longer require access to the powers by way of being accredited financial investigators.
- 4.11 There has been some variation in relation to the level of seniority of the officers who may authorise the use of some of the powers (for the purposes of the Act, these are “senior appropriate officers”). These are all still at or above the civil service grading level of senior executive officer, which is commensurate with the level of responsibility and authority expected of that grade. This Order makes amendments to the previous orders to create consistency between England and Wales and Northern Ireland. An example of this is the change in seniority level of a senior appropriate officer in the NCA from grade 3 to grade 2, an equivalent to Grade 6 in civil service grading terms. This amendment raises the seniority level at which authorisation can be granted.

5. Extent and Territorial Application

- 5.1 This instrument extends to the United Kingdom.
- 5.2 The territorial application of this instrument is England and Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The objective is to make 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 under the Act in relation to restraint, confiscation, cash recovery and financial investigation. By providing the order-making power in section 453, the Act ensures that it is the Secretary of State (and not, for example, the NCA) who decides ultimately which persons and members of staff of agencies, bodies and Government departments should have access to the various investigation and ancillary powers under the Act.
- 7.2 Current policy is to limit access to these intrusive powers to appropriate public (rather than private) bodies involved in financial investigation addressing public harm. NCA will train, accredit and monitor individual financial investigators within those bodies. This is the same policy and legal approach as when the Act was first enacted; accredited financial investigators have been operating powers under the Act since February 2003.

- 7.3 Since 2003 accredited financial investigators have played a key role in combating serious organised crime. Between 2013 and 2016 alone, a total of over £100 million has been recovered as a result of work done by accredited financial investigators. This supports the Serious and Organised Crime Strategy (October 2013) commitment to attack criminal finances by making it harder to move, hide and use the proceeds of crime. All the agencies are involved in investigation criminality that has financial benefit, most obviously in relation to fraud against the organisation itself.
- 7.4 Listing descriptions of accredited financial investigators in the Order enables 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 embed the recovery of the proceeds of crime and financial investigation techniques in the criminal justice system. This Order will assist in that policy objective.
- 7.5 Bodies listed in the Order will have a number of trained internal financial investigators who will be familiar with, and therefore more effective at, pursuing criminality in their field of operation. The amendments made by this Order will mean that these organisations will be less reliant on more traditional law enforcement agencies, notably the police.

Consolidation

- 7.6 The list of public bodies which have (or which need) access to the powers afforded to accredited financial investigators is reviewed on an on-going basis to reflect the changing nature of the threat from serious organised crime to the United Kingdom. The Criminal Finances Bill laid before Parliament on 13 October 2016, subject to Royal Assent, will extend further powers to accredited financial investigators. It is at this stage that we will embark on a process of consolidation and create a single consolidated Order.

8. Consultation outcome

- 8.1 A Government consultation has not been conducted for this Order. We are satisfied that a number of consultations have been undertaken by the public bodies who are affected by this Order and that the response has been positive in favour of the proposed amendments made in this Order.
- 8.2 A number of the provisions in this Order are technical amendments for example, updating a reference consequential on a simple change in the name of a Department does not require a public consultation.
- 8.3 Furthermore, the Home Office is satisfied by the level of consultation that has taken place as the Order in itself makes amendments to two previous ones where full public consultations were carried out.
- 8.4 Bodies who are being added to the Order have been instructed by the Home Office to fully consider the impact of having access to the powers, and have undertaken local reviews and consultations as they deemed necessary. This includes considering the impact of having the powers on the community and society as a whole. The Home Office is satisfied that this exercise has been performed by these bodies.

9. Guidance

- 9.1 Training of financial investigators is provided or approved by the NCA. Once financial investigators are trained and accredited, the continued use of their powers is closely monitored and reviewed by the NCA.
- 9.2 Most of the powers in the Act are also subject to codes of practice issued by the Secretary of State or the Department of Justice Northern Ireland. Accredited financial investigators will have to be familiar with, and abide by, these codes when operating the powers.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is neutral. Most of the agencies listed already have accredited financial investigators. The new bodies listed 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 under the Asset Recovery Incentivisation Scheme 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 activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Section 3 of the Act requires the NCA to monitor the performance of accredited financial investigators for purposes of the Proceeds of Crime Act 2002. This monitoring takes the form of bi-monthly activities, work based evidence submissions via the NCA's financial investigation professional register and their Regulator's communication and liaison with individual financial investigators and bodies. 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 NCA publishes an annual report which details that it has discharged its statutory obligations and objectives set by its annual plan. On a more informal basis, the Secretary of State can also request a report from the NCA on specific matters.

13. Contact

- 13.1 Stephen Goadby at the Home Office Telephone: 02070351559 or email: Stephen.Goadby@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.