

EXPLANATORY MEMORANDUM TO

THE SERIOUS CRIME ACT 2007 (AMENDMENT OF THE PROCEEDS OF CRIME ACT 2002) ORDER 2008

2008 No.

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 Crime Act 2007 (“the 2007 Act”). The Order amends section 280(4) of the Proceeds of Crime Act 2002 (“the 2002 Act”) as a consequence of amendments made to it under the 2007 Act. The Order relates to the remuneration of trustees for the civil recovery of the proceeds of crime who are outside contractors of an enforcement authority under Part 5 of the 2002 Act.

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

3.1 None.

4. Legislative Background

4.1 Under the 2007 Act the Assets Recovery Agency and its Director are abolished and some of their functions and powers are transferred to the Serious Organised Crime Agency (SOCA), the Director of Public Prosecutions (DPP), the Director of the Serious Fraud Office, the Director of Revenue and Customs Prosecutions and the Director of Public Prosecution Service for Northern Ireland. Part 2 of Schedule 8 to the 2007 Act makes amendments to the 2002 Act to provide that these bodies can act as the enforcement authority in the civil recovery of the proceeds of crime (see in particular the definition of enforcement authority in section 316 of the 2002 Act, as amended by paragraph 91(2) of Schedule 8 to the 2007 Act).

4.2 Section 280(4) of the 2002 Act (as added by section 99 of the Serious Organised Crime and Police Act 2005 (c. 15)) prevents the enforcement authority (previously the Director of the Assets Recovery Agency) from recovering from the sums it receives from a trustee for civil recovery under section 280(2), the remuneration of a member of staff who has been appointed as a trustee. Section 280 is amended by paragraph 88 of Schedule 8 to the 2007 Act.

4.3 This Order is made under section 90 of the 2007 Act, which allows the Secretary of State to make supplementary, incidental and consequential amendments to enactments (including Acts of Parliament) for the purposes of the 2007 Act, in consequence of the 2007 Act and in order to give full effect to the 2007 Act. The powers in section 90 are being exercised in this case because the effect of the amendments made by the 2007 Act to the 2002 Act has been to make it unclear what the proper position of contractors is under section 280(4) of the 2002 Act. The amendment in this Order will clarify the position.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

5.2 Section 280 of the 2002 Act extends to the whole of the United Kingdom and so, therefore, does the amendment made by this instrument. However, section 280(4) does not have effect in Scotland because the provision specifically excludes the Scottish Ministers, who are the enforcement authority in relation to Scotland.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for the Home Department, Vernon Coaker, has made the following statement regarding Human Rights:

In my view the provisions of the Serious Crime Act 2007 (Amendment of the Proceeds of Crime Act 2002) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The general policy position under the 2002 Act is that references to members of staff includes those persons (outside contractors) providing services under arrangements made by the relevant authority – for example, contractors working for the DPP.

7.2 In civil recovery cases, where a court makes a recovery order it must appoint a trustee for civil recovery. The enforcement authority (eg SOCA, DPP etc) must nominate someone suitably qualified, and may do so from its own staff. The trustee acts on behalf of the enforcement authority. The trustee is under a duty to secure the property which will be vested in him, and to liquidate non-cash assets for the benefit of the enforcement authority. The trustee is also required to realise the property vested in him in such a way as to maximise the amount payable to the enforcement authority.

7.3 Section 280 of the 2002 Act relates to the application of sums which represent the realised proceeds of property vested in, or obtained by, a trustee for civil recovery under a recovery order and sums vested by a recovery order in the trustee or obtained by the trustee in pursuance of a recovery order. Under section 280(2) once certain payments have been made any remaining sum is paid by the trustee to the enforcement authority. Section 280(3) (also inserted by section 99 of the Serious Organised Crime and Police Act 2005) provides that the enforcement authority may apply sums it receives under section 280(2) to pay the remuneration and expenses of a trustee for civil recovery. However, section 280(4) prevents the enforcement authority from recovering from such sums the remuneration of a member of its staff who has been appointed as a trustee. The policy position is that the reference to a member of staff in these circumstances should not include an outside contractor. The enforcement authority should be able to recover the remuneration where the trustee is an outside contractor engaged by that authority. The amendment to the 2002 Act in the Order will clarify the position in this respect.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it does not create any impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is likely to be negligible. In 2006-07 the Assets Recovery Agency concluded 33 civil recovery cases. For the future, it is expected that the relevant enforcement authority would, in general, find it more cost effective to appoint a suitably qualified member of staff to be a trustee for civil recovery.

9. Contact

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.