

EXPLANATORY MEMORANDUM TO
THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (DISCLOSURE OF
INFORMATION BY SOCA) ORDER 2008

2008 No. Draft

THE PROCEEDS OF CRIME ACT 2002 (DISCLOSURE OF INFORMATION)
ORDER 2008

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1. 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008 provides that the powers to disclose information available to the Serious Organised Crime Agency (SOCA) include those previously available to the Director of the Assets Recovery Agency (ARA). Part 10 of the Proceeds of Crime Act 2002 (POCA) provided the disclosure of information arrangements for the Director of ARA. Additional information gateways available to the Director of ARA were provided by the Proceeds of Crime Act 2002 (Disclosure of Information) Order 2003 (S.I. 2003 No. 335). This Order replicates the provision of the 2003 Order to add to the functions for the purpose of the exercise of which SOCA may make a disclosure under section 33 of the Serious Organised Crime and Police Act 2005. The Order is required in consequence of the abolition of ARA and its Director by the Serious Crime Act 2007 (SCA) which came into force in April 2008. Under that Act some of the functions of ARA were transferred to SOCA.

2.2 The Proceeds of Crime of Act 2002 (Disclosure of Information) Order 2008 makes similar additions to the information gateways from the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland. Those persons are now covered by Part 10 of POCA following amendments made by the SCA. It also adds to those persons who can make disclosures to those Directors. This Order is required in consequence of the transfer of civil recovery proceedings and civil recovery investigation functions in Parts 5 and 8 of POCA from the abolished ARA to those Directors.

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

3.1 None.

4. **Legislative Background**

4.1 The Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008 is made under section 33(2)(f) of the Serious Organised Crime and Police Act 2005. Section 33 (as amended by paragraph 172 of Schedule 8 to the SCA) already makes provision for disclosure by SOCA for certain permitted purposes.

This Order adds two more functions of a public nature, which means that when a disclosure is made for the purpose of exercising those functions it will be for a permitted purpose.

4.2 The Proceeds of Crime of Act 2002 (Disclosure of Information) Order 2008 is made under sections 436(6) and 438(9) of POCA. Section 436 (as amended by paragraph 132 of Schedule 8 to the SCA) makes provision about disclosures to the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland. Section 438 (as amended by paragraph 134 of Schedule 8 to the SCA) makes provision about disclosures by those Directors. The Order adds to the list of persons who can make a disclosure to those Directors and includes the functions in relation to which a person is being added to the list. The Orders also adds two more functions of a public nature for the purposes of section 438.

4.3 ARA and its Director were created by POCA. An order under section 74 of the SCA abolished ARA and its Director on 1 April 2008 (the Assets Recovery Agency (Abolition) Order 2008 (S.I. 2008 No. 575)). Under section 74 of, and Schedule 8 to, the SCA some of their functions were transferred to other persons. Schedule 8 to the SCA makes the necessary amendments to references to the Director and ARA in POCA and other related primary legislation, significantly the Serious Organised Crime and Police Act 2005.

5. Extent

5.1 The relevant provisions in POCA and the Serious Organised Crime and Police Act 2005 extend to the whole of the United Kingdom. Insofar as the Orders effect Scotland, they are not within the legislative competence of the Scottish Parliament.

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 Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008 and the Proceeds of Crime of Act 2002 (Disclosure of Information) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Orders provide additional information gateways to those persons who have inherited the civil recovery proceedings and investigation functions in Parts 5 and 8 of POCA from the abolished Director of ARA. The gateways provided by these Orders mean that SOCA, the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland have the same information gateways available as were provided for ARA. It is the policy that those undertaking civil recovery functions shall have the same provisions applying to them as applied to ARA.

7.2 The abolition of ARA with most of its functions, including civil recovery proceedings and investigations, transferring to SOCA maximises the skills and

expertise of both agencies in going after the profits of criminals. . 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 were 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 were also 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 POCA 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 There will be no regulatory impact on business, charities or voluntary businesses as a result of these Orders.

8.2 The impact on the public sector is neutral. The ability for the Director of ARA to receive information and for him to disclose information has just been transferred to others. There is no additional burden.

9. Contact

9.1 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.