

EXPLANATORY MEMORANDUM TO
THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (AMENDMENT OF
SECTION 76(3)) ORDER 2007

2007 No.1392

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 This Order adds to the list of offences under section 76(3) of the Serious Organised Crime and Police Act 2005 which gives rise to the power to make a financial reporting order. A financial reporting order is an ancillary order available to courts at the point of sentence or when a person is otherwise dealt with by the court. The order requires offenders convicted of a specified offence to make such reports of their income and assets as set out in the order. The court has to be satisfied that there is a sufficiently high risk of the defendant committing similar offences in the future.

2.2 The qualifying offences are specified fraud and organised criminal lifestyle offences. The order adds similar offences in the area of money laundering, corruption and fraud.

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

3.1 None.

4. Legislative Background

4.1 The offences already covered by section 76(3) of the Serious Organised Crime and Police Act 2005 are certain offences under the Fraud Act 2006 and offences specified in Schedule 2 of the Proceeds of Crime Act 2002. The 2002 Act lists a number of offences that are covered by ten different headings which include drug trafficking, arms trafficking and intellectual property.

4.2 The offences added are those which are usually investigated by the Serious Organised Crime Agency and HM Revenue and Customs. They are regarded by those agencies as serious offences with a risk of re-offending. They are therefore suitable for inclusion in the list of qualifying offences for financial reporting orders so that orders can be made in relation to convicted defendants in appropriate cases. This is the first time the power in section 76 to add offences to section 76(3) has been exercised.

4.3 The money laundering offences created by sections 327 and 328 of the Proceeds of Crime Act 2002 are listed in Schedule 2 to that Act and so are already qualifying offences for a financial reporting order. However, those offences only apply to conduct after the commencement of the relevant provisions (as provided for in article 3 of the Proceeds of Crime Act 2002 (Commencement No 4, Transitional Provisions and Savings) Order 2003 (SI 2003/120)). Conduct prior to that date is still dealt with using the old money laundering offences under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. There are still ongoing investigations and prosecutions in relation to such conduct and so this order adds the old money laundering offences to section 76(3).

4.4 A failure to comply with a financial reporting order or the submission of false or misleading information is an offence which carries a term of imprisonment. The maximum in England and Wales, pending the commencement of section 281(5) of the Criminal Justice Act 2003 (when it will rise to 51 weeks), is 6 months. Section 175 of the Serious Organised Crime and Police Act 2005 contains a transitional provision.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 There is a separate power in section 77 of the Serious Organised Crime and Police Act 2005 for Scottish Ministers to amend the qualifying offences in Scotland.

6. European Convention on Human Rights

Vernon Coaker, the Parliamentary Under Secretary of State for Policing, Security and Community Safety, has made the following statement regarding Human Rights:

In my view the provisions of the Serious Organised Crime and Police Act 2005 (Amendment of Section 76(3)) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Serious Organised Crime Agency and HM Revenue and Customs have identified serious offences which they investigate which are not currently within the scope of the financial reporting order provisions. The addition of these offences will enhance the utility and effectiveness of financial reporting orders.

7.2 The financial reporting order provisions are an important addition to law enforcement's offender management function, and will contribute to the further detection of crime and criminal assets and to crime and harm reduction. It is difficult to estimate the number of forthcoming cases the addition of these offences will affect. A total of nine financial reporting orders have been made in connection with Serious Organised Crime Agency cases since the provisions came into force in April 2006, the numbers of orders is unlikely to be large.

7.3 The Government has consulted with the Serious Organised Crime Agency, HM Revenue and Customs and with relevant government departments.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal. The purpose of the Order is that further offences can result in the offender management of serious criminals by the Serious Organised Crime Agency and other law enforcement agencies.

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.