

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Other Measures to Prevent or Disrupt Serious and Other Crime **Chapter 2: Proceeds of Crime**

Assets Recovery Agency

Sections 78 to 81 and Schedule 11: Extension of powers of accredited financial investigators

269. An accredited financial investigator is an investigator who has been trained and accredited under section 3 of the POCA to undertake certain investigation, restraint and search and seizure functions under the Act. The persons trained can be investigators who are not constables or officers of HMRC in respect of the cash forfeiture powers under Chapter 3 of Part 5 of POCA, the investigation powers under Part 8 and other search and seizure powers. Constables and officers of HMRC have access to these powers without the need for accreditation.
270. **Section 78** amends section 45 of POCA (and section 194 which is the equivalent provision in Northern Ireland) to enable accredited financial investigators to exercise the powers conferred by those sections. Sections 45 and 194 currently allow a constable or officer of HMRC to seize any property subject to a restraint order to prevent its removal from England and Wales or Northern Ireland, respectively. Such an order is designed to freeze property to prevent its dissipation in advance of the making of a confiscation order. The amendments made by this section enable financial investigators to have this power of seizure if they fall within a description of investigator specified for this purpose by an order made by the Secretary of State under section 453 of POCA. Such an order is likely to relate to the training that the investigator has had to exercise powers of seizure.
271. **Section 79** gives effect to Schedule 11 which makes provision for accredited financial investigators to seize and seek the forfeiture of cash under Chapter 3 of Part 5 of POCA. That Chapter already allows a constable or officer of HMRC to seize, detain and apply for the forfeiture of cash that is suspected of being the proceeds of unlawful conduct or intended for use in such conduct. These are civil proceedings against the cash; there is no prosecution or sanction against an individual. Schedule 11 extends these powers to those accredited financial investigators who have been accredited under the Act to perform these functions. The accredited financial investigator will be able to search for cash on a person or premises and seize such cash if he suspects that it is the proceeds of unlawful conduct or intended for use in such conduct. The accredited financial investigator will also be able to apply for the detention of the cash and apply for its forfeiture before the magistrates' court. The safeguards which apply to constables and officers of HMRC will similarly apply to accredited financial investigators, namely safeguards attached to the search power regarding approval and reporting to an independent person. The code of practice under section 292 will be amended to apply to accredited financial investigators to provide guidelines on the operation of their search powers. Paragraph

*These notes refer to the Serious Crime Act 2007 (c.27)
which received Royal Assent on 30th October 2007*

13 of Schedule 11 inserts section 303A which provides that a reference to an accredited financial investigator under these provisions is a reference to one who falls within a description specified in an order made by the Secretary of State under section 453 of POCA.

272. Accredited financial investigators can currently apply for a search and seizure warrant under section 352 of POCA, but such warrants have to be executed by a constable or officer of HMRC. Section 80 amends sections 352 and 353 to allow an accredited financial investigator who falls within a description specified by order made by the Secretary of State to execute a warrant.
273. Section 453 of POCA enables the Secretary of State to specify by order a description of the type of accredited financial investigators who may exercise functions conferred on accredited financial investigators under POCA. Section 81(1) amends section 453 to provide expressly that the Secretary of State can by order require relevant accredited financial investigators to have been satisfactorily trained to perform the relevant functions. This adds to the current express power to specify that an investigator must be of a particular grade.
274. As accredited financial investigators will be undertaking invasive powers, offences of assaulting, resisting or wilfully obstructing them in the course of their duties are created by the new section inserted by section 81(2) into POCA. An accredited financial investigator will not have the power of arrest. A person found guilty of any of these offences will be liable to a term of imprisonment not exceeding 51 weeks or a fine or both. The maximum sentence in Northern Ireland is 6 months which is also the maximum in England and Wales pending commencement of section 281(5) of the Criminal Justice Act 2003.