

SCHEDULES

SCHEDULE 8

ABOLITION OF ASSETS RECOVERY AGENCY AND ITS DIRECTOR

PART 4

TRANSFER OF INVESTIGATION FUNCTIONS

- 103 The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- 104 In section 351(5) (supplementary)—
- (a) after “investigator,” where it first appears, insert “a member of SOCA’s staff”; and
 - (b) after “investigator,” where it appears for the second time, insert “member of SOCA’s staff”.
- 105 (1) Section 352 (search and seizure warrants) is amended as follows.
- (2) In subsection (5)(b) for “named member of the staff of the Agency” substitute “member of SOCA’s staff or of the staff of the relevant Director”.
- (3) After subsection (5) insert—
- “(5A) In this Part “relevant Director”—
 - (a) in relation to England and Wales, means the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office; and
 - (b) in relation to Northern Ireland, means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.”
- 106 In section 353(10)(b) (requirements where production order not available) for “the staff of the Agency” substitute “SOCA’s staff or of the staff of the relevant Director”.
- 107 (1) Section 356 (further provisions: civil recovery) is amended as follows.
- (2) Omit subsection (6).
- (3) In subsection (11)(a) (as inserted by Schedule 10) for “the Director” substitute “an appropriate officer”.
- 108 (1) Section 357 (disclosure orders) is amended as follows.
- (2) In subsection (1) for “the Director” substitute “the relevant authority”.
- (3) After subsection (2) insert—

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“(2A) The relevant authority may only make an application for a disclosure order in relation to a confiscation investigation if the relevant authority is in receipt of a request to do so from an appropriate officer.”

(4) In subsection (3)(a) for “the Director” substitute “an appropriate officer”.

(5) In subsection (4)—

- (a) for “the Director”, where it first appears, substitute “an appropriate officer”; and
- (b) for “the Director”, where it appears for the second time, substitute “the appropriate officer”.

(6) In subsection (5) for “the Director” substitute “the appropriate officer concerned”.

(7) After subsection (6) insert—

“(7) In this Part “relevant authority” means—

- (a) in relation to a confiscation investigation, a prosecutor; and
- (b) in relation to a civil recovery investigation, a member of SOCA’s staff or the relevant Director.

(8) For the purposes of subsection (7)(a) a prosecutor is—

- (a) in relation to a confiscation investigation carried out by a member of SOCA’s staff, the relevant Director or any specified person;
- (b) in relation to a confiscation investigation carried out by an accredited financial investigator, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland or any specified person;
- (c) in relation to a confiscation investigation carried out by a constable, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, the Director of the Serious Fraud Office or any specified person; and
- (d) in relation to a confiscation investigation carried out by an officer of Revenue and Customs, the Director of Revenue and Customs Prosecutions, the Director of Public Prosecutions for Northern Ireland or any specified person.

(9) In subsection (8) “specified person” means any person specified, or falling within a description specified, by an order of the Secretary of State.”

109 (1) Section 361 (further provisions) is amended as follows.

(2) In subsection (7) for “The Director” substitute “An appropriate officer”.

(3) In subsection (9) for “the Director” substitute “an appropriate officer”.

110 (1) Section 362 (supplementary) is amended as follows.

(2) In subsection (3)(a) for “Director” substitute “person who applied for the order”.

(3) After subsection (4) insert—

“(4A) If a member of SOCA’s staff or a person falling within a description of persons specified by virtue of section 357(9) applies for a disclosure order, an application to discharge or vary the order need not be by the same member

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of SOCA’s staff or (as the case may be) the same person falling within that description.

(4B) References to a person who applied for a disclosure order must be construed accordingly.”

(4) In subsection (5) for “(4)” substitute “(4B)”.

111 (1) Section 369 (supplementary) is amended as follows.

(2) In subsection (5)—

(a) after “investigator,” where it first appears, insert “a member of SOCA’s staff”; and

(b) after “investigator,” where it appears for the second time, insert “member of SOCA’s staff”.

(3) In subsection (7) after “investigator,” insert “a member of SOCA’s staff”.

112 In section 375(4) (supplementary)—

(a) after “investigator,” where it first appears, insert “a member of SOCA’s staff”; and

(b) after “investigator,” where it appears for the second time, insert “member of SOCA’s staff”.

113 Omit section 376 (evidence overseas).

114 (1) Section 377 (code of practice) is amended as follows.

(2) In the heading after “practice” insert “of Secretary of State etc.”.

(3) In subsection (1)—

(a) in paragraph (a) for “the Director” substitute “the Director General of SOCA”; and

(b) in paragraph (b) for “members of the staff of the Agency” substitute “other members of SOCA’s staff”.

(4) In subsection (9)—

(a) after “officer” insert “or the relevant authority”; and

(b) for “he” substitute “either”.

115 After section 377 (code of practice of Secretary of State etc.) insert—

“377A Code of practice of Attorney General or Advocate General for Northern Ireland

(1) The Attorney General must prepare a code of practice as to—

(a) the exercise by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office of functions they have under this Chapter; and

(b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) in relation to a confiscation investigation, of functions he has under this Chapter in relation to England and Wales as the relevant authority.

(2) The Advocate General for Northern Ireland must prepare a code of practice as to—

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- (a) the exercise by the Director of Public Prosecutions for Northern Ireland of functions he has under this Chapter; and
 - (b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) in relation to a confiscation investigation, of functions he has under this Chapter in relation to Northern Ireland as the relevant authority.
- (3) After preparing a draft of the code the Attorney General or (as the case may be) the Advocate General for Northern Ireland—
- (a) must publish the draft;
 - (b) must consider any representations made to him about the draft;
 - (c) may amend the draft accordingly.
- (4) After the Attorney General or the Advocate General for Northern Ireland has proceeded under subsection (3) he must lay the code before Parliament.
- (5) When the code has been so laid the Attorney General or (as the case may be) the Advocate General for Northern Ireland may bring the code into operation on such day as he may appoint by order.
- (6) A person specified in subsection (1)(a) or (b) or (2)(a) or (b) must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter to which the code relates.
- (7) If such a person fails to comply with any provision of such a code of practice the person is not by reason only of that failure liable in any criminal or civil proceedings.
- (8) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.
- (9) The Attorney General or (as the case may be) the Advocate General for Northern Ireland may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.
- (10) In this section references to the Advocate General for Northern Ireland are to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as references to the Attorney General for Northern Ireland.”
- 116 (1) Section 378 (officers) is amended as follows.
- (2) In subsection (1)(a) for “the Director” substitute “a member of SOCA’s staff”.
 - (3) In subsection (2)(a) for “the Director” substitute “a senior member of SOCA’s staff”.
 - (4) In subsection (3) for the words from “the Director”, where it first appears, to the end of the subsection substitute “—
 - (a) a member of SOCA’s staff or the relevant Director is an appropriate officer;
 - (b) a senior member of SOCA’s staff is a senior appropriate officer.”
 - (5) In subsection (5) for “the Serious Organised Crime Agency” substitute “SOCA”.

- (6) Omit subsection (7).
- (7) After subsection (7) insert—
- “(8) For the purposes of this Part a senior member of SOCA’s staff is—
- (a) the Director General of SOCA; or
 - (b) any member of SOCA’s staff authorised by the Director General (whether generally or specifically) for this purpose.”
- 117 In section 416(2) (other interpretative provisions)—
- (a) after the entry for production order insert—
“relevant authority: section 357(7) to (9)
relevant Director: section 352(5A)”; and
 - (b) at the end insert—
“senior member of SOCA’s staff: section 378(8).”
- 118 After section 449 (pseudonyms) insert—
- “449A Staff of relevant Directors: pseudonyms**
- (1) This section applies to a member of the staff of the relevant Director if—
 - (a) the member is to exercise a function as a member of that staff under, or in relation to, Part 5 or 8; and
 - (b) it is necessary or expedient for the purpose of exercising that function for the member of staff to identify himself by name.
 - (2) The relevant Director may direct that such a member of staff may for that purpose identify himself by means of a pseudonym.
 - (3) For the purposes of any proceedings or application under this Act, a certificate signed by the relevant Director which sufficiently identifies the member of staff by reference to the pseudonym is conclusive evidence that that member of staff is authorised to use the pseudonym.
 - (4) In any proceedings or application under this Act a member of the staff of the relevant Director in respect of whom a direction under this section is in force must not be asked (and if asked is not required to answer) any question which is likely to reveal his true identity.
 - (5) The relevant Director may not delegate the exercise of his functions under this section or otherwise authorise another person to exercise those functions on his behalf.
 - (6) In this section “relevant Director” has the meaning given by section 352(5A).”
- 119 (1) Section 459 (orders and regulations) is amended as follows.
- (2) In subsection (3) after “instrument” insert “(other than the power of the Advocate General for Northern Ireland to make an order under section 377A(5) which is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)))”.
 - (3) In subsection (4)(a) after “377(4)” insert “, 377A(5)”.

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(4) After subsection (6)(a) insert—

“(aa) by the Attorney General or the Advocate General for Northern Ireland under section 377A(5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;”.

(5) After subsection (7) insert—

“(8) In this section references to the Advocate General for Northern Ireland are to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as references to the Attorney General for Northern Ireland.”