EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (CASH SEARCHES: CODE OF PRACTICE) ORDER 2008

2008 No. 947

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN ENGLAND, WALES AND NORTHERN IRELAND: CODE OF PRACTICE) ORDER 2008

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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 These two Orders are made under the Proceeds of Crime Act 2002 ("the 2002 Act"). They provide that two revised Codes of Practice providing guidance on powers under the 2002 Act shall come into operation. One code provides guidance for the exercise of a search power under section 289 of the 2002 Act and the second provides guidance on exercising the investigation powers provided under Part 8 of the 2002 Act.

2.2 The Codes of Practice require updating and reissuing because of amendments to the 2002 Act made by the Serious Crime Act 2007 ("the 2007 Act"), which include,

- the abolition of the Assets Recovery Agency ("ARA") and its Director and the transfer of some of their functions to other agencies,
- the creation of a new type of investigation to investigate the provenance or intended use of cash seized under the 2002 Act, and
- the extension of powers under that Act to certain civilian financial investigators.

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

3.1 None.

4. Legislative Background

The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2008

4.1 The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2008 is made under the powers in section 292 of the 2002 Act to bring into operation a revised Code of Practice. It provides that the revised draft "Code of Practice issued under section 292 of the Proceeds of Crime Act 2002" laid before Parliament on 18 February 2008 shall come into operation on 6 April 2008.

4.2 Chapter 3 of Part 5 of the 2002 Act provides for the search, seizure and detention of cash which is reasonably suspected of having been obtained through unlawful conduct or of being intended for use in such conduct, and for the forfeiture of such cash in civil proceedings before a magistrates' court.

4.3 Section 79 of and Schedule 11 to the 2007 Act extend these powers from constables and officers of HM Revenue and Customs to accredited financial investigators. Accredited financial investigators are investigators who have been trained and accredited under section 3 of the 2002 Act to undertake certain investigation, restraint and search and seizure functions under that Act.

4.4 As a result of the amendments made by the 2007 Act, the existing Code of Practice under section 292, setting out how the powers of search in section 289 are to be exercised, requires updating to take account of the extension of these powers to accredited financial investigators. The revised draft Code makes the necessary updates and also takes account of developments in recent Codes of Practice issued under the Police and Criminal Evidence Act 1984, such as consulting with community liaison officers.

The Proceeds of Crime Act 2002 (Investigations in England, Wales and Northern Ireland: Code of Practice) Order 2008

4.5 The Proceeds of Crime Act 2002 (Investigations in England, Wales and Northern Ireland: Code of Practice) Order 2008 is made under the powers in section 377 of the 2002 Act to bring into operation a revised Code of Practice. It provides that the draft "Code of Practice issued under section 377 of the Proceeds of Crime Act 2002" laid before Parliament on 18 February 2008 shall come into operation on 1 April 2008. The Code has been revised to take account of the following amendments to the 2002 Act.

4.6 Section 74 of and Part 4 of Schedule 8 to the 2007 Act transfers the investigation functions of ARA and its Director to other agencies. Confiscation investigation powers will transfer to the Serious Organised Crime Agency ("SOCA"); civil recovery investigation powers will transfer, in England and Wales, to SOCA, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office and, in Northern Ireland to SOCA, the Director of Public Prosecutions for Northern Ireland and the Director of the Serious Fraud Office. ARA and its Director are to be abolished and their functions are to be transferred on 1 April 2008.

4.7 Sections 75 to 77 of and Schedule 10 to the 2007 Act provide that production orders and search and seizure warrants can be used to investigate the provenance or intended use of cash seized under Chapter 3 of Part 5 of the 2002 Act (see paragraph 4.2 above). This new type of investigation will be known as a "detained cash investigation". Section 80 of the 2007 Act allows for accredited financial investigators to execute search and seizure warrants in confiscation investigations and money laundering investigations, a power previously limited to constables and officers of HM Revenue and Customs. Section 80 also amends the amendments in sections 75 to 77 and Schedule 10 to enable accredited financial investigators to be able to execute search and seizure warrants in the new detained cash investigations. Section 80(7) of the 2007 Act provides that accredited financial investigators can conduct a detained cash investigation. All these provisions

amend Part 8 of the 2002 Act which provides financial investigation powers. These provisions will come into operation on 6 April.

4.8 The two Codes have been revised and these two Orders are required to bring them into operation.

5. Extent

5.1 These instruments apply to England and Wales and Northern Ireland, and the Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2008 makes provision for officers of HM Revenue and Customs in Scotland (see section 292(1) of the 2002 Act).

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 Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2008 and The Proceeds of Crime Act 2002 (Investigations in England, Wales and Northern Ireland: Code of Practice) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The two Orders bring into operation two Codes of Practice that provide guidance for the power to search for cash and the powers of investigation under the 2002 Act. These are set out in Chapter 3 of Part 5 and Part 8 of the 2002 Act respectively. The 2007 Act is making a number of amendments to these provisions. These Codes of Practice therefore require consequential updating to refer to the correct agencies and provide guidance for new procedures.

7.2 The abolition of ARA with most of its functions transferring to SOCA maximises the skills and expertise of both agencies in going after the profits of criminals. It will also help to deliver the stretching new targets on asset recovery set out in the Government's Public Service Agreement No.24 to "Deliver a more effective, transparent and responsive Criminal Justice System for victims and the public ". SOCA has come into existence since the 2002 Act. 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 are 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 The creation of the new "detained cash investigation" is a response to representations from law enforcement agencies that there are no current powers to investigate the provenance or intended use of cash which has been seized and detained. The production order and search warrant powers will be invaluable in constructing a full and speedy forfeiture case before the courts.

7.4 The operation of the 2002 Act has been a success and non-police and HM Revenue and Customs bodies have operated more independently as experience has been gained. These include trading standards officers, benefit fraud investigators and staff of the Serious Fraud Office. It is a natural extension of the role of accredited financial investigators to allow them access to the powers that are currently limited to the police and HMRC such as executing a search warrant and searching for and seizing suspicious cash.. As they are becoming less dependent on the police in conducting their financial investigations so adding to their own powers is a logical development. This parallels other developments in law where civilians take on more law enforcement functions; see, for example, the exercise of police powers by civilian staff under the Police Reform Act 2002.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as the codes in themselves do not create any impact on business, charities or voluntary bodies, this is done by the statutory provisions on which they provide guidance.

8.2 The impact on the public sector is training costs. The National Policing Improvement Agency (NPIA) has devised a training event to cover all amendments to the 2002 Act. The Codes of Practice will be only one component of that course. The cost of this course will be approximately £400 per student which covers all of the NPIA's costs; there are no costs to the NPIA. The grand total to those public bodies with financial investigators will be approximately £215,000. The figure of £215,000 does not include the time for other investigators to gain a working understanding of the code, but it is likely to be of negligible cost. The code themselves do not impose more than negligible cost burdens on the investigation bodies. The overall cost is likely to be less than £250,000.

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.