EXPLANATORY MEMORANDUM TO

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

2008 No. 1978

1. This explanatory memorandum has been prepared by the Attorney General's Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order is made under the Proceeds of Crime Act 2002 ("the 2002 Act"). It provides that a Code of Practice providing guidance on exercising the investigation powers provided under Part 8 of the 2002 Act shall come into operation.

2.2 The Code of Practice applies to prosecutors. It is identical in all material respects to the revised Code of Practice for investigators issued by the Home Secretary and brought into operation by the Proceeds Of Crime Act 2002 (Investigations In England, Wales And Northern Ireland: Code of Practice) Order 2008 (SI 2008/946).

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

3.1 None.

4. Legislative Background

4.1 The Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors in England, Wales and Northern Ireland: Code of Practice) Order 2008 is made under the power in section 377A of the 2002 Act to bring into operation a Code of Practice. It provides that the draft "Code of Practice issued under section 377A of the Proceeds of Crime Act 2002" laid before Parliament on 18 June 2008 shall come into operation on the day after the order has been made.

5. Extent

5.1 This instrument applies to England and Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 The Attorney General, Baroness Scotland QC, has made the following statement regarding Human Rights:

In my view the provisions of the Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors in England, Wales and Northern Ireland: Code of Practice) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Order brings into operation the Code of Practice which provides guidance for prosecutors on their exercise of the powers of investigation under the 2002 Act. These powers are set out in Part 8 of the 2002 Act. They have been available to investigators from law enforcement agencies and the Asset Recovery Agency ("ARA") since February 2003, to be exercised in accordance with a Code of Practice issued by the Home Secretary.

7.2 The Serious Crime Act 2007 ("the 2007 Act") abolished ARA and transferred its civil recovery functions to the Serious Organised Crime Agency and to the four main prosecuting authorities in England, Wales and Northern Ireland, namely the Director of Public Prosecutions, the Director of the Serious Fraud Office, the Director of Revenue and Customs Prosecutions and the Director of Public Prosecutions for Northern Ireland. The 2007 Act made available to these prosecuting authorities the investigative powers under Part 8 of the 2002 Act, for use in civil recovery investigations. The prosecuting authorities were also given the power to apply for disclosure orders in criminal confiscation investigations on behalf of law enforcement agencies. The Code of Practice issued to investigators by the Home Secretary has been revised to take account of the changes effected by the 2007 Act, and this Code of Practice for prosecutors is based on the revised investigators' code and is entirely consistent with it.

7.3 The extension of civil recovery powers to prosecuting authorities will 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 ". It will widen the pool of practitioners using civil recovery to target the profits of criminals. It will also increase efficiency, in that civil recovery powers tend to be exercised where there has already been a criminal investigation or criminal proceedings in which the prosecuting authority has been involved.

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 limited to training costs. It is envisaged that a small number of staff within each prosecuting authority will be trained to exercise the powers, and will need to be familiar with the Code of Practice. The training will be given either by a law enforcement agency which already exercises the powers or by the National Policing Improvement Agency (NPIA), with the cost being met by the prosecuting authorities. The Code of Practice itself does not impose more than negligible cost burdens on the prosecuting authorities. The overall cost will be less than £250,000.

9. Contact

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