EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME (DISCLOSURE ORDERS: CONFISCATION INVESTIGATIONS) (SPECIFIED PERSON) ORDER 2014

2014 No. 3207

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

2. Purpose of the instrument

2.1 This instrument specifies the Director of the Serious Fraud Office ("the Director of the SFO") as a prosecutor for the purposes of section 357(8)(b) of the Proceeds of Crime Act 2002 (c. 29) ("POCA"). This has the effect that the Director of the SFO can apply for a disclosure order under section 357 in relation to a confiscation investigation carried out by an accredited financial investigator ("AFI"), after receiving a request from the AFI to do so.

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

3.1 None.

4. Legislative Context

4.1 This is the first exercise of the power to specify a person as a prosecutor under section 357(9) of POCA.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 POCA is concerned with the recovery of the proceeds of crime from individuals who have benefited from that crime. Part 8 of POCA sets out several types of investigations which are permitted by the Act: confiscation, civil recovery, detained cash, money laundering and exploitation proceeds investigations. Of particular relevance to this

instrument is the definition of a confiscation investigation, which is an investigation into whether a person has benefited from his criminal conduct, or the extent or whereabouts of his benefit from his criminal conduct (section 341(1)). Investigations are carried out by appropriate officers, as defined in section 378, and AFIs are among the list of appropriate officers.

7.2 POCA also provides for the investigative powers to conduct those investigations. One of the available investigative tools for confiscation investigations are disclosure orders. A disclosure order is an order authorising an appropriate officer to give written notice to any person that officer considers has relevant information in relation to an investigation, requiring that person to answer questions, provide information or produce documents (see section 357(4)).

7.3 When POCA came into force, the power to seek a disclosure order was vested solely in the Director of the Assets Recovery Agency (ARA). ARA was later abolished, and the power to seek a disclosure order was vested in a "relevant authority", which for the purposes of a confiscation investigation is a "prosecutor" (see section 357(1), (7)(a)). "Prosecutor" is defined in section 357(8) of POCA. The Director of the SFO is only currently able to seek a disclosure order in relation to a confiscation investigation carried out by a constable (section 357(8)(c)). In relation to a confiscation order carried out by an AFI, the Director currently has no such power as he is not a prosecutor for this purpose (section 357(8)(b)).

7.4 The Serious Fraud Office employs AFIs to conduct confiscation investigations, yet if an AFI wishes to obtain a disclosure order to further an investigation, the AFI cannot ask the Director of the SFO to seek to obtain an order and must instead ask the Director of Public Prosecutions to do so under section 357(8)(b) of POCA. It does not make sense that the Director of the SFO cannot seek to obtain a disclosure order in relation to confiscation investigations carried out by AFIs which the SFO employs, but can do so in respect of confiscation investigations carried out by constables.

7.5 There is also a desire to increase joint working between the prosecutors. Therefore, AFIs will in future be able to request that the Director of the SFO apply for disclosure orders, where that is appropriate.

- Consolidation

7.6 This is the first order made under the power in section 357(9) therefore the issue of consolidation does not arise.

8. Consultation outcome

8.1 No consultation has been carried out.

9. Guidance

9.1 No guidance will be issued in relation to this instrument, however there is a code of practice which governs the exercise of the functions in section 357 by prosecutors. This code of practice is made by the Attorney General or the Advocate General for Northern Ireland under section 377A of POCA and can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15330/Code_of_Practice_Issued_Under_Section_377A_of_the_Proceeds_of_Crime_Act_2002.doc.pdf.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There are no plans to monitor or review this instrument.

13. Contact

Alison Moore at the Home Office Tel: 0207 035 1717 or email: Alison.moore@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.