



# Memorandum to the Home Affairs Committee and Justice Committee

Post-legislative Scrutiny

of the

Serious Crime Act 2007

Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

November 2012

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**Post Legislative Scrutiny of the Serious Crime Act 2007**  
**Memorandum to the Home Affairs Committee and the Justice Committee**

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**MEMORANDUM TO THE HOME AFFAIRS SELECT COMMITTEE AND JUSTICE COMMITTEE:**

**POST-LEGISLATIVE SCRUTINY OF THE SERIOUS CRIME ACT 2007**

This memorandum provides a preliminary assessment of the Serious Crime Act 2007 and has been prepared by the Home Office and the Ministry of Justice for submission to the Home Affairs Select Committee and Justice Committee. It is published as part of the process set out by the previous Government in the document *Post Legislative Scrutiny – The Government’s Approach* (Cm 7320).

The current Government has accepted the need to continue with the practice of post-legislative scrutiny as it supports the coalition aim of improving Parliament’s consideration of legislation.

**SUMMARY OF THE OBJECTIVES**

Introduction

1. The Serious Crime Act 2007 obtained Royal Assent on 30 October 2007. It was intended to remove what the Government of the time saw as gaps in the UK’s capability in dealing with the threat posed by organised crime. It was conceived to:
  - a. provide for the creation of Serious Crime Prevention Orders to prevent serious crime;
  - b. create new offences of intentionally encouraging or assisting crime;
  - c. make provision for the prevention of fraud, including through data sharing and data matching;
  - d. amend the Proceeds of Crime Act 2002 including through transferring certain functions of the Asset Recovery Agency to the Serious Organised Crime Agency;
  - e. extend the power of civilian financial investigators operating under the Act;

- f. provide investigation powers in respect of the cash forfeiture regime and introduce powers to force entry in the execution of search warrants issued and executed in Scotland;
  - g. extend certain investigatory powers of HMRC officers to former Inland Revenue matters; and
  - h. extend an existing police power to stop and search for dangerous instruments and offensive weapons without reasonable suspicion.
2. The previous Government published the Green Paper 'New Powers Against Organised and Financial Crime' (CM 6875) on 17th July 2006. The Green Paper set out a package of measures to improve the ability of law enforcement agencies to tackle fraud and serious organised crime. The Green Paper can be found at: <http://www.homeoffice.gov.uk/documents/cons-2006-new-powers-org-crime/>.
3. The document summarising the responses that were received to the consultation is available at:  
<http://www.homeoffice.gov.uk/documents/powers-against-org-crime.pdf?version=1>

### **Part 1: Serious Crime Prevention Orders**

4. As set out in the explanatory notes<sup>1</sup>, Part 1 creates Serious Crime Prevention Orders (SCPOs), a new civil order aimed at preventing serious crime. These orders were intended to be used against those involved in serious crime and the purpose of their terms was to protect the public by preventing, restricting or disrupting involvement in serious crime. They can be made on application to the High Court, or the Crown Court upon conviction, and breach of the order will be a criminal offence. The Act provides for rights of appeal and variation or discharge of the order.
5. The Act allows for SCPOs to be made against individuals, bodies corporate, partnerships or unincorporated associations. SCPOs may contain such

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2007/27/notes/data.pdf>

prohibitions, restrictions, or requirements or such other terms that the Court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime. Terms of an order can cover virtually any area of activity, but they must be reasonable and proportionate and must be preventative, rather than punitive. For example, where appropriate, an order might not prohibit travel abroad but instead require advance notification of travel plans and purpose.

6. SCPOs can be applied to offences committed online, whether they are Computer Misuse Act (1990) offences, or whether they are other offences such as fraud, which are committed online. Terms secured include restricting internet access to specified machines or locations, restricting the number of email accounts a subject may use and requiring subjects to retain evidence of their internet browsing history for inspection by SOCA. More generally, the CPS and SOCA have also worked together to tighten the terminology of SCPO terms to make them easier to monitor and harder to evade.
7. Orders can last for up to five years. Breach of an order is punishable by up to five years imprisonment and an unlimited fine.
8. To protect the subject of an SCPO from self-incrimination there are a number of safeguards in place, for example the requirement (under section 9) that any person who is likely to be significantly and adversely affected by a SCPO should be provided with an opportunity to make representations during any proceedings and the limitation that SCPOs are not to be imposed on anyone below the age of 18.
9. An SCPO may be made by the Crown Court where it is sentencing a person who has been convicted of a serious offence by the Crown Court. Orders may also be made by the High Court where it is satisfied that a person has been involved in serious crime, whether that involvement was in England, Wales, Northern Ireland or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England, Wales and

Northern Ireland. Scottish Courts cannot currently make SCPOs, although they can be enforced in Scotland.

10. A serious offence in England and Wales and Northern Ireland is one which is listed under Schedule 1 of the Act, or an offence which is sufficiently serious that the court considers it should be treated as it were part of the list.

11. When the legislation was passed, the then Attorney General told Parliament those SCPOs were not to be regarded as a “soft” alternative to prosecutions<sup>2</sup>. To ensure that the exercise of the powers is kept under tight control, the powers to seek SCPOs can only be expressly and not automatically delegated. An application for an SCPO can only be made by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions<sup>3</sup>, the Director of the Serious Fraud Office or the Director of Public Prosecutions Northern Ireland. It is expected that a Director will decide on an application on the basis of information from law enforcement agencies including the police, HMRC and SOCA.

## **Part 2: Encouraging or assisting crime**

12. Part 2 of the Act relates to encouraging and assisting crime and was intended to close a gap in the criminal common law identified by the Law Commission in its report ‘Inchoate Liability for Encouraging and Assisting Crime’ published in 2006. The Law Commission’s proposals were considered as part of the consultation on the Home Office’s Green Paper ‘New Powers Against Organised and Financial Crime’ and the Commission’s draft bill formed the basis of Part 2 of the Serious Crime Bill, with modification by the then Government at introduction.

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<sup>2</sup> Baroness Scotland 7 February 2007 Hansard HL col. 728

<sup>3</sup> Decisions to make applications under section 19 (Orders by the Crown Court) are limited to Chief Crown Prosecutors, Deputy Chief Crown Prosecutors and Heads of Central Casework Divisions. The Director has delegated the power to make applications under section 1 to the Head of Organised Crime Division or, in his absence, the Head of Special Crime and Counter-Terrorism Division. Furthermore, in accordance with the terms of the protocol between the Law Officers and the prosecutors they superintend, the Attorney General must be consulted before proceedings are issued in any section 1 case.

13. Prior to the coming into force of the Serious Crime Act 2007, it was an offence under the common law for a person to incite another to commit an offence (whether or not that offence went on to be committed). However, the person could be convicted only where he encouraged the offence and not where he simply provided assistance. So a person who supplied a car knowing that it was intended to be used in an armed robbery could not be convicted of incitement if the robbery did not take place. The Act sought to fill this gap.
14. The gap was particularly significant in relation to organised crime where complex relationships can exist between those involved in offences. Previously the police could be impeded in taking action against those providing assistance, in the absence of encouragement, where no offence went on to be committed.
15. Part 2 addresses this by creating three new offences, applicable in circumstances where a person commits an act that is capable of encouraging or assisting an offence intentionally (section 44); or in the belief that it will be committed (section 45); or in the belief that one or more offences (which his acts are capable of encouraging or assisting) will be committed, irrespective of the offence which he believes he is encouraging or assisting (section 46). A person may commit an offence whether or not any offence capable of being encouraged or assisted by his act is in fact committed. Part 2 abolished the common law offence of incitement.

### **Part 3: Other measures to disrupt serious and other crime**

#### Chapter 1: Fraud

16. Chapter 1 of Part 3 enables public authorities to share data to improve the detection and prevention of fraud. The objective of these measures was to prevent, detect and reduce the harm caused by fraud committed against the private and public sector through greater data sharing, for example by enabling a comparison between mortgage records and housing benefit data to directly uncover apparently fraudulent behaviour or by enabling organisations to share more information on high-risk individuals and activity, and by ensuring that other agencies are alert to similar types of fraud being committed against them.

Similarly, sharing information on who commits fraud can help public bodies protect themselves in future.

17. The provisions in the Serious Crime Act were intended to enable the public sector to share information with the private sector, and vice versa. This voluntary provision enables the sharing of data by the public sector through a specified anti fraud organisation (SAFO), either as a member of, or by arrangement with, such an organisation. The Act provides the potential to identify those individuals intent on defrauding the taxpayer by accessing benefits and services to which they were not entitled, and to prevent fraudulent applications from being granted. The provision is intended as a narrow and targeted provision to prevent fraud through the sharing of specific and controlled data in accordance with appropriate safeguards.
  
18. To strengthen the ability to detect fraud, the Act enables the Audit Commission to carry out, or authorise, data matching exercises. Section 73, gives effect to Schedule 7<sup>4</sup> to place the National Fraud Initiative (NFI) on a statutory footing and gave the Audit Commission new powers to extend the benefits of NFI to central government and the private sector. The National Fraud Initiative is a biennial data-matching exercise, which is run by the Audit Commission as part of its auditing function and has a proven track record in identifying fraud. The expansion of the Audit Commission's NFI was intended to improve the ability of the Audit Commission to detect fraud against Local Authorities and other participating bodies. Data sets which should be mutually exclusive are matched to identify possible fraud.
  
19. The provisions in the Act make the NFI a mandatory process for bodies that are subject to the Audit Commission's audit and inspection regime. Those bodies are required to provide the Audit Commission with all data it might reasonably require in order to undertake data matching exercises. The provisions also introduce an order making power enabling the Secretary of State to add to the

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<sup>4</sup> which amended the Audit Commission Act 1998 (c. 18)

list of mandatory bodies as deemed appropriate. The Act also provides a power for other bodies to participate voluntarily in the NFI.

20. Both the Audit Commission and participating bodies are subject to the data destruction requirements of the Data Protection Act, which demand that data is not held any longer than is necessary. The NFI code of data matching practice also states that participating bodies should discuss with their Auditor which data should be destroyed and when.
21. The Act imposed a new regulatory regime alongside existing fair processing and other compliance requirements of the Data Protection Act 1998. Any person or body conducting or participating in the Commission's data matching exercises must by law, have regard to a statutory Code of Data Matching Practice.
22. New provisions were also made for the Secretary of State to extend by order the purposes of data matching exercises beyond fraud.

## Chapter 2: Proceeds of Crime

### *Abolition of Assets Recovery Agency and redistribution of functions etc*

23. The Act makes a number of amendments to the Proceeds of Crime Act 2002 and supporting legislation. These transfer certain functions of the Assets Recovery Agency to the Serious Organised Crime Agency and other persons, extend the powers of civilian financial investigators operating under that Act, provide investigation powers in respect of the cash forfeiture regime of that Act and create various miscellaneous powers relating to asset recovery.
24. The Act provided for the abolition of the Assets Recovery Agency (ARA) and its Director and for the transfer of their functions<sup>5</sup>. The ARA was originally established under Part 1 of and Schedule 1 to the Proceeds of Crime Act 2002. Under the Serious Crime Act, the function of training, accrediting and monitoring financial investigators was transferred to the National Policing Improvement

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<sup>5</sup> Section 74, Schedules 8 and 9

Agency (NPIA), the ability to pursue civil recovery investigations and proceedings was transferred to SOCA and the main prosecution agencies (namely the Crown Prosecution Service, the Public Prosecution Service for Northern Ireland, the Revenue and Customs Prosecution Office and the Serious Fraud Office) and the function of raising an unsourced tax assessment against income, gains and profits arising or accruing from crime was transferred to SOCA.

25. The absorption of ARA functions within SOCA was intended to maximise the skills and expertise available to target criminal finances and profits. This was intended to ensure that there was no diminution in the resources available for asset recovery work in Northern Ireland and SOCA became accountable for its performance on the recovery of assets.
26. Section 2A of the Proceeds of Crime Act provides that the guidance is given by the Secretary of State to SOCA, and by the Attorney General to the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions, the Director of the Serious Fraud Office and (as Attorney General for Northern Ireland) to the Director of Public Prosecutions for Northern Ireland on the use of their powers in POCA. This was issued in November 2009.

#### *Detained cash investigations*

27. The Act contains provisions to enable law enforcement agencies to take cash forfeiture cases before the courts more effectively. Under Chapter 3 of Part 5 of the Proceeds of Crime Act 2002, officers could seize, detain and seek forfeiture before the courts of cash which is the proceeds of, or intended for use in, crime. Prior to the Act, There had been no powers to investigate the provenance of the detained cash and so new provisions provided that the investigator could apply to the court for a production order and a search and seizure warrant for that purpose.

Extension of powers to accredited financial investigators

28. Three specific powers, which were available to the police and Revenue and Customs officers under the Proceeds of Crime Act, were extended to certain accredited financial investigators who operate under the Act<sup>6</sup>. The relevant powers were those to seize restrained property to prevent its removal from the United Kingdom; seize and seek the forfeiture of suspect cash; and to obtain and execute search and seizure warrants in confiscation, money laundering and detained cash investigations. The safeguards that apply when police and HMRC officers use the search and seizure powers under the POCA regime were similarly extended to accredited financial investigators.

29. The objective was for the same agency to undertake all aspects of its investigation, to keep uniformity and free the police from assisting in cases which were not necessarily viewed by them as a priority. This was to strengthen overall capacity in the recovery of the proceeds of crime.

Powers of receivers

30. The Act amends the Proceeds of Crime Act to enable Court-appointed management and enforcement receivers to sell or otherwise dispose of assets which are perishable or which ought to be disposed of before their value diminishes, before a person having an interest in that property has had an opportunity to make representations<sup>7</sup>. The time delay involved in notifying all interested parties was seen as being significant in relation to certain property (e.g. food), given that such receivers either manage property or seek to sell property to meet the value of an outstanding confiscation order. The property in question must be subject to a restraint order with a view to a confiscation order being made and receivers must maintain the value of property subject to restraint.

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<sup>6</sup> Sections 78 to 81 and Schedule 11. These are financial investigators who have been trained and accredited by the National Policing Improvement Agency (or formerly by the Assets Recovery Agency)

<sup>7</sup> Section 82

Civil recovery management receivers

31. The objective was to create a new type of receiver in civil recovery proceedings whose only function was to manage property which is subject to a property freezing order. The previous role of the interim receiver had the additional roles of investigation of the property in question and reporting findings to the court. This new receiver, having no investigation function, has no influence on the progress or final outcome of the case. As this new receiver has no direct impact on the proceedings, the principle of equality of arms would not be breached and accordingly the role can be performed by a member of staff of the same body (such as SOCA) that is pursuing the civil recovery case. Significant cost savings are produced upon the appointment of a management receiver compared to an interim receiver because the body pursuing the civil recovery case has the ability to maintain control over the management receiver's costs.

Powers of prosecutors to appear in cash recovery proceedings

32. Under POCA, prosecutors could not appear in summary cash recovery proceedings. The objective of this amendment was to allow for the Crown Prosecution Service and the Director of Public Prosecutions for Northern Ireland to act for the police and accredited financial investigators and the Revenue and Customs Prosecutions Office to act for officers of Revenue and Customs in summary cash recovery proceedings<sup>8</sup>.

Chapter 3: Stop and search

33. Section 87 amends section 60 of the Criminal Justice and Public Order Act 1994 to introduce s60(1)(AA). The purpose of the amendment was to assist the police in locating dangerous or offensive weapons used in incidents involving serious violence, and in apprehending the offender.

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<sup>8</sup> Section 84

34. The amendment extends the powers of an authorising officer to include a further circumstance when an authorisation can be given for people and vehicles within a specified area to be stopped and searched, namely where there is a reasonable belief that an incident involving serious violence has taken place in the officer's police area, that a dangerous instrument or offensive weapon used in the incident is being carried by a person in any locality in that police area, and that it is expedient to use these powers to find that instrument or weapon.
35. Before this amendment was made, the powers were restricted to circumstances where a police officer of or above the rank of inspector reasonably believed that incidents of serious violence may take place in his police area and it was expedient to give an authorisation to prevent their occurrence, rather than instances where incidents involving serious violence have already occurred, and where the police suspect that persons are carrying the dangerous instruments or offensive weapons used.

### Chapter 3: Investing HMRC officials with criminal investigation powers

36. The Act makes amendments to HMRC's powers contained within the Regulation of Investigatory Powers Act 2000 (RIPA) and Part III of the Police Act 1997. Specifically, the provisions contained within section 88 and Schedule 12 apply the range of covert powers that previously applied to HM Customs and Excise, to officers of HM Revenue and Customs. These powers concern a number of capabilities in relation to interfering with property (for example, entering a property to place a listening device :
- the taking of action in respect of wireless telegraphy;
  - obtaining interception warrants for; the acquisition and disclosure of 'communications data' (as defined by section 21(4)); directed surveillance, intrusive surveillance and for the use of covert human intelligence sources;
  - and to serve notice on individuals or bodies requiring disclosure of protected (e.g. encrypted) data.

37. Some of these provisions, such as those relating to action in respect of wireless telegraphy, were preceded by an extensive consultation process, which highlighted concerns that such an extension of covert policing powers should be subject to stringent management controls and that their use should be limited in scope, as highlighted in the following extract from the consultation document:

*“The majority of respondents who commented on this aspect of the consultation were in favour of extending the application of provisions to ex-IR responsibilities, provided that they could only be used in criminal investigations into serious crime, and continued to be subject to the same safeguards and controls. On that basis Ministers have decided to put the proposed extension before Parliament in the Serious Crime Bill that is published today [17 January 2007]. It remains the case that under the proposals these powers would not be available for use in any HMRC activity except criminal investigations into serious crime.”*

38. Similar concerns were expressed during Parliamentary debates in both the House of Commons and the Lords, with a number of amendments being tabled to explicitly limit the use of the covert powers, as detailed in Schedule 12, to prevent them being used in routine tax compliance work. In response, Ministers made commitments in statements to both Houses which clarified that the widening of the powers referred to in Schedule 12 would only be used in relation to the criminal investigation of serious crime and that the existing stringent controls would continue to apply.

39. The Serious Crime Act also made amendments to relevant terminology within both RIPA and the Police Act 1997; replacing references relating to HM Customs and Excise and the Inland Revenue with appropriate HM Revenue and Customs based terminology. The majority of these amendments did not extend or alter the scope of the particular powers.

## IMPLEMENTATION

### Part 1: Serious Crime Prevention Orders

40. SCPOS were brought into force In England and Wales and Northern Ireland by Article 15 of the Serious Crime Act 2007 (Commencement No.2 and Transitional and Transitory Provisions and Savings) Order 2008/755. This has enabled law enforcement agencies, with the help of the Crown Prosecution Service (CPS) to draft innovative terms to restrict and prevent criminals from re-engaging in criminal activity.

41. As of 31 March 2012<sup>9</sup>, a total of 164<sup>10</sup> SCPOs have been obtained Of these, the CPS has obtained the majority; three have been obtained by the Director of Public Prosecutions for Northern Ireland and one by the Serious Fraud Office.

42. A breakdown of the SCPOs obtained by the CPS is provided in the two tables below, showing numbers secured in SOCA cases and the number of SCPOs that have been obtained by other law enforcement partners and were reported to SOCA. The CPS in conjunction with SOCA has secured four SCPOs in respect of cyber-specific cases, although an increasing number of cyber related terms feature in orders generally.

<b>YEAR</b>	<b>SCPOs secured by the CPS in SOCA cases</b>
2008-09	12
2009-10	27
2010-11	18
2011-12	40
<b>TOTAL</b>	<b>97</b>

<sup>9</sup> Latest set of validated figures.

<sup>10</sup> This number may not be the complete number of SCPOs, as some SCPOs secured by law enforcement authorities other than SOCA may not have been reported to SOCA.

<b>YEAR</b>	<b>SCPOs secured in non-SOCA cases <sup>11</sup></b>
2008-09	7
2009-10	16
2010-11	21
2011-12	23
<b>TOTAL</b>	<b>67</b>

43. All SCPOs awarded as of 31 March 2012, have been secured following a conviction in the Crown Court. Only 16 applications in SOCA cases have been refused at Crown Court.

44. The first case seeking a High Court SCPO is due to go to court in March 2013 and is scheduled for a hearing on 4th to 15th March 2013. Several potential cases have been considered by SOCA and the CPS but have been ruled out and there is the potential for more work to be undertaken to develop High Court SCPOs:

- There is no formal procedure (either domestically or internationally) for enabling evidence to be obtained from abroad in anticipation of High Court SCPO proceedings.
- There are countries that are unwilling to assist with High Court SCPO cases as the proceedings are civil and do not depend upon a conviction.
- There is no general gateway allowing the Revenue and Customs Prosecution Office to disclose information to the CPS for the purpose of High Court SCPO proceedings.
- There are limited investigatory powers that can be used by SOCA and the Police once a decision has been made to

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<sup>11</sup> This number may not be the complete picture of other law enforcement SCPOs secured, as some may not have been reported to SOCA.

proceed solely on a High Court SCPO basis, i.e. where there is no criminal investigation or prosecution.

- That SCPOs are orders *in personam* and that they can have extraterritorial effect could be made clearer.

45. The majority of orders become active once the offender is released from prison, however there are 6 SCPOs active against offenders who are currently imprisoned. The terms of the Order are drafted in the knowledge that the named law enforcement agency will have to monitor and enforce them, and will be structured accordingly.

46. SOCA proactively reviews its criminal caseload to identify defendants who pose an on-going risk to the public and whose management would be assisted by an SCPO. In accordance with undertakings given to Parliament when the legislation was passed about the seniority of review functions within the CPS, all requests for SCPO applications in SOCA cases are reviewed and, if appropriate, approved by the Head of the CPS' Organised Crime Division. Close liaison between SOCA and the CPS on these cases has resulted in a high proportion of applications for SCPOs being granted. SOCA works closely with the CPS' Organised Crime Division to develop and maintain a directory of precedent terms that are judged would be effective in managing risk. This directory and experience is regularly made available to other law enforcement partners seeking advice on making applications for SCPOs.

47. Within the CPS, guidance has been issued on SCPOs and is available on the CPS website. When the legislation was passed, CPS issued legal guidance and provided training for Chief Crown Prosecutors. The CPS has recently completed an updated training package on SCPOs which all those with delegated authority to apply for SCPOs (together with certain other senior lawyers) were asked to complete by the end of July 2012.

48. As part of its commitment to enforce orders rigorously, SOCA has published details of certain ancillary orders on its website from June 2010. Each case is considered for publication on its individual merits and according to strict criteria

to ensure the “preventative not punitive” principle is protected. The list is updated approximately every six months.

### Monitoring of compliance

49. Each agency monitors its own offenders according to the agencies’ skills, resources, opportunities and priorities, and the threat posed by the offender. For example, SOCA uses a variety of investigative techniques to monitor compliance with its SCPOs and every offender with a SCPO is subject to an individual action plan. SOCA keeps in contact with offenders subject to SCPOs and other ancillary orders to remind them of the terms of the order and to make them aware they are subject to active monitoring. SOCA shares monitoring techniques and approaches with other agencies involved, but how each agency monitors its offenders will depend on several factors including resources and priorities. SOCA is frequently consulted by other agencies on how it monitors SCPOs, and routinely shares techniques and approaches with its partners. Many of these approaches are taken on board, but the decision on what tactics to use remains with each agency.
50. The CPS has successfully prosecuted two offenders on breaches of their SCPOs. Most SCPOs become active when the offender leaves prison. There is therefore a natural delay in the process since the legislation in 2007 – the offender has to serve their time in prison before their order becomes active. SCPOs are only granted on the most serious offenders, so the prison sentences tend to be lengthy. Law enforcement then have to monitor them, investigate a breach and submit to the usual criminal justice process before a prosecution is successfully completed. SOCA is investigating an increasing number of potential breaches, and anticipates much higher numbers of prosecutions going forward as offenders are released from prison. On the two successful prosecutions, one person was convicted on two counts in relation to breach of his SCPO and was sentenced in February 2012 to two years imprisonment for each offence (reduced to one year for each offence on appeal) for failing to follow the terms of the order. The other person was convicted on 12 counts in

relation to breach of his SCPO and received sentences (in July 2012) ranging from 8 months to 16 months to run concurrently.

## Part 2: Encouraging or assisting crime

51. Part 2 was brought fully into force by the Serious Crime Act 2007 (Commencement No. 3) Order 2008 (SI 2008/2504)<sup>12</sup> on 1 October 2008. It was brought to the attention of criminal justice organisations including the police, judiciary and prosecutors by a Ministry of Justice circular<sup>13</sup> on 29 September 2008. The circular outlined the sections of Part 2, providing further information and numerous examples of its application. This supplemented the Explanatory Notes for the Act<sup>14</sup>.

52. Figures on charging of these offences show that their use has been growing. Figures from the CPS for offences charged and reaching at least a first hearing at the magistrates' court are shown below:

<b>Serious Crime Act 2007</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Section 44	0	0	1
Sections 44 and 58	6	26	75
Section 45	0	0	0
Sections 45 and 58	7	15	26
Sections 46 and 58	0	3	8
Sections 46 and 58(5), (6) and (7)	0	3	11
<b>TOTAL OFFENCES</b>	<b>13</b>	<b>47</b>	<b>121</b>

Offences recorded in CPS's management information system are not official statistics. They are those offences which were charged at any time and reached at least one hearing. An offence will remain recorded whether or not that offence was proceeded with and there is no indication of final outcome or if the offence charged was the substantive offence at finalisation.

<sup>12</sup> <http://www.legislation.gov.uk/uksi/2008/2504/made>

<sup>13</sup> <http://www.justice.gov.uk/publications/docs/serious-crime-act-2007-implementation-part2.pdf>

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/2007/27/notes/contents>

### Part 3: Other measures to disrupt serious and other crime

#### Chapter 1: Prevention of Fraud

53. Part 3, Chapter 1 creates new offences and order making powers and allows for data sharing with anti-fraud organisations. The sections are:

- Section 68: Disclosure of information to prevent fraud.
- Section 69: Offence for certain further disclosures of information.
- Section 70: Penalty and prosecution for offence under section 69.
- Section 71: Data matching (England Wales and Northern Ireland).

54. To date, the following Statutory Instruments, enabled by the provisions of the Act, have been implemented:

- In SI 2008 No 219 (C5) Section 68 (8), Section 71 (1) (2) (4) & (5) came into force on 01 March 2008.
- In SI No 2504 (C108) Section 68 (1-7), Sections 69 & 70, Section 71 (3) (6) and Section 72 came into force on 01 October 2008.
- SI 2008 2353 laid before Parliament on the 5 September 2008 specified 6 anti fraud organisations and came into force on 1 October 2008.
- The Code of Practice required under S71 was laid before Parliament on 6 October 2008.

55. In Scotland, Section 68(5) and (6) and section 69 (3) were brought into force on 1 October 2008. Section 71 (4) was brought into effect on 1 March 2008<sup>15</sup>.

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<sup>15</sup> The power of disclosure in S68 can be used by all public authorities in the UK. However, where the subject matters falls under the competence of the Scottish Parliament, the power can only be used by Scottish public authorities. Once Section 98 of the Criminal Justice and Licensing (Scotland) Act 2010 has been enacted, this restriction will longer apply and the Code of Practice will be amended accordingly.

56. National Fraud Initiative data matching provisions commenced on 6th April 2008 were Section 73 together with Schedule 7 of the 2007 Act which provides for the Audit Commission, the Auditor General for Wales and the Controller and Auditor General for Northern Ireland to carry out data matching exercises or to arrange for another organisation to do this on their behalf. Data matching is defined as the comparison of sets of data, for example two local authority payroll databases. Matches should not occur, but if they do, fraudulent activity may be highlighted.

57. The code of data matching practice 2008 was finalised, published, and laid before Parliament on 21 July 2008. The 2008 Code replaced the previous Code published by the Commission in May 2006.

## Chapter 2: Proceeds of Crime

58. This section provides for the abolition of the Asset Recovery Agency and the transfer of its powers; extends the powers of accredited financial investigators and receivers and allows HMRC to disclose information for the purposes of civil recovery of the proceeds of crime.

59. Section 74, Schedules 8 and 9: Abolition of Assets Recovery Agency and redistribution of functions etc were fully commenced on 1 April 2008 and have UK wide application. Provisions required to ensure the effective transferral of functions, staff, property, liabilities etc. in advance of the abolition of the Agency were commenced on 1 March 2008.

60. Sections 75 to 77 and Schedule 10: Detained cash investigations were commenced in relation to England and Wales and Northern Ireland on 6 April 2008 and Scotland on 18 June 2008.

61. In Scotland, the power to carry out “detained cash investigations” under the Proceeds of Crime Act 2002 is primarily used by the Civil Recovery Unit within the Crown Office in Scotland. Production Orders are now regularly sought and obtained by the CRU, and they are now an integral part of the way in which

cash forfeiture cases are dealt with. They have reported that no search warrant has yet been sought for the purposes of a detained cash investigation, but the existence of the power to do so if necessary is welcomed.

62. Sections 78 to 81 and Schedule 11, the extension of powers to accredited financial investigators, were commenced on 6 April 2008. (These powers do not extend to Scotland).

63. The miscellaneous provisions relating to the proceeds of crime (sections 82 to 84) were commenced on 6 April 2008. (These powers do not extend to Scotland).

64. Additionally, ACPOS (Association of Chief Police Officers in Scotland) has offered comment in respect of the amendment to Section 387 of the Proceeds of Crime Act 2002 (amended by Section 86 of the Serious Crime Act 2007 and commenced on 28 April 2008). The use of reasonable force in executing search warrants obtained under S387 was welcomed when it was brought into effect. They are in no doubt that this power provides officers with a more effective means of executing such warrants, particularly in circumstances where the investigation may be prejudiced unless the police are able to secure the required evidence without delay.

### Chapter 3: Other Measures

65. Chapter Three includes powers to stop and search people and vehicles where serious violent incidents are anticipated or where the police suspect that dangerous instruments or weapons are being carried without good reason. This chapter also makes criminal investigation powers apply consistently to all functions of Her Majesty's Revenue and Customs (HMRC).

## Stop and search

66. The provisions in Section 60 came into force on 6<sup>th</sup> April 2008

## Investing HMRC officials with criminal investigation powers

67. The provisions contained with Section 88 and Schedule 12 came into force on 30<sup>th</sup> October 2007. Section 88 contained no powers to make secondary legislation.

68. The practical effect of Section 88 and Schedule 12 of the Serious Crime Act 2007 was that HM Revenue and Customs became empowered to use the following covert powers across the full range of Commissioners' functions:

- Property Interference (Part III of the Police Act 1997)
- Interception of Communications (Part, Chapter 1, RIPA 2000)
- Intrusive Surveillance (Part II, RIPA 2000)
- The investigation of electronic data protected by encryption (Part III, RIPA 2000).

69. The effect of the Serious Crime Act 2007, in the context of the Ministerial commitments made to Parliament, is that the use of these (now extended) powers is only available:

- where HMRC is conducting a criminal investigation into serious crime; and
- where HMRC can meet the specified purpose for the use of the power as set out in legislation.

70. Section 85 of the Act provides for the disclosure of Revenue and Customs information for the purpose of identifying the proceeds of crime, bringing civil proceedings or taking any other action in relation to the proceeds of crime. The purpose of the section was to provide for such a disclosure where this would normally be prevented by the confidentiality requirements contained in section

18(1) of the Commissioners for Revenue & Customs Act 2005. Section 85 allows for the disclosure of information to the Criminal Assets Bureau in Ireland and to any public authority specified by Order of the Treasury. Any disclosure must relate to the exercise of the receiving organisations functions in relation to the recovery of proceeds of crime. To date no Order has been made by the Treasury specifying a public authority in this regard, because no public authority has made a request to HMRC or Treasury to be specified under these provisions

71. In Scotland, section 86 was brought into force on 28 April 2008.

72. Section 94 of the Serious Crime Act 2007 provides for commencement of the Act. Subsection (2) requires the Secretary of State to consult with Scottish Ministers before making an order in relation to:

- section 75 (1): brought into force on 6 April 2008, for implementation of provision for “detained cash investigations”;
- paragraph 2 of Schedule 10: brought into force on 6 April 2008; and
- paragraph 24 of Schedule 10: brought into force on 6 April 2008.

73. Subsections (3) and (4) of Section 94 (Serious Crime Act 2007) provide that the provisions listed in subsection (4) will be brought into force by orders made by Scottish Ministers. These are:

- Section 75 (4) and (5): brought into force on 18<sup>th</sup> April 2009;
- Section 76 (4) to (6): brought into force on 18<sup>th</sup> April 2009;
- Section 86: brought into force on 28<sup>th</sup> April 2008;
- Paragraphs 14-23 and, so far as extending to Scotland, paragraph 25 of Schedule 10 - brought into force on 18 June 2009; and
- so far as relating to the provisions falling within the previous bullet point above, paragraph 1 of that Schedule and section 77; brought into force on 18 June 2009.

## **SECONDARY LEGISLATION**

### **Part 1: Serious Crime Prevention Orders**

74. No secondary legislation

### **Part 2: Encouraging or assisting crime**

75. No secondary legislation has been made for Part 2 though there are powers under the Act for the Secretary of State to amend Schedules 3 and 6 by order.

### **Part 3: Other measures to disrupt serious and other crime**

76. The Assets Recovery Agency (Abolition) Order 2008 (SI 2005 no. 575) – made on 4 March 2008, came into force on 1 April 2008. The Order provided that the Assets Recovery Agency and the corporation sole, that is its Director, ceased to exist.

77. A Transfer Scheme came into force on 1 April 2008. Schedule 9 to the Serious Crime Act provided for the Secretary of State to make a scheme to provide for the transfer of the Director and staff of the Asset Recovery Agency (ARA) along with its property, rights liabilities and other matters to the SOCA or NPIA.

78. Although not an enabling power introduced by the Serious Crime Act, the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (SI 2009 no. 975) as amended by The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 (SI 2009 no. 2707) lists the bodies whose accredited financial investigators have access to the investigation powers under the Proceeds of Crime Act.

## LEGAL ISSUES

### Part 1: Serious Crime Prevention Orders

79. There have not been any challenges to the lawfulness of the scheme. Relevant litigation in the Court of Appeal has concerned the application of the statutory scheme to the facts of the case (see *R v Hancox and Duffy* [2010] EWCA Crim 102). Similarly, when making Crown Court applications, the CPS has sometimes been confronted by arguments that the proposed SCPO is unnecessary, given the existence of the licence conditions regime. These arguments have been dealt with on their merits.

### Part 2: Encouraging or assisting crime

80. Part 2 has given rise to two sets of cases of note. In August 2011, following the riots that month, two men were convicted under Part 2 of the Act of offences using Facebook to encourage or assist others – one under section 46 where he believed that the offences being encouraged or assisted were riot, burglary and criminal damage; the second under section 44 of intentionally encouraging or assisting the commission of the offence of a riot. In both cases the anticipated offences were not committed and the offenders were each sentenced to four years imprisonment. Appeals against sentence were dismissed in September 2011<sup>16</sup>.

81. In *Regina v S and H*<sup>17</sup> the Court of Appeal dismissed arguments that section 46 of the Act was incompatible with the European Convention on Human Rights (ECHR) and refused to issue the Declaration of Incompatibility sought under section 4 of the Human Rights Act 1998. Both appellants had been convicted of the section 46 offence, specifically of assisting in the supply of Class A or Class B controlled drugs. It had been alleged that the appellants were involved in a national distribution business supplying chemical cutting agents direct to drug dealers and to regional distributors of cutting agents.

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<sup>16</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-v-blackshaw-others.pdf>

<sup>17</sup> <http://www.bailii.org/ew/cases/EWCA/Crim/2011/2872.html>

82. The appellants had submitted at a preparatory hearing that section 46 was incompatible with Article 7 of the ECHR in that it was too vague and uncertain and that the trial on that Count should therefore be stayed as an abuse of process. It was the appellant's case that it is not 'possible to arrive at a workable and intelligible interpretation of' section 46. The judge at that hearing had ruled against that submission and his ruling was then taken to appeal. The Court of Appeal held:

*Having interpreted the section 46 offence in the way that we have and in a manner consistent with the submissions of the respondent, we have no doubt that section 46 as interpreted in this way is not incompatible with the ECHR<sup>18</sup>.*

### **Part 3: Other measures to disrupt serious and other crime**

83. During the passage of the Bill, concern, was expressed that the powers for accredited financial investigators were too broad. On the extension of powers to accredited financial investigators, on 7 December 2009, the Earl of Onslow moved the motion "That this House notes with concern criticisms by the Chairman of the Police Federation of the powers contained in the Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 (SI 2009/2707) laid before the House on 8 October and calls upon Her Majesty's Government to revoke the order". Concerns were expressed at the number of agencies whose accredited financial investigators had access to the powers under the Proceeds of Crime Act, with particular reference being made to local authorities and Transport for London. The motion was carried by 64 votes. Consideration of additional safeguards to provide assurances of the effective and transparent use of the powers is ongoing. These include drafting publicly available acceptance criteria for applying asset recovery provisions to cases, a more intense system for monitoring the use of powers by financial investigators and consulting with Parliament when new agencies are being considered for obtaining access to the investigation powers.

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<sup>18</sup> Para 91 of the Decision

## OTHER REVIEWS

### Part 1: Serious Crime Prevention Orders

84. No reviews found.

### Part 2: Encouraging or assisting crime

85. There have been no official reviews or Select Committee enquiries into Part 2 (though there has been some interest from legal commentators<sup>19</sup>).

### Part 3: Other measures to disrupt serious and other crime

86. The National Fraud Authority (an Executive Agency of the Attorney General's Office prior to April 2011 when it moved to the Home Office) produced a report on data sharing under Section 68 of the Serious Crime Act 2007 as part of its Information Sharing Project in July 2010. Taking the form of an informal survey that report concluded that there had been a slow start to data sharing under the provision but that there was evidence of discussions and work on product development that could improve results.

87. In 2011, The Home Office carried out an informal survey of the six specified anti fraud organisations to consider the impact that Section 68 has had in the context of considering how to move forward when the five year specification period for SAFOs ends next year. The results of the survey are summarised at paragraphs 89-93.

88. The Audit Commission publishes a report following each National Fraud Initiative (NFI) detailing the results of the exercise. Seven reports have been published since 1998/9. Each report summarises the findings of the most recent NFI and looks ahead in terms of any potential development to the NFI.

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<sup>19</sup> Including: Spencer and Virgo, 'Encouraging and Assisting Crime: Legislate in Haste, Repent at Leisure' [2008] 9 *Archbold News* 7; Ibbetson, 'Encouraging or Assisting Attempt' [2009] 3 *Archbold News* 8; and Ormerod and Fortson, 'Serious Crime Act 2007: The Part 2 Offences' [2009] *Crim LR* 389.

89. Whilst the specific provisions of Section 88 and Schedule 12 have not been the subject of any assessments of reviews, HMRC's use of the powers, as amended by the Serious Crime Act 2007, are in common with other law enforcement agencies, subject to ongoing inspection and, where required prior authorisation, by both the Office of the Interception Commissioners and the Office of the Surveillance Commissioners.

## PRELIMINARY ASSESSMENT

### Part 1: Serious Crime Prevention Orders

#### Analysis of effectiveness of SCPOs

90. SCPOs are now seen as an important tool in disrupting organised crime. Their main value is less in prevention than in early identification of criminal activity through breach of an order. Alongside the full range of enforcement options available to law enforcement agencies, they are a powerful and cost effective tool in protecting society from organised criminality by allowing for wide-ranging restrictions to be placed on people involved in serious organised crime, including in relatively new and expanding areas of cyber crime.
91. In the first couple of years of implementation, the process of obtaining SCPOs at times proved difficult. This has been overcome with time, as understanding and experience of SCPOs grow and as precedents are established. Measures by the CPS have assisted in raising awareness and understanding of SCPOs and other ancillary orders across the legal profession.
92. One measure of success of a SCPO is a lack of evidence or intelligence linking an individual with an active SCPO to further criminality, which suggests that the implementation of the order has prevented further criminality. More commonly, the effectiveness of SCPOs is demonstrated by the early identification of criminal activity through the breach of a SCPO. Although there have only been two successful prosecutions in relation to breaches (see paragraph 50), SOCA currently has 33 live Orders<sup>20</sup> and is investigating a number of breaches which are at different stages in the judicial process.
93. From SOCA's experience to date in the management of offenders with SCPOs, there has been only one case where there was clear evidence of the offender being deterred from criminality due solely to the issuing of an SCPO. There are however, several cases where the SCPO has enabled SOCA to intervene at an

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<sup>20</sup> Examples of individual success and end of year totals have been quoted in SOCA's Annual Report.

early stage in an offender's criminal activity. Also SCPOs are usually used in combination with other measures such as licence conditions and asset denial.

94. Whilst the Act does not expressly state that there is a requirement under an SCPO to submit to a search by law enforcement officers or to allow entry to premises to allow for them to be searched by law enforcement officers, an SCPO can include provisions requiring a person to provide specified information or answer questions. Examples of effectiveness include:

- In a drug trafficking case, which involved a widespread conspiracy to import 40 tonnes of cocaine to the UK, the judge approved applications for 13 separate SCPOs in December 2011. The case illustrated that, where necessary and where the criminality was sufficiently serious, orders against a large numbers of offenders would be sought. These orders contained a range of terms, relating to matters such as mobile phone ownership, bank accounts and association with others, aimed at comprehensively preventing the group's activities.
- A cyber crime case involved offences of conspiring to defraud, steal and launder monies totalling £229 million from the Sumitomo Matsui Banking Corporation in London. A principal subject of this investigation was convicted and sentenced in March 2009 to eight years imprisonment. As part of his sentence, he was also subjected to an SCPO which will come into effect on his release from prison and last five years. The terms of his order include restrictions on: operating a company; engaging in businesses including share dealing; providing financial services and advice; and on possessing bank accounts/credit cards and cash. There is also a requirement for notification of worldwide assets and travel.

## **Part 2: Encouraging or assisting crime**

95. Part 2 of the Act (Encouraging or assisting crime) was intended to close a gap in the criminal law to allow prosecution of a person who provided assistance in committing an offence, even if it did not end up taking place. Prior to this a person could be convicted only where he encouraged the offence and not where he simply provided assistance. The new offences apply generally but are particularly important in relation to organised crime. Our preliminary assessment shows that the gap was successfully closed by these offences and their use is increasing. Part 2 is the responsibility of the Ministry of Justice.

96. The then Government's key objective in enacting Part 2 was to close the gap in the law that impeded prosecution of those who sought to assist the commission of offences which did not in fact go on to be committed. Sections 44 to 46 are available in cases where action capable of encouraging or assisting the commission of an offence has occurred, irrespective of whether or not any offence is then committed. *Regina v S and H* is a good example of the application of this legislation to organised crime, in this case to a national distribution business supporting the drugs trade, where the prosecution was able to focus on culpability of those accused of encouraging and assisting.

## **Part 3: Other measures to disrupt serious and other crime**

97. Part 3 of the Act introduced a range of miscellaneous measures to tackle organised crime including:

- provision for the prevention of fraud, including data sharing through Specified Anti-Fraud Organisations (SAFOs) and data matching;
- amendments to the Proceeds of Crime Act 2002, including the transference of certain functions of the Asset Recovery Agency to the Serious Organised Crime Agency;

- extending the power of civilian financial investigators operating under the Act;
- providing investigation powers in respect of the cash forfeiture regime;
- introducing powers to force entry in the execution of search warrants issued and executed in Scotland;
- extending certain investigatory powers of HMRC officers to former Inland Revenue matters; and
- extending an existing police power to stop and search for dangerous instruments and offensive weapons without reasonable suspicion.

98. Our preliminary assessment shows that these new measures are generally being implemented satisfactorily and have been effective. Where they have been less effective (for example, public sector membership of SAFOs) steps are being taken to address this.

#### Chapter 1: Fraud

99. Five specified anti fraud organisations (SAFOs), responding to a survey conducted by the Home Office in 2011, noted that Section 68 was a benefit and that having SAFO specification provided a level of credibility which could help in forming relationships with public sector bodies. One of the five SAFOs has three public sector members; three of them commented that they had data sharing agreements in place with public sector organisations who were not members. In two of those cases, it is doubtful whether the Section 68 gateway was required to share the data, but having SAFO status may have ensured a higher level of trust on the part of the public sector partners.

100. No assessment has been made of the amount of fraud prevented as a result of data sharing through the Section 68 gateway. However, given that many public sector organisations (including HMRC) are not participating in any of the sharing arrangements under Section 68, it is unlikely that the amount of fraud prevented has come anywhere close to the potential levels suggested by CIFAS and quoted in the impact assessment for the Serious Crime Bill.

101. Activity under Section 68 has therefore been limited over the past 4 years and take-up has been slow. The intelligence sharing landscape is a complex one in which Section 68 is only a part. Many organisations in the public and private sector are working towards a comprehensive architecture for intelligence sharing, particularly with the development of the National Crime Agency.
102. On data matching, the National Fraud Initiative (NFI) has been running since a pilot exercise in London in 1993. After further pilots the NFI was established as a national data matching exercise in 1996 and has been run every two years since. The 2007 Serious Crime Act put the National Fraud Initiative onto a statutory footing and gave the Audit Commission powers to extend the NFI to central government and the private sector. Levels of fraud identified have increased with each round of the NFI since its inception. The most recent NFI identified almost £229m of fraud, error and overpayments – an increase of £215m from the previous NFI (which was also up 54%). It is estimated that the NFI has identified £939m in fraud and error since it began.
103. In August 2010, the Department for Communities and Local Government (DCLG) announced plans to put in place new arrangements for auditing England's local public bodies leading to the abolition of the Audit Commission by 2015. DCLG consulted between March and June last year on proposals for a new audit framework including the future of the NFI. The Government response to that consultation published on 4 January 2012 contained a commitment to continuing the NFI.

## Chapter 2: Proceeds of Crime

104. Asset recovery performance has continued to improve and over £1 billion has been recovered since the Proceeds of Crime Act came into force in 2003. There has been a year-on-year increase with amounts collected, with over £165 million collected last in 2011/12.

105. Part 6 of the Proceeds of Crime Act originally empowered the Director of the Assets Recovery Agency to exercise functions of the then Inland Revenue in relation to income, gains and profits arising or accruing as a result of criminal conduct. In effect, to raise a tax assessment on the suspected proceeds of crime. The Serious Crime Act made provision to revoke these provisions with a view to HM Revenue and Customs being assigned the function of raising such tax assessments as they do in all other cases. The Part 6 Revenue function has not been abolished and is now operated by SOCA. The use of tax powers against the proceeds of crime was subject to a review involving SOCA, Her Majesty's Revenue and Customs and the Home Office. The review concluded that HMRC and SOCA should both exercise taxation powers to tackle criminal finances and profits. This maintains the current legislative framework for the application of tax powers against criminals, with the power to raise tax assessments against unsourced but suspected criminal proceeds passing from ARA to SOCA.

106. The National Audit Office visited ARA and reported via the Public Accounts Committee about their performance. This report was published in February 2007. The Centre of Excellence, which was the training, accrediting and monitoring arm of ARA for financial investigators, came under criticism. One significant area highlighted in the NAO report was the number of persons who had been through the training who ARA had no record of, including whether they were using their powers. On inheriting this function, the NPIA created a professional register that maintains records of all financial investigators and also has embedded regional based assessors who carry out inspections and assessments of investigators in the work place. There is strict monitoring of financial investigators by way of having to complete monthly activities set by the NPIA and having to record on the professional register every 12 weeks the cases that they are engaged in and evidence of the correct use of their powers.

107. As of 11 June 2012, NPIA had 2135 operational investigators who use POCA powers (NPIA is not itself an operational law enforcement authority). It should be noted that because of the strict monitoring policy this number can go up or down on a daily basis. As at June 2012 there were 1920 investigators suspended from using POCA powers. The apparent high number suspended relates to investigators who are "archived", which includes those who have retired or given up financial investigation work as well as those who are serving a short term suspension imposed by the NPIA for incomplete completion of current work. NPIA also continuously monitors investigators via the Financial Investigation Support System, investigators who have not used the powers in the last 12 weeks or who do not meet the prescribed standard are then coached and can ultimately have their powers withdrawn.

108. NPIA <sup>21</sup> has received the following net income from delivering the training and monitoring of financial investigators –

<b>NPIA (POCA) Revenue</b>	<b>Training</b>	<b>Non Training</b> (notably accreditation and registration fees)	<b>Total</b>
2008-9	£ 1,190,409.62	£ 184,556.01	£ 1,374,965.63
2009-10	£ 902,872.00	£ 175,141.00	£ 1,078,013.00
2010-2011	£ 727,200.42	£ 145,436.00	£ 872,636.42
2011-2012	£ 566,166.43	£ 204,813.92	£ 770,980.35
			<b>£ 4,096,595.40</b>

109. Financial investigators accredited with the powers to conduct detained cash investigations have assisted in the successful forfeiture of cash in England, Wales and Northern Ireland.

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<sup>21</sup> On the abolition of the NPIA, the functions relating to accrediting, training and monitoring financial investigators will be transferred to the National Crime Agency.

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Cash Forfeitures	£31.8m	£31.5m	£39.8m	£49.9m	£48.4m	£43.4m

110. The majority of cash forfeitures are performed by traditional law enforcement (i.e. the police and HM Revenue and Customs), but those agencies with the powers to undertake detained cash investigations has led to additional money being recovered; £1.8m in 2008/09, £10.2m in 2009/10, £9.4m in 2010/11 and £4.3m in 2011/12. So, these are additional to the cash forfeited by the police and HM Revenue and Customs and show a significant contribution to the overall proceeds of crime recovered from criminals. As at 9<sup>th</sup> October 2012 there were 321 accredited financial investigators with the powers to search for, seize and seek the detention and forfeiture of suspect cash.

111. The powers to appoint civil recovery management receivers were requested by prosecutors and CPS advises that they are working smoothly when required. There has been no criticism of the provision.

112. The cost of receivers in England, Wales and Northern Ireland has significantly reduced since the creation of civil recovery management receivers in 2008.

Civil Recovery	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Receiver's costs	£2.56m	£6.86m	£7.8m	£4.7m	£4.5m	£1.98m	£0.822m	£0.28m

113. The Home Office is unaware of the provision on the powers of prosecutors to appear in summary cash recovery proceedings being used, but has been informed by the Crown Prosecution Service that they intend to embark on cases in the near future. The section permits CPS to undertake this work on behalf of the police or HMRC, rather than in its own name. HMRC has its own unit

dealing with this work. Although there have been some enquires so far, CPS has not been asked to take forward any cases for the police. This is because of the terms of the current incentivization scheme. In the event that the incentivization scheme were to end or be altered this position could change very rapidly. With the merger with other prosecutors there is scope for CPS taking on this work on behalf of other departments, although legislative change will be required.

### Chapter 3: Stop and search

114. Section 87 of the Act made a relatively small change to the existing stop and search power in section 60 of the Criminal Justice and Public Order Act 1994. Specifically, it enables the police to authorise the making of stops and searches without individual suspicion to enable them to locate the weapon used in a recent incident.
115. Evidence from the police indicates that this Section 60 power has been used regularly and continues to be used to date. However, the number of authorisations varies from force to force; some police forces report an increase in the use of these powers year on year since its introduction, whereas others report a decrease. It should be noted that police forces in urban areas, where serious violence is more prevalent, report a higher number of authorisations than police forces in more rural areas.
116. It is not possible to determine how effective the powers have been in helping the police find dangerous instruments or offensive weapons following an incident, as police forces' databases generally do not capture either the types and numbers of weapons found against the 's60' database or that authorisation has been given under this particular section. However, some police forces have confirmed that they are amending their forms to make it possible to capture this information in the future.

Chapter 3: Investing HMRC officials with criminal investigation powers

117. Section 88 and Schedule 12 have, in HMRC's view, fully met the objectives as set out in paragraphs 284 to 322 of the Explanatory Notes to the Act.



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