

SERIOUS CRIME BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

SUPPLEMENTAL MEMORANDUM BY THE HOME OFFICE

Introduction

1. This memorandum addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to Government amendments to the Serious Crime Bill tabled for Lords Report stage. The memorandum has been prepared by the Home Office.

Proceeds of crime – amendment to clause 2

2. This amendment will insert into clause 2 of the Bill new section 18A of the Proceeds of Crime Act 2002, which will confer a power on the courts to require information from third parties about any interest they may have in property that is the subject of a confiscation order (an amendment to clause 25 makes equivalent provision for Northern Ireland). The Government considers that in cases where a third party is genuinely seeking to secure their legitimate interests, it will be to their advantage to put forward all the evidence they can to support their claim, so there would be no need for the judge to compel the provision of information. However in cases where a third party has a more doubtful claim or is simply seeking to frustrate the confiscation process, we believe it would be helpful for the courts to have a power to compel the provision of information.
3. The European Court of Human Rights has stated that ‘the... right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of a fair procedure under Article 6’ (Heaney and McGuinness v Ireland (2001), paragraph 40). Accordingly, new section 18A(9) provides that no information given by a person under section 18A is admissible in evidence in proceedings against that person for an offence.
4. The Government therefore considers that the amendment is ECHR compliant. An amendment to clause 25 makes equivalent provision for Northern Ireland.

Home Office
7 October 2014