

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT PROCEEDS OF CRIME ACT 2002 (SEARCH,
SEIZURE AND DETENTION OF PROPERTY: CODE
OF PRACTICE) ORDER 2018

DRAFT PROCEEDS OF CRIME ACT 2002 (CASH
SEARCHES: CODE OF PRACTICE) ORDER 2018

DRAFT PROCEEDS OF CRIME ACT 2002 (RECOVERY
OF LISTED ASSETS: CODE OF PRACTICE)
(ENGLAND AND WALES AND SCOTLAND)
REGULATIONS 2018

DRAFT CRIMINAL FINANCES ACT 2017
(CONSEQUENTIAL AMENDMENT)
REGULATIONS 2018

Monday 4 December 2017

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Friday 8 December 2017

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The Committee consisted of the following Members:

Chair: Ms KAREN BUCK

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| † Badenoch, Mrs Kemi (<i>Saffron Walden</i>) (Con) | Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) |
| † Burden, Richard (<i>Birmingham, Northfield</i>) (Lab) | † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) |
| Coffey, Ann (<i>Stockport</i>) (Lab) | † Mak, Alan (<i>Havant</i>) (Con) |
| Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | Smith, Eleanor (<i>Wolverhampton South West</i>) (Lab) |
| † Dakin, Nic (<i>Scunthorpe</i>) (Lab) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| Doughty, Stephen (<i>Cardiff South and Penarth</i>) (Lab/Co-op) | † Wallace, Mr Ben (<i>Minister for Security</i>) |
| † Freer, Mike (<i>Finchley and Golders Green</i>) (Con) | Clementine Brown, <i>Committee Clerk</i> |
| † Harris, Carolyn (<i>Swansea East</i>) (Lab) | |
| Herbert, Nick (<i>Arundel and South Downs</i>) (Con) | |
| Hoare, Simon (<i>North Dorset</i>) (Con) | |
| † Howell, John (<i>Henley</i>) (Con) | † attended the Committee |

The following also attended, pursuant to Standing Order No. 118(2):

Caulfield, Maria (*Lewes*) (Con)

Second Delegated Legislation Committee

Monday 4 December 2017

[Ms KAREN BUCK *in the Chair*]

Draft Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018

4.30 pm

The Chair: I call the Minister to move the first motion and speak to all four instruments. At the end of the debate, I will ask him to move the other motions formally.

The Minister for Security (Mr Ben Wallace): I beg to move,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018.

The Chair: With this it will be convenient to consider the draft Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018, the draft Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018 and the draft Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018.

Mr Wallace: It is a privilege to serve under your chairmanship, Ms Buck.

Criminals go to great lengths to hide the proceeds of their crimes and exploit any opportunities to frustrate the recovery of such proceeds by the authorities. We need to stay ahead of that problem. That is why the Criminal Finances Act 2017 was passed in April, with cross-party support from the Labour party and the Scottish National party, for which I was grateful. The Act strengthens and extends existing powers to trace and recover criminal assets. The powers most relevant to this debate are those relating to the forfeiture of certain items of property that are either the proceeds of crime or intended to be used to further criminal activity.

Codes of practice protect the public by ensuring the appropriate and proportionate use of new powers. In this case, that includes search and seizure powers, which are used by a wide range of law enforcement officers in connection with various investigations. Three of the draft statutory instruments before the Committee bring into force revised and new codes of practice providing guidance on powers of search, seizure and detention of property to support enforcement of confiscation orders; search powers for criminal cash; and search powers relating to the new power to seize certain listed assets, such as precious metals and stones. The final draft instrument makes a minor technical amendment to an existing provision of the Proceeds of Crime Act 2002 to take account of the creation of a new power to forfeit

listed assets. POCA provides tough powers in the fight against all levels of crime and was introduced under a Labour Government.

The use of those powers can involve significant interference in the rights of persons in respect of their privacy and property. The purpose of the codes of practice is to provide guidance to officers who use those powers and an assurance to the public that they are being used correctly. The codes act as a safeguard to ensure effective, consistent and proportionate use of the powers. The POCA powers were significantly strengthened by the Criminal Finances Act 2017. The new, extended and strengthened powers will give officers important tools for the recovery of criminally obtained assets. They form part of the Government's commitment to making the UK a hostile environment for those who seek to move, use and hide the proceeds of crime and corruption.

Two of the codes before the Committee are revisions of previous codes issued under POCA and closely follow the procedures established in those codes. They also follow a similar approach to the codes issued more widely to police officers under the Police and Criminal Evidence Act 1984. The third code is new, but follows the approach in the existing POCA and Police and Criminal Evidence Act codes. The new powers that give rise to those codes have been debated extensively by both Houses, resulting in the Criminal Finances Act receiving Royal Assent in April. We are therefore not debating the powers themselves, but considering the codes that give guidance about their use.

Importantly, some matters in POCA are devolved to the Northern Ireland Assembly. Members may recall that the Assembly was dissolved during the passage of the Criminal Finances Act, meaning that a legislative consent motion could not be obtained. A commitment was made on the Floor of the House not to commence any legislation relating to devolved matters without the appropriate consent being in place. In line with that commitment, there is nothing in these codes relating to the new powers that is a devolved matter in the competence of the Northern Ireland Assembly. I assure the Committee that we are working with the authorities in Northern Ireland to commence those powers as soon as possible.

A separate combined code of practice has been drafted in respect of searches by constables in Scotland in relation to the civil forfeiture of listed items of property and the civil forfeiture of cash. A public consultation is being undertaken. The code is expected to come into force in the spring, and I hope that it does.

The amendments to POCA that require these new and amended codes of practice are the new power to forfeit listed assets; the expanded powers relating to search and seizure to prevent the dissipation of property that may subsequently be used to satisfy a confiscation order; the extension of search powers to a range of law enforcement agencies, notably the Serious Fraud Office; and the change of the definition of cash for the purposes of cash seizure and forfeiture powers to include gaming vouchers, fixed-value casino tokens and betting slips. During the passage of the Criminal Finances Act, I distinctly remember the Scottish National party raising the issue of betting slips. The Government recognised that and have included related measures in the Act and therefore the codes.

POCA stipulates that the Secretary of State must prepare and publish a draft of any new or revised codes, consider any representations made and modify the draft as appropriate. A public consultation on all the codes before the Committee was carried out this summer and amendments were made to the drafts accordingly. The explanatory memorandum addresses the consultation in detail.

The first order brings into effect a new code of practice, providing guidance on the use of search powers for the recovery of listed assets, such as precious metals and watches, that are suspected to be the proceeds of crime or intended for use in crime. The second code of practice relates to search and seizure powers in England and Wales to prevent the dissipation of property that might be used to satisfy a confiscation order. That has been revised to take account of the extension of powers to the Serious Fraud Office and a change in the authorisation process for the powers for certain civilian financial investigators. Those amendments to the code are both purely consequential.

The final code relates to search powers for the seizure and detention of cash. These amendments are also purely consequential. The code required revision due to three amendments to the cash provisions. These are an amendment to the definition of cash, the extension of powers to SFO officers and an amended definition of senior officers who can provide prior approval for the search powers. The three instruments will bring the codes of practice into effect. We will therefore have safeguards in place on the use of the powers, and that will enable full commencement of the POCA amendments that I have described.

The final instrument makes a technical amendment to an existing provision in POCA. The approach in POCA is that when property has been recovered, it cannot become subject to further recovery action under the Act; that would be recovering the same property twice. Given the new forfeiture powers that have been introduced by the Criminal Finances Act, further powers need to be brought within that safeguard. The regulations provide that property forfeited by the High Court under the new listed items powers cannot subsequently become liable to future civil recovery action.

I ask the Committee to approve the orders, thereby giving effect to the codes of practice and making the small addition to the safeguard in POCA against double recovery.

4.37 pm

Carolyn Harris (Swansea East) (Lab): Thank you, Ms Buck, for chairing the Committee. The Opposition generally support such measures, but with some reservations. We of course welcome any new provision to prosecute, prevent and seize the assets of criminals. However, amid continued cuts to public services, I am interested to hear exactly how the measures will be fully and robustly enforced. There have been staff cuts in literally every agency carrying out this work, from the police to Border Force, to revenue officers.

I remind the Minister of Labour's argument that agencies involved in exercising civil recovery powers should have enough resources to do their job properly. He may recall that we requested a distinct and clear annual report, detailing the resources that are allocated

to agencies strictly for carrying out the recovery powers. The Conservatives objected to that during the early stages of the Proceeds of Crime Act, on the grounds that the asset recovery incentivisation scheme would allow frontline agencies to keep 100% of the illicit value that they recover. In theory, the agencies could retain the total value recovered, but as was made clear by the Public Accounts Committee at the time in its progress review of confiscation orders and by the Home Affairs Committee in its review of POCA, the agencies' recovery rates have been poor. Although the measures appear to convey greater powers to the agencies, there is no guarantee that they will improve their recovery rates. Given the failure to achieve that in recent Bills, we had hoped that these orders might go further.

We also note with concern that the said powers will be conferred on immigration officers. Although that makes sense in theory, will the Minister explain whether that includes agents of the state such as G4S and Serco? I remind the Government of the complete lack of trust in those agencies, following recent revelations in immigration detention centres, such as Brook House and Yarl's Wood. If we cannot trust those individuals to deal with human beings professionally, that clearly indicates that we may not be able to trust them with other matters. Those matters aside, which we would appreciate the Minister's assurances on, we will support the orders.

4.39 pm

Mr Wallace: I am grateful for the points made by the hon. Member for Swansea East. I can set her mind at rest: we are not in any way envisaging that G4S, Serco or anyone else will be empowered by these new powers. I have heard her points about resourcing the correct individuals to pursue the proceeds of crime. There are two parts to that. First, there were many valid points in reports published by the Public Accounts Committee and the Home Affairs Committee about 18 months ago. I have used those reports as a reference to try to push for better recoveries. Some of those points were about basic day-to-day processes that have not always been undertaken, such as police officers not routinely loading confiscation orders on to the police national computer. Those orders are a matter of public record, so it would not be obvious to a police officer who stopped someone driving around in Lancashire in a brand new Range Rover that they happened to have a confiscation order outstanding. We are on our way to improving that.

On reinvesting, we took a decision in line with our manifesto to return 100% of ARIS funds—the proceeds of crime that were taken—above the baseline of the assets recovered last year when the amount returned was 50%. At the moment, any money taken off organised crime by regional organised crime units, for example, goes back only into the asset recovery part of that organisation. Some police lobby for it to go across the broader spectrum, and others have said it must be incentivised and remain in the proceeds of crime part of the organisation. We are trying to unlock more money to address that issue.

Alongside resourcing is the issue about powers. POCA was a good Act, but it has to be kept up to date. Some of the decline in recovery is partly because some bad guys switched from cash to mobile stores of value—betting slips, jewels and all the other things—which is why we have to move to stay one step ahead. We have also

[Mr Wallace]

started doing quite a lot. With the National Crime Agency and HMRC, we have invested in an international network to try to ensure we get assets when they are overseas—I have been abroad to visit some of that and recover some of the assets.

One of the challenges with recovering the proceeds of crime is that sometimes dirty money has already been washed, so it is not as straightforward as just grabbing it. That is why we included unexplained wealth orders in the Criminal Finances Act 2017, which effectively reverse the burden of proof. If someone rocks up as unemployed who owns a £1 million house—we all have some of those people in our communities—they have to prove how they got it. That is an important message.

I understand the issue about resource and ensuring that we give the police the powers and resources they need. We recognised that in the last spending round by protecting police spending, but I also recognise the increasing pressures on our police, so I would still like to see more. We hope that the Criminal Finances Act goes a long way towards giving them those extra powers and building on POCA. Part of the challenge has been that POCA is massively complicated and requires lots of specialists to interpret it because the criminals are massively complex in hiding their money. I wish there was an easy answer.

This is the right step. These codes of practice are as much about protecting our constituents to ensure that police and other people do not overstep how they use the powers—some of which are quite powerful—as they are about making it easier for a detective sergeant or whoever to go after the money in the first place. We will be pushing them; I push them quite a lot to get

more. I ask them the questions and, where there is a resource issue, I try to address it; I hear what the hon. Member for Swansea East said.

Question put and agreed to.

**DRAFT PROCEEDS OF CRIME ACT 2002
(CASH SEARCHES: CODE OF PRACTICE)
ORDER 2018**

Resolved,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018.—*(Mr Ben Wallace.)*

**DRAFT PROCEEDS OF CRIME ACT 2002
(RECOVERY OF LISTED ASSETS: CODE OF
PRACTICE) (ENGLAND AND WALES AND
SCOTLAND) REGULATIONS 2018**

Resolved,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018.—*(Mr Ben Wallace.)*

**DRAFT CRIMINAL FINANCES ACT 2017
(CONSEQUENTIAL AMENDMENT)
REGULATIONS 2018**

Resolved,

That the Committee has considered the draft Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018.—*(Mr Ben Wallace.)*

4.45 pm

Committee rose.