

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

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

DRAFT PROCEEDS OF CRIME ACT 2002
(INVESTIGATIVE POWERS OF PROSECUTORS:
CODE OF PRACTICE) ORDER 2018

DRAFT TERRORISM ACT 2000 (CODE OF
PRACTICE FOR AUTHORISED OFFICERS)
ORDER 2018

Tuesday 5 December 2017

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Saturday 9 December 2017

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)
 † Dakin, Nic (*Scunthorpe*) (Lab)
 † Day, Martyn (*Linlithgow and East Falkirk*) (SNP)
 † Flint, Caroline (*Don Valley*) (Lab)
 † Freer, Mike (*Finchley and Golders Green*) (Con)
 † Haigh, Louise (*Sheffield, Heeley*) (Lab)
 † Hoare, Simon (*North Dorset*) (Con)
 † Howell, John (*Henley*) (Con)
 † Jones, Susan Elan (*Clwyd South*) (Lab)
 † Keegan, Gillian (*Chichester*) (Con)

† Malthouse, Kit (*North West Hampshire*) (Con)
 † Moore, Damien (*Southport*) (Con)
 † Smith, Eleanor (*Wolverhampton South West*) (Lab)
 † Smith, Royston (*Southampton, Itchen*) (Con)
 † Tredinnick, David (*Bosworth*) (Con)
 † Twigg, Derek (*Halton*) (Lab)
 † Wallace, Mr Ben (*Minister for Security*)

Kenneth Fox, *Committee Clerk*

† **attended the Committee**

Third Delegated Legislation Committee

Tuesday 5 December 2017

[MR ADRIAN BAILEY *in the Chair*]

Draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018

8.55 am

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

That the Committee has considered the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018.

The Chair: With this it will be convenient to consider the draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2018 and the draft Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018.

Mr Wallace: It is a delight to serve under your chairmanship this early morning, Mr Bailey.

The three orders give effect to revised codes of practice, providing guidance and acting as an important safeguard on the use of investigatory powers in the Proceeds of Crime Act 2002 and on the use of powers in relation to terrorist property under the Anti-terrorism, Crime and Security Act 2001. Those two pieces of legislation provide strong powers in the fight against crime and terrorism. In particular, the powers relate to investigation and the recovery of assets that are the proceeds of crime or are terrorist property. Obviously, exercising the powers can involve interference with people's privacy and property, so the purpose of the codes of practice is to provide guidance to law enforcement officers on the lawful and proportionate exercise of the powers. They safeguard the proportionate, effective and consistent use of the powers.

The codes may be revised, or new ones created, in the light of legislative changes. The three revised codes before the Committee are consequential on changes made in POCA and ATCSA by the Criminal Finances Act 2017. Two of the codes relate to POCA: one relates to law enforcement officers and is issued by the Secretary of State, and the other contains guidance for prosecutors and is therefore issued by the Attorney General. The POCA and ATCSA powers have been strengthened and expanded by the 2017 Act. Once commenced, the powers will give officers important new tools to assist with investigations and to recover assets, supporting the Government's commitment to fight terrorism and make the UK a hostile environment for those seeking to move, use and hide the proceeds of crime and corruption.

The powers to which the codes relate will not initially be commenced in Northern Ireland, because in the absence of an Assembly we have been unable to obtain the necessary legislative consent to commence the powers relating to devolved matters in the 2017 Act. I assure the Committee that we are working with the authorities

in Northern Ireland to address and remedy the issue as soon as possible. For the time being, the codes, in so far as they apply to Northern Ireland, will cover only existing POCA powers. The ATCSA provisions apply across the whole United Kingdom and thus include Scotland. The POCA provisions to which these codes relate are for England and Wales only and do not extend to Scotland.

The three codes build on previous codes issued under POCA and ATCSA. The codes provide an important safeguard and reassurance that the powers are being used properly and proportionately. We plan to commence the majority of the new and amended POCA and ATCSA powers on 31 January 2018. Once approved, the codes will come into operation at the same time as the powers. The new powers to which the amended codes relate have already been debated, and the 2017 Act received Royal Assent in April, with cross-party support. We are therefore not debating the powers themselves, but considering the codes that give guidance on their use. The amended codes of practice are required as a result of the introduction of new investigatory powers and some amendments to existing ones, as well as new seizure, detention and forfeiture powers under ATCSA.

In line with the requirements in both POCA and ATCSA, the Secretary of State must prepare and publish a draft of any new or revised code, consider any representations made and modify the draft as appropriate. A public consultation has been undertaken on all the codes before the Committee today. More detail on the consultation can be found in the accompanying explanatory memorandum.

One order relates to a code that deals with the use of investigatory powers by law enforcement officers under chapter 2 of part 8 of POCA. The revised code caters for new and amended powers introduced by the 2017 Act—notably, unexplained wealth orders. Unexplained wealth orders will provide an enforcement authority with the ability to require an individual or company to explain how specified property was obtained, and may state that specific documents or information are to be provided in order to establish whether property has been legitimately obtained. There is a further section relating to disclosure orders, which has been considerably revised. Notably, disclosure orders will now be available to law enforcement agencies in money laundering investigations.

In addition, the code provides guidance on the use of the two new categories of investigation introduced by the 2017 Act: detained property investigations and frozen funds investigations. Those new investigations support the powers to forfeit certain listed items of property, such as precious stones and works of art, and to forfeit funds in bank or building society accounts. The kind of investigators who may apply for these orders are clearly set out in the revised code, as are the procedure and statutory requirements for applying. The code sets out the issues that agencies and officers should consider before making an application.

The code has been revised in consequence of the extension of powers to the officers of the Serious Fraud Office and the Financial Conduct Authority, and in the light of the fact that Her Majesty's Revenue and Customs is now being given civil recovery powers, including those of investigation. There is a similar code providing

guidance for prosecutors using the investigatory powers. As that code relates to prosecutors, it is issued by the Attorney General, although it is substantially the same as the one issued by the Secretary of State. The order bringing that code into effect is also before the Committee today. As the two codes are essentially the same in substance and in their procedures and provisions, I am discussing them together and, in this instance, on behalf of the Attorney General.

The third order gives effect to a revised code of practice made under the Terrorism Act 2000 for officers exercising asset recovery powers conferred on them through the terrorist property provisions of schedule 1 to ATCSA. The code has been updated to reflect the amendments made to the Terrorism Act and ATCSA by part 2 of the 2017 Act, including a new power administratively to forfeit “terrorist cash” and new civil recovery powers to seize, detain and forfeit listed terrorist assets and terrorist money held in bank and building society accounts. I repeat the essential point that these revised codes ensure the targeted, proportionate and effective use of the powers.

On the nature of the guidance, the codes ensure that officers consider the rights of the person—in particular, their right to free enjoyment of their property—and the impact on their community. It provides the process that officers should follow when arriving at a decision to use the relevant powers and in their execution. The codes also ensure that there will be a full paper record in relation to the use of the powers. The training provided by the National Crime Agency to all financial investigators includes familiarity with the codes. It is also important to note that codes have been in place for the use of these POCA powers since their commencement in 2003 and that they have acted as a safeguard in ensuring the powers are used in a measured and relevant manner. The revised codes will ensure that that will continue. I therefore ask the Committee to approve the orders, and thereby give effect to the codes of practice.

9.2 am

Louise Haigh (Sheffield, Heeley) (Lab): First, let me put on record that the Opposition fully support the statutory instruments, which is why it is baffling to see so many Members here so early in the morning.

As I say, we fully support these powers. They are absolutely necessary but nowhere near sufficient. Our biggest impediment to tackling the current terrorist threat is bodies on the ground, but police officer numbers are being cut up and down the country. I was in Norwich over the weekend; every single police community support officer post in Norfolk is being abolished. That is an incredible threat to our ability to tackle not just crime and antisocial behaviour, but the unprecedented terrorist threat we face. Our PCSOs and neighbourhood policing teams are the eyes and ears of our counter-terrorism units, and they need not just powers but resources and bodies on the ground.

The Minister referred to the right to respect for private and family life and to peaceful enjoyment of property under the European convention on human rights. Will he say a little more on the training that our law enforcement officers and financial investigators will receive, to ensure that those rights are fully respected and understood? We must ensure that the codes provide sufficient guidance on that.

I will not detain the Committee any longer. We are more than happy to support the instruments.

9.4 am

Martyn Day (Linlithgow and East Falkirk) (SNP): It is a pleasure to serve under your chairmanship, Mr Bailey. I am grateful to the Minister for outlining the orders. Let me say on behalf of the Scottish National party that we are totally committed to tackling organised crime and terrorism. We see nothing contentious in the orders and are happy to support them.

9.4 am

Mr Wallace: I thank both Opposition spokespersons for their constructive criticism. POCA was introduced by a Labour Government, and successive Governments have built on that good piece of work to ensure that we take away the property that terrorists acquire through organised crime and money laundering. I think that spirit carried through to the Criminal Finances Act 2017, which was also supported by all parties. The Government made concessions to both the SNP and the Labour party on matters such as the use of betting slips and Scottish limited partnerships; we too have concerns about their misuse.

The codes of practice are needed because unpicking the complex web that criminals weave to hide their money requires skills and training, but also guidance on navigating through the plethora of relevant law. They manage to hide their money through exploiting that complicated legal structure, and we must equip ourselves to counter what they do.

In answer to the point made by the hon. Member for Sheffield, Heeley, first, we already have Crown Prosecution Service specialists. Some activities, such as terrorist financing, are not as prevalent as people might think, but they are important and potentially dangerous, so we have those specialists. In regional organised crime units there are specialised proceeds of crime units, specifically set up to recover assets and implement confiscation orders. That specialist group is funded not only through home forces and the Home Office, but from some of the receipts from asset recovery; the asset recovery incentivisation scheme funding is ploughed back in. We decided, in line with our manifesto, that above the 2015-16 baseline of recovery, all assets—100%—will be returned to law enforcement agencies and the people involved in the prosecution, to put funding back in.

On police cuts, I hear what the hon. Lady says about numbers, and I understand the threat that we are up against. I do not dispute that we have had to make some tough decisions on policing, as we have elsewhere, but it is not just a numbers game; powers are important. Also, fighting terrorism and crime in the 21st century is different from when I was fighting terrorism in the early 1990s. How terrorists and criminals do business is different and we have to change the way we deal with it. Although, as the hon. Lady points out, there may have been reductions affecting some aspects of policing, there have been increases for the intelligence services and technical capabilities, which have taken our counter-terrorism funding from £11.7 billion to £15.2 billion—a 30% increase. I do not think that there has been such an increase in funding anywhere else in the public sector over the spending period.

[Mr Wallace]

We recognise the threat, and that we must deal with it. We will deal with it not just through the police but through the broader counter-terrorism family, including intelligence services, and—in the Prevent duty area—local government and schools, as well as, upstream, places such as GCHQ, so that we keep one step ahead of organised criminals and terrorists. I urge the Committee to support the orders. We will be happy to get on with the job, and I should be happy to go with the hon. Member for Sheffield, Heeley to meet some of the terrorist financing specialists, to see how they go about what they do.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018.

**DRAFT PROCEEDS OF CRIME ACT 2002
(INVESTIGATIVE POWERS OF
PROSECUTORS: CODE OF PRACTICE)
ORDER 2018**

Resolved,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2018.—(Mr Wallace.)

**DRAFT TERRORISM ACT 2000 (CODE OF
PRACTICE FOR AUTHORISED OFFICERS)
ORDER 2018**

Resolved,

That the Committee has considered the draft Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018.—(Mr Wallace.)

9.9 am

Committee rose.