

SL(5)191 – The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018

Background and Purpose

This Order provides that references to accredited financial investigators in the Proceeds of Crime Act 2002 ('POCA') are to be read as references to accredited financial investigators who are members of staff of the Welsh Revenue Authority (WRA).

Accredited financial investigators may apply for restraint orders under Part 2 of POCA and may seize property to which any such order applies. Accredited financial investigators may also search for, seize, detail and apply for the forfeiture of cash. Before exercising powers of search they must obtain prior approval from either a justice of the peace or a senior officer (unless in the circumstances it is impracticable to do so).

Accredited financial investigators may also apply for orders and warrants in relation to confiscation, money laundering and detained cash investigations. The purpose of such orders and warrants can include e.g. requiring a person to produce certain material, permitting the search and seizure of material from premises and requiring a financial institution to provide customer information. Only an accredited financial investigator who is (depending on the nature of the order or warrant) either an appropriate person, appropriate officer or senior appropriate officer can apply for and/or exercise the powers provided by such orders and warrants.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

This Order gives substantial powers to the WRA. An explanation has been given that does not appear unreasonable. Nevertheless, attention is drawn to the Order on the basis that they are of legal or political importance or give rise to issues of public policy that are likely to be of interest to the Assembly. [Standing Order 21.3(ii)]

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Government Response

The Welsh Government notes the report and recognises that this SI does contain matters likely to be of interest to the Assembly.

Committee Consideration

The Committee considered the instrument at its meeting on 12 March 2018, along with the Government response and reports to the Assembly in line with the merits point identified.

However, during its consideration the Committee agreed to include another point for reporting relating to an anomaly between the regulations and the Explanatory Memorandum.

The Explanatory Memorandum states that the WRA must comply with statutory codes of practice, but our understanding is that they need only have regard to the code, and then only a duty to have regard to relevant bits of the code (see section 67(9) of the *Police and Criminal Evidence Act 1984*). There is an important difference between having to comply with something and having to have regard to it. The Welsh Government should clarify the position and if necessary, ensure that all relevant documents related to the regulations are corrected.

