

**EXPLANATORY MEMORANDUM ON THE COUNCIL OF EUROPE CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME AND ON THE FINANCING OF TERRORISM**

**Title of Treaty**

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

**Command Paper Number:** 8972

**Subject matter**

1. This Explanatory Memorandum concerns the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) done at Warsaw on 16 May 2005 ("the Warsaw Convention").
2. The Warsaw Convention updates and expands the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No 141) done in Strasbourg on 8 November 1990 ("the 1990 Convention"). It sets a basic operational framework for international assistance in tackling the threat from money laundering and the financing of terrorism, providing for the freezing and confiscation of the proceeds and instrumentalities of crime.

**Ministerial responsibility**

3. The Home Secretary has overall responsibility concerning the proceeds of criminality.

**Policy Considerations:**

**General**

4. The Government is committed to depriving criminals of their ill gotten gains by targeting the financial flows that support their crimes. Criminals do not respect boundaries and international cooperation is key to effectively combating money laundering and the financing of terrorism.
5. The Government supports the aims and objectives of the Warsaw Convention. For the most part we exceed the requirements of the Warsaw Convention as our domestic legislation is robust and gives law enforcement extensive powers to identify, seize and remove the proceeds of crime. The Warsaw Convention supports this work and provides minimum standards across the Council of Europe for the recovery of the proceeds from cross-border criminality.

## Financial

6. As noted above, the United Kingdom exceeds many of the minimum requirements of the Warsaw Convention and so there are no financial implications in its implementation. An increase in the number of cases as a direct result of the Warsaw Convention could have an increase in costs for investigation and prosecution agencies, but this should be offset by an increase in the proceeds recovered.

## Reservations and Declarations

7. Article 53 of the Warsaw Convention permits a number of declarations and reservations to be made by State at the time of signature or when depositing instruments of ratification, acceptance, approval or accession.
8. The United Kingdom will be making a reservation on ratification of the Warsaw Convention, pursuant to Article 53, paragraph 2, reserving its right not to apply in whole, the provisions of Article 47 (International co-operation for postponement of suspicious transactions).
9. Article 47 requires measures that permit urgent action to be initiated by a Financial Intelligence Unit (FIU) at the request of an overseas FIU to suspend certain transactions. Under the current regime it is not considered appropriate to grant this power. The UK FIU, which sits within the National Crime Agency, has national responsibility for gathering, analysing and disseminating the financial intelligence submitted through the Suspicious Activity Reports regime under Part 7 of the Proceeds of Crime Act 2002. The regime is designed to detect money laundering activity and enable the appropriate authorities to take action, investigate and, where appropriate, prevent money laundering activity, prosecute offenders and disgorge the benefits from crime. It is not proposed that the Part 7 regime or the established and leading role of the UK FIU should change.
10. The United Kingdom will be making the following declarations on ratification of the Warsaw Convention:

(a) Pursuant to Article 53, paragraph 4(c), a declaration that the UK intends to apply Article 3, paragraph 4 (Confiscation measures) in accordance with its domestic legislation.

UK law (the Proceeds of Crime Act 2002) contains a list of serious offences which, upon conviction, the court can assume that everything an offender has and has had in the past six years is the proceeds of crime and so can be calculated into the value set on a confiscation order. The court is not, however, permitted to make an assumption in relation to particular property or expenditure if it is shown to be incorrect or that there would be a serious risk of injustice if it were made. An assumption would commonly be rebutted by the offender demonstrating the legitimate origin of the property. These offences, known as "lifestyle offences", include money laundering, people

trafficking and directing terrorism. The assumptions can also be applied to an offender if he has a certain number and history of convictions.

(b) Pursuant to Article 53, paragraph 1, and Article 24, paragraph 3, a declaration that Article 24, paragraph 2 (Execution of confiscation) applies only subject to the UK's constitutional principles and the basic concepts of the UK's legal system. The UK shall only be bound by the findings of the requesting Party as stated in the judicial decision.

(c) Pursuant to Article 53, paragraph 1, and Article 35, paragraph 3 (Form of request and languages) a declaration that the UK reserves its right to require that requests for investigative assistance made and documents supporting such requests must be accompanied by an English translation.

(d) Pursuant to Article 53, paragraph 1, and Article 42, paragraph 2 (Restriction of use) a declaration that information or evidence provided by the UK under Chapter IV of the Warsaw Convention may not be used or transmitted by the requesting Party in investigations or proceedings other than those specified in the request unless the prior written consent from the UK has been given.

11. The United Kingdom will also notify the names and addresses of the UK's central authorities, as required under Article 33, paragraph 2; and details of the UK's Financial Intelligence Unit, as required under Article 46, paragraph 13.

#### **Implementation**

12. No new legislation is required in the United Kingdom to implement the provisions of the Warsaw Convention.
13. The UK is already party to the 1990 Convention and, as required under Article 49, paragraph 5 of the Warsaw Convention, signs and ratifies this Convention whilst considering itself bound by at least the provisions corresponding to the provisions of the 1990 Convention.

#### **Consultation**

14. The Ministry of Justice, the Foreign and Commonwealth Office, HM Treasury, the Devolved Administrations and law enforcement agencies were consulted during the compliance analysis. The House of Lords EU Scrutiny Committee has made representations to the present and previous Government on signing and ratifying the Convention.

*Karen Bradley*

**KAREN BRADLEY MP**  
**Parliamentary Under Secretary of State**  
**Home Office**