

CRIMINAL FINANCES BILL
COMMONS REPORT STAGE AMENDMENTS
SUPPLEMENTARY ECHR MEMORANDUM

1. The Home Office has prepared this Supplementary ECHR Memorandum, in relation to amendments tabled by the Government for consideration at the Report Stage of the Criminal Finances Bill in the House of Commons. The Memorandum identifies those amendments which have ECHR implications and explains the justification in each case.

Amendments NC7, 58 and 59

2. New Clause 7 (and linked amendments 58 and 59) amends the Proceeds of Crime Act 2002 (“POCA”) to provide that ‘unlawful conduct’ for the purposes of the civil recovery provisions within Part 5 of POCA may include conduct that occurs overseas which constitutes or is connected to the torture or inhuman, degrading or cruel treatment or punishment of a person in consequence of that person having whistle blown on illegal activity by a public official or otherwise having sought to obtain, exercise, defend or promote human rights or fundamental freedoms. The conduct need not be criminal in the place where it occurred but must, if it had been carried out in the UK, constitute an offence triable on indictment (or either way). The torture or inhuman, degrading or cruel treatment or punishment (but not conduct connected to it) must have been carried out by a public official or done at the instigation, consent or acquiescence of one.
3. Conduct that is connected to torture or inhuman, degrading or cruel treatment or punishment includes: acting as an agent for another in connection with activities relating to it; directing, or sponsoring, such activities; profiting from such activities, or materially assisting such activities.
4. The provisions as they relate to torture will have retrospective effect but civil recovery proceedings are subject to a statutory limitation period providing that the civil action must be brought within 20 years of the date of the last day of the relevant conduct occurring.
5. The provisions as they relate to inhuman, degrading or cruel treatment or punishment do not have retrospective effect.

Rights Engaged

6. The application of these provisions could interfere with Article 8 and Article 1, Protocol 1 of the ECHR in that they enable the state to recover the property of persons on the ground that the property was obtained through unlawful conduct.

Justification

7. It is considered that the interferences with both Articles is justified as necessary and proportionate for the purpose of achieving a legitimate aim – the prevention and deterrence of torture and inhuman, degrading or cruel treatment or punishment and the use of the UK financial system as a repository for sums made by or in connection with such activities. It is considered that both forms of conduct have long been unlawful under international law (UN Convention Against Torture) and any persons engaging in, or connected, with such activity could reasonably expect that any property deriving from that conduct is apt to become recoverable by the UK.

Amendments 9-12, Clause 9

8. Amendment 9 (and a number of consequential amendments) provides for the moratorium period to extend automatically for a period of up to 31 days where a Court has been unable to determine an application prior to the expiry of the initial moratorium period; to allow for a potential further period of up to 5 days for consideration as to whether or not to bring an appeal; and to allow for a potential further period of up to 31 days to allow an appeal court to consider the application for appeal. The Court will have to deduct the period of any automatic extension from the duration of any extension it grants to the moratorium period.

Rights Engaged

9. The application of these provisions could interfere with Article 8 and Article 1, Protocol 1 of the ECHR in that they enable the state to recover the property of persons.

Justification

10. It is considered that these potential additional periods of automatic extension are necessary and proportionate to ensure that there is sufficient judicial oversight of the application for an extension of the moratorium period. They do not significantly increase the potential likelihood of disproportionate interference with rights beyond the Clause as it stands and as explained in the original Memorandum.