

*This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament and published on 16th December 2015 [ISBN 978-0-11-114220-2]. It is being issued free of charge to all known recipients of that draft Statutory Instrument.*

*Draft Order laid before Parliament under section 459(6)(aa) of the Proceeds of Crime Act 2002, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

# **PROCEEDS OF CRIME, ENGLAND AND WALES PROCEEDS OF CRIME, NORTHERN IRELAND**

## **The Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) (England and Wales and Northern Ireland) Order 2016**

*Made* - - - - **\*\*\***  
*Coming into force* - - *1st March 2016*

The Attorney General and the Advocate General for Northern Ireland (the “Attorney General”) make this Order in exercise of the powers conferred by section 377A(5) and (9) of the Proceeds of Crime Act 2002(1) (“the Act”).

The Attorney General has—

- (a) in accordance with section 377A(9) of the Act, revised(2) the codes of practice prepared under section 377A(1) and (2) of the Act in connection with the exercise of functions under Chapter 2 of Part 8 of the Act by—
  - (i) the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland of functions they have under Chapter 2 of Part 8 of the Act; and
  - (ii) any other person, who is the relevant authority by virtue of section 357(9) of the Act in relation to a confiscation investigation, of functions the person has under Chapter 2 of Part 8 of the Act in relation to England, Wales and Northern Ireland as the relevant authority;
- (b) in accordance with section 377A(3) of the Act, published a draft of the revised code of practice, considered any representations made to him about the draft and, as he thought appropriate, amended the draft accordingly; and

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(1) [2002 c. 29](#). Section 459(6)(aa) was added by the Serious Crime Act 2007 [c. 27](#) Sch.8(4) para.119(4) (April 1, 2008)

(2) The revised code of practice brought into operation by this Order replaces the code of practice brought into operation in relation to England and Wales and Northern Ireland on 22nd July 2008 by [S.I. 2008/1978](#) and the revised code of practice brought into operation in relation to England and Wales only on 1st June 2015 by [S.I. 2015/612](#).

- (c) in accordance with section 377A(4) of the Act, laid a draft of the revised code of practice before Parliament.

In accordance with section 459(6)(aa) of the Act a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

### **Citation, commencement and extent**

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) (England and Wales and Northern Ireland) Order 2016.

(2) This Order comes into force on 1st March 2016.

### **Revised Code of Practice**

2. The revised code of practice entitled “Code of Practice issued under section 377A of the Proceeds of Crime Act 2002 (England and Wales and Northern Ireland) Investigative Powers of Prosecutors” laid in draft before Parliament on 16th December 2015 comes into operation on 1st March 2016.

### **Revocations**

3. The following instruments are revoked—

- (a) The Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors in England, Wales and Northern Ireland: Code of Practice) Order 2008(3); and
- (b) The Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) (England and Wales) Order 2015(4).

Date

Solicitor General  
Attorney General’s Office

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(3) S.I. 2008/1978.  
(4) S.I. 2015/612.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into operation on 1st March 2016 in relation to England, Wales and Northern Ireland the revised code of practice made pursuant to section 377A of the Proceeds of Crime Act 2002 (“the Act”) in connection with the exercise by—

- the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland of functions under Chapter 2 of Part 8 of the Act (“the relevant Directors”); and
- any other person, who is the relevant authority by virtue of section 357(9) of the Act in relation to a confiscation investigation, of functions the person has under Chapter 2 of Part 8 of the Act in relation to England, Wales and Northern Ireland as the relevant authority (“a specified person”).

Part 8 of the Act concerns the investigations permitted under the Act, of which there are five kinds (confiscation investigations, civil recovery investigations, detained cash investigations, money laundering investigations and exploitation proceeds investigations: see section 341 of the Act).

The relevant Directors have various functions under Chapter 2, connected with their roles as:

- appropriate officers who can carry out civil recovery investigations,
- prosecutors who can apply to court for disclosure orders under section 357 of the Act in relation to civil recovery investigations and certain confiscation investigations, and
- persons who may request assistance under section 375A of the Act if they think that there is relevant evidence pertaining to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation, in a country or territory outside the United Kingdom.

Under section 357(9) of the Act, the Secretary of State can by order specify a person as a prosecutor. A specified person is a relevant authority under section 357 of the Act and is able to apply to court for a disclosure order under that section in relation to a confiscation investigation.

This Order revokes previous Orders made under section 377A of the Act.

An impact assessment has not been produced for this instrument as it has no direct impact on business, charities or voluntary bodies. The revised code of practice provides guidance on the use of powers under POCA by bodies in the public sector, and incorporates best practice, but it does not require any greater use of those powers which could result in an additional impact.