

2021 No. 155

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2021

Made - - - -

7th June 2021

Coming into operation -

28th June 2021

The Department of Justice makes the following Order in exercise of the powers conferred by sections 355(3A)(a) and 459(3) and (7A) of the Proceeds of Crime Act 2002(b) and now vested in it(c).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2021 and shall come into operation on 28th June 2021.

(2) In this order, “the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989(d).

Amendment of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016

2.—(1) The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 is amended as follows.

(2) In Article 2 (application of Article 17 of the 1989 Order), for “or a detained cash investigation” in each place where it occurs, substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”.

(3) In Article 3 (application of Article 18 of the 1989 Order), for “or a detained cash investigation”, substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”.

(4) In Article 4 (application of Article 23 of the 1989 Order)—

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- (a) Section 355 is amended by section 66(6) of the Policing and Crime Act 2009 (c. 26); subsection (3A) is inserted by Article 12 of, and paragraphs 47 and 66(1) and (3) of Schedule 14 to, the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976) (“the 2010 Order”).
- (b) 2002 c.29.
- (c) The section 459 powers of the Secretary of State are transferred to the Department of Justice by Article 12 of, and paragraphs 47 and 74(1), (2) and (7) of Schedule 14 to, the 2010 Order.
- (d) S.I. 1989 No. 1341 (N.I. 12). Relevant amendments affecting Articles 17, 18, 23 and 24 of the 1989 Order have been made by the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I.2)).

- (a) in paragraph (1), for “or a detained cash investigation”, substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
 - (b) at paragraph (2), for “or a detained cash investigation”, substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
 - (c) for paragraph (7)(c), substitute—
 - “(c) in paragraph (c) after “proceedings” insert “(including proceedings related to the making of a confiscation order) or any proceedings under Chapter 2, 3, 3A, or 3B of Part 5 of the Proceeds of Crime Act 2002”.
- (5) In Article 5 (application of Article 24 of the 1989 Order)—
- (a) in paragraph (1), for “or a detained cash investigation”, substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
 - (b) in paragraph (2) and (3), for “or a detained cash investigation”, substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
 - (c) in paragraph (3)(d), in inserted sub-paragraph (iv), for “Chapter 3” substitute “Chapter 2, 3, 3A or 3B”.

Sealed with the Official Seal of the Department of Justice on 7th June 2021



Naomi Long
Minister of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 (“the 2016 Order”) applies, with modifications, certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 No. 1341 (N.I. 12)) (“the 1989 Order”) to search and seizure warrants obtained in Northern Ireland under section 352 of the Proceeds of Crime Act 2002 (c. 29) for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, and to the powers of seizure under those warrants.

This Order amends the 2016 Order so that the relevant provisions of the 1989 Order apply to search and seizure warrants obtained in two new categories of investigation introduced by the Criminal Finances Act 2017 (c. 22), namely a detained property investigation and a frozen funds investigation (“the new investigations”). The new investigations relate to two new forfeiture powers (“the new powers”); the forfeiture of certain listed items of personal (or moveable) property and the forfeiture of money held in an account maintained with a bank or building society.

This Order also introduces a new modification to the application of Article 23(8) of the 1989 Order, in the context of the new investigations as well as in the context of detained cash investigations. Article 23(8) of the 1989 Order provides that the duty to grant access to, or supply a photograph or copy of, anything seized under a warrant does not arise where the officer in charge of the investigation has reasonable grounds to believe that to grant access or supply a photograph or copy would prejudice a criminal investigation or proceedings. Article 2(4)(c) of this Order extends this to civil proceedings under Chapter 2, 3, 3A or 3B of POCA (that is, in relation

to the existing civil recovery and cash forfeiture powers under POCA, and in relation to the new powers).

Article 2(5)(c) of this Order makes a further modification to the application of Article 24(2)(a) of the 1989 Order, to provide that material seized under a warrant in the context of the new investigations may be retained for use as evidence in proceedings in relation to the new powers, and the existing cash forfeiture and civil recovery powers.

An impact assessment has not been produced for this Order as no impact is foreseen on the private, voluntary or public sectors.

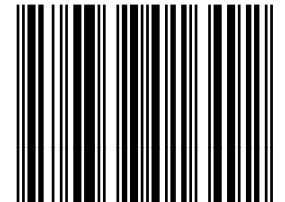
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£4.90

<http://www.legislation.gov.uk/id/misr/2021/155>

ISBN 978-0-33-801649-2



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