

**EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL INVESTIGATIONS)
ORDER 2013**

2013 No. 2605

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes provision to assist an external investigation (in a civil context) by obtaining orders and warrants from the High Court (or the sheriff or Court of Session in Scotland). It contains provisions which correspond (subject to modifications) to those concerning civil recovery investigations under Part 8 of the Proceeds of Crime Act 2002; namely production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders.

2.2 The investigation powers will be available in respect of overseas equivalents to civil recovery investigations (property obtained as a result of or in connection with unlawful conduct).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred under sections 445 and 459(2) of the Proceeds of Crime Act 2002. It sets out how the United Kingdom may assist an external civil investigation by an overseas authority into the proceeds of criminal conduct. Overseas requests to investigate that are criminal in nature will continue to be dealt with through the provisions in the Crime (International Co-operation) Act 2003.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 8 of the Proceeds of Crime Act 2002 provides various powers to trace the proceeds of criminal and unlawful conduct.

7.2 The intention behind the Order is to ensure that the United Kingdom can assist an investigation by an overseas authority by obtaining orders and warrants in the United Kingdom. This might be because the proceeds of criminal conduct or evidence relating to such proceeds are located in the United Kingdom. Significantly, the provisions in the Order provide powers in relation to property where the investigation is civil in nature.

7.3 It is of note that articles 5, 18 and 25 create new offences in England, Wales and Northern Ireland broadly equivalent to those in sections 342, 359 and 366 of the Proceeds of Crime Act 2002, namely offences of prejudicing an external investigation and failure to comply with certain requirements under a disclosure order and a customer information order. Articles 39, 52 and 59 are the equivalent offences in Scotland. This is to ensure compliance with those investigative powers.

7.4 The ability to carry out an investigation that is criminal in nature, notably confiscation of assets pursuant to a criminal conviction, or to prosecute money laundering in an overseas jurisdiction, is already provided under the existing Crime (International Co-operation) Act 2003.

7.5 The ability to investigate and remove property in civil proceedings without a criminal conviction is an emerging international practice and one well established in United Kingdom law, see Part 5 (civil recovery) of the Proceeds of Crime Act 2002. This alternative civil form of deprivation of assets may be necessary where, for example the person is dead or missing.

7.6 In addition, the existing Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (SI 2005 No 3181) (the 2005 Order) makes provision to assist in the freezing and deprivation of assets. This 2005 Order is being amended by a separate Order in Council, namely The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2013.

7.7 Government policy is that we should be able to assist overseas authorities in tracing the proceeds of criminal conduct and that this should be streamlined. Section 445 of the Proceeds of Crime Act 2002 and this Order delivers that policy aim in respect of civil investigations.

8. Consultation outcome

8.1 Drafting of the Order was developed in consultation with the Crown Prosecution Service, the Serious Fraud Office, the Serious Organised Crime Agency (whose functions, from October 2013, will be performed by the National Crime Agency) and the Devolved Administrations.

9. Guidance

9.1 The Codes of Practice providing guidance on the use of investigation powers issued by the Secretary of State under section 377 of the Proceeds of Crime Act 2002 and by the Attorney General and Attorney General for Northern Ireland under section 377A of the Proceeds of Crime Act 2002 shall apply by virtue of article 35 of the Order and the equivalent Scotland Code of Practice shall apply by virtue of article 69 of the Order.

9.2 The Proceeds of Crime Centre (operationally part of the National Crime Agency), which carries out the responsibility for the training, monitoring and accreditation of financial investigators under section 3 of the Proceeds of Crime Act 2002, will provide necessary guidance as appropriate. The Order makes provision corresponding to provisions in Part 8 of the Proceeds of Crime Act 2002 and so judges and legal representatives will be familiar with the provisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument. The amount of requests to undertake assistance in a financial investigation will remain low because other routes are utilised and NCB confiscation is not widely available amongst international partners.

11. Regulating small business

11.1 Small businesses will be subject to the same requirements and liabilities as they are under the operation of the domestic power under Part 8 of the Proceeds of Crime Act 2002. The impact on small businesses is negligible.

12. Monitoring & review

12.1 Requests for investigative assistance will be made through the Secretary of State. The Home Office will therefore be able to closely monitor the number of cases and the standard of these requests with the burden they place on investigators, the courts and respondents to the investigation orders.

13. Contact

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