

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS
OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2015

2015 No. 925

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 amendments to the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425) (“the 2003 Order”) which are consequential on the commencement of section 66 of the Policing and Crime Act 2009 (c. 26) (“PCA 2009”), the commencement of section 55(5) of, and paragraph 144 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), and on the making of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 (S.I. 2015/759) (“the PACE Order”) (itself consequential on the commencement of section 66 of the PCA 2009). The 2003 Order sets out the procedures for enforcement of certain orders and search and seizure warrants obtained for the purposes of certain investigations under Part 8 of the Proceeds of Crime Act 2002 (c. 29) (“POCA”).

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

3.1 None

4. Legislative Context

4.1 Orders made and warrants issued by a judge of the High Court under Part 8 of POCA can be enforced throughout the United Kingdom by virtue of section 18 of the Civil Jurisdiction and Judgments Act 1982 (c. 27) (enforcement of UK judgments in other parts of UK), but orders made and warrants issued by a judge entitled to exercise the jurisdiction of the Crown Court cannot. The 2003 Order sets out the procedures for enforcement of those orders and search and seizure warrants under Part 8 of POCA which do not fall within the scope of section 18 of the Civil Jurisdiction and Judgments Act 1982.

4.2 Section 66 of the PCA 2009 is being commenced in England and Wales on 1st June 2015 (see the Policing and Crime Act 2009 (Commencement No. 10, Transitional Provision and Savings) Order 2015). That provision transfers the jurisdiction in England and Wales for making production orders and issuing search and seizure warrants in relation to detained cash investigations from a judge of the High Court to a judge entitled to exercise the jurisdiction of the Crown Court. The 2003 Order is therefore amended so

that it provides for enforcement of such English and Welsh orders and warrants in Northern Ireland and Scotland. There are savings in relation to the commencement of section 66 of the PCA 2009, such that applications for orders and warrants which are undetermined by 1st June 2015, and orders and warrants which are already in existence on that date, remain subject to the jurisdiction of a judge of the High Court. Therefore savings are made in this Order so that the amendments to the 2003 Order do not apply to such orders and warrants.

4.3 The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 (S.I. 2015/759) (“the PACE Order”), was made in consequence of the commencement of section 66 of the PCA 2009. The PACE Order applies, with modifications, certain provisions of the Police and Criminal Evidence Act 1984 (c 60) to search and seizure warrants obtained in England and Wales under section 352 of POCA 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. It revokes and replaces, in relation to England and Wales only, the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003 (S.I. 2003/174), which Order continues to apply in relation to Northern Ireland. The 2003 Order is amended to make reference to the PACE Order in relation to police and criminal evidence procedures for England and Wales.

4.4 This Order also makes amendments to the 2003 Order which are consequential on the commencement of section 55(5) of, and paragraph 144 of Schedule 8, to the Crime and Courts Act 2013 (see the Crime and Courts Act 2013 (Commencement No 1 and Transitional and Saving Provision) Order 2013 (S.I. 2013/1042) and the Crime and Courts Act 2013 (Commencement No 2 and Saving Provision) Order 2013 (S.I. 2013/1682)). Section 55(5) (powers of immigration officers) makes immigration officers appropriate officers for the investigations dealt with by the 2003 Order (see section 378 of POCA). Paragraph 144 of Schedule 8 (abolition of Serious Organised Crime Agency) substitutes references to National Crime Agency officers for references to members of staff of the Serious Organised Crime Agency in the definition of appropriate officer. This Order makes appropriate amendments to the definitions of appropriate officer in the 2003 Order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The Order makes necessary consequential amendments to ensure that the commencement of amendments to POCA are made fully effective, for the purpose of ease of enforcement of orders and search seizure warrants obtained in relation to investigations under Part 8 of POCA in one part of the United Kingdom, in the other parts of the United Kingdom.

7.2 The amendments take account of the changes made to POCA by section 66 of the PCA 2009, transferring the jurisdiction for making production orders and search and seizure warrants for the purposes of detained cash investigations from the High Court to the Crown Court. This is to ensure a sensible and consistent approach with other search warrants that are currently issued by a court with a criminal jurisdiction. Immigration officers are now appropriate officers in relation to investigations under Part 8 of POCA, in order to tackle criminal assets derived from immigration and related offences.

- Consolidation

7.2 This is not a consolidation.

8. Consultation outcome

8.1 There has been no consultation in relation to this Order.

9. Guidance

9.1 There is no guidance on this Order.

10. Impact

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

10.2 The impact on the public sector is neutral as warrants relating to a detained cash investigation are already issued by the High Court rather than (as will be the case) the Crown Court. All that is altering is the court that will issue these warrants.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The 2003 Order will next be reviewed when commencement of section 66 of PCA 2009 takes place for Northern Ireland.

13. Contact

Stephen Goadby at the Home Office Tel: 0207 035 1559 or email: stephen.goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.