

## EXPLANATORY MEMORANDUM TO

### THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2017

2017 No. 1280

#### 1. Introduction

- 1.1 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 in Council amends the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425) (“the Investigations Order”). Both this Order in Council and the Investigations Order are made under Part 11 of the Proceeds of Crime Act 2002 (“POCA”), specifically section 443. Part 11 provides that Orders in Council may make provision for cooperation in the investigation and enforcement of court orders relating to recovering the proceeds of crime. There are separate Orders in Council that provide for cooperation between the jurisdictions of the United Kingdom for the enforcement of court orders, and for the United Kingdom to assist overseas authorities.
- 2.2 This Order in Council is necessary because of amendments made to POCA by the Criminal Finances Act 2017 (the “CFA”). The CFA introduced new powers by amending the provisions in POCA relating to the investigation and recovery of the proceeds of crime. The Investigations Order needs to be updated in light of the CFA amendments so that court orders issued by the criminal courts in one jurisdiction can be recognised and enforced in the other jurisdictions of the United Kingdom.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 The Investigations Order contains the recognition and enforcement procedures across the United Kingdom for orders made, and search and seizure warrants issued, relating to certain investigations under Part 8 of POCA. The Investigations Order only applies to court orders and warrants issued by the criminal courts. Court orders issued by the civil courts are recognised and enforced under the provisions of the Civil Jurisdictions and Judgments Act 1982 – see the amendments made to that Act by paragraph 3 of Schedule 5 to the CFA.

- 4.2 The Investigations Order is made under section 443 of POCA. It is of note for the purposes of this Order in Council that section 443 was amended by section 53 of, and paragraph 83 of Schedule 5 to, the CFA so that it would also apply to orders made under Part 7 of POCA (money laundering).
- 4.3 Amendments to POCA in the CFA have introduced two new categories of investigation for which orders under Part 8 of POCA may be obtained, and two new categories of orders in relation to money laundering, which may require enforcement in another jurisdiction of the United Kingdom.
- 4.4 Section 7 of the CFA amends the provisions in Part 8 of POCA relating to disclosure orders in England and Wales and Northern Ireland. The amendments allow disclosure orders to be obtained in the context of money laundering investigations. Section 8 makes an equivalent amendment to the disclosure order provisions in POCA for Scotland. This Order in Council amends the Investigations Order to make provision for disclosure orders obtained in money laundering investigations in England and Wales and Scotland to be enforced in other jurisdictions within the United Kingdom (excluding Northern Ireland; see paragraph 4.8 below).
- 4.5 Section 10 of the CFA amends the provisions in POCA which apply where an entity in the regulated sector has reported a suspicion of money laundering, and has sought consent from a nominated officer, a constable or a customs officer to carry out a particular transaction. Where that consent is refused, the entity is currently prohibited from carrying out the transaction for a period of 31 days (“the moratorium period”). Section 10 of the CFA introduces a new power for a senior officer to apply to the court (the Crown Court in England & Wales and Northern Ireland, and the Sheriff’s Court in Scotland) for an order extending the moratorium period. The court can order an extension of up to 31 days where it believes that it is appropriate to allow further time for the law enforcement agency to conduct the investigation. The court may allow up to six extensions, to a maximum of 186 days. This Order in Council amends the Investigations Order to make provision for moratorium extension orders made in England and Wales and Scotland to be enforced in other jurisdictions within the United Kingdom (excluding Northern Ireland; see paragraph 4.8 below).
- 4.6 Section 12 of the CFA amends POCA to provide a power for a court (the Magistrates’ court in England & Wales, and the Sheriff’s Court in Scotland), upon application by the National Crime Agency (or, in Scotland, the procurator fiscal), to make an order requiring a person in the regulated sector to provide specified further information in relation to a disclosure made under Part 7 of POCA. These provisions came into force across the United Kingdom on 31 October 2017, and this Order in Council makes provision for further information orders obtained in one part of the United Kingdom to be enforced in other parts.
- 4.7 Section 15 of the CFA allows law enforcement agencies to seize items listed in that section where they have reasonable grounds to suspect that they are recoverable property, or are intended for use in unlawful conduct. Section 16 allows law enforcement agencies to seek the freezing and forfeiture of money held in a bank or building society account where they have reasonable grounds to suspect that the money is recoverable property or is intended for use in unlawful conduct. These forfeiture powers are supported by two new categories of investigation in section 341 of POCA, namely detained property investigations and frozen funds investigations respectively (“the new investigations”). Law enforcement officers can apply to the relevant court (the Crown Court in England and Wales and Northern Ireland and the

Sheriff's Court in Scotland) for investigatory orders under part 8 of POCA in the context of the new investigations. Section 15 of the CFA will be commenced in England and Wales and Scotland on 16 April 2018. This Order in Council makes provision for investigatory orders obtained in the course of the new investigations in England and Wales and Scotland to be enforced in other jurisdictions within the United Kingdom (excluding Northern Ireland; see paragraph 4.8 below).

- 4.8 The amendments in this Order in Council define, for the purposes of the Investigations Order, an "English or Welsh appropriate officer" in the context of the new investigations. In England and Wales, orders in the new investigations will be made by the criminal courts. No similar definition is required for Scotland, as the Sheriff's court will continue to exercise its civil jurisdiction in respect of the new investigations, and so the Investigations Order will not apply. The CFA makes provision to amend section 2(2)(g) of the Civil Jurisdiction and Judgments Act 1982 to ensure that the new investigations will fall within that provision (see paragraph 3 of Schedule 5 to the CFA). The amendments made to POCA by the provisions in the CFA above are not being commenced in Northern Ireland at this time, with the exception of section 10 (further information orders).
- 4.9 The amendment in paragraph 6 of the Schedule to this Order in Council has the effect that, if an order is obtained in the context of the new investigations and is to be enforced in a different jurisdiction, any application to vary or discharge that order is to be made in the jurisdiction where it was obtained. This maintains the approach taken in respect of orders obtained in the context of a detained cash investigation.

## **5. Extent and Territorial Application**

- 5.1 The territorial extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is 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 The Investigations Order provides the mechanism for intra-United Kingdom investigation of the proceeds of crime. The CFA made a number of amendments to POCA, which require consequential amendments to the Investigations Order so that the co-operation, enforcement and investigation regimes in continue to function effectively. The amendments allow those pursuing investigations in one jurisdiction of the UK to easily obtain information or evidence from another UK jurisdiction by means of a court order obtained in the investigator's own jurisdiction. This removes potential inefficiencies that would arise were an order made in one jurisdiction to require the endorsement of the court in another.

## **8. Consultation outcome**

- 8.1 As this Order in Council makes amendments to the cooperation powers which are equivalent to those made to the domestic provisions in POCA, they are essentially consequential and technical; no public consultation has therefore been carried out. The draft codes of practice on the investigation powers were subject to a four week public consultation from 31 July 2017 to 25 August 2017. See

## **9. Guidance**

- 9.1 The Codes of Practice issued by the Secretary of State and Attorney General, and Scottish Ministers for Scotland, providing guidance and operational requirements on the use of investigation powers (see section 377, 377A and 410 of POCA (as amended)), shall apply to the use of the relevant powers under the Investigations Order, as amended by this Order in Council.
- 9.2 The Proceeds of Crime Centre (part of the National Crime Agency), which has responsibility for the training, monitoring and accreditation of financial investigators under section 3 of POCA, will provide necessary guidance as appropriate.
- 9.3 This Order in Council makes provision corresponding to amended provisions in Parts 7 and 8 of POCA. Investigators, prosecutors, judges and legal representatives will be familiar with the provisions, and the Home Office will issue non-statutory guidance on the use of these 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 these instruments. It is of note that this Order in Council amends the Investigations Order, and makes equivalent provisions to the domestic provisions in POCA. Businesses are already familiar with these.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 Small businesses will be subject to the same requirements and liabilities as they are under the operation of the domestic powers under POCA. The impact on small businesses is negligible.

## **12. Monitoring & review**

- 12.1 The use of this Order in Council will form part of the overall monitoring of the powers under POCA. This can be reported from individual cases either directly to the Home Office or via the Devolved Administrations, or through the National Crime Agency's oversight function of financial investigators.

## **13. Contact**

- 13.1 Justin Millar at the Home Office can answer any queries regarding the instrument (Tel: 020 7035 1578 or e-mail: Justin.millar@homeoffice.x.gsi.gov.uk).