

**EXPLANATORY MEMORANDUM TO**  
**THE PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2020**

**2020 No. 1078**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015 (“the 2015 Order”), which makes provision about which financial investigators can exercise specific powers under the Proceeds of Crime Act 2002 (“POCA”).

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

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 POCA provides for the confiscation or civil recovery of the proceeds of crime and criminal property. It is also the principal money laundering legislation for the UK.  
6.2 The Secretary of State can make an order under section 453 of POCA to provide that specified references to an Accredited Financial Investigator (AFI) include staff of organisations listed in the 2015 order for some or all of the powers provided by POCA. Section 453(2) also includes the ability for the Secretary of State to specify an AFI by reference to a particular grade for the purposes of POCA.  
6.3 This instrument amends the 2015 Order to add the Ministry of Justice (MoJ) to the list of organisations whose staff have access to certain powers.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument includes members of staff of the Ministry of Justice (MoJ) within specified references to AFIs in POCA. The purpose of this is to enable Her Majesty's Prison and Probation Service's (HMPPS), an executive agency of the MoJ, to employ AFIs to exercise powers under the POCA in relation to confiscation, cash recovery and investigations. This note therefore focuses on the use of POCA powers by HMPPS only.
- 7.2 This instrument will confer access to specified POCA powers to the MoJ., however, this does not automatically provide all MoJ agencies with the ability to deploy these powers without prior accreditation and monitoring by the National Crime Agency (NCA). Use of these powers by MoJ agencies other than HMPPS will only be possible after the need and proportionality of using these powers is demonstrated to the Home Office and NCA and accreditation and training of employees is provided. It will not be possible for an AFI employed by HMPPS or otherwise to move into employment in another agency of the MoJ in order to use their financial investigation powers without notification and permission from the NCA. This aligns with the position of other central government departments already listed on the 2015 Order.
- 7.3 This instrument will support HMPPS to disrupt the flow of payments linked to the illicit economy in prisons as part of the National Prison Drugs Strategy. Money drives the illicit economy and the substantial profits that can be made are an incentive to criminals and organised crime groups to traffic drugs and other contraband into prisons. Substance misuse, debt, bullying, self-harm and violence undermine the safety and stability of prisons and are often directly caused by or linked to the illicit economy in prisons.
- 7.4 To tackle the illicit economy, HMPPS employed AFIs will gain the ability to conduct confiscation, detained cash, frozen funds and money laundering investigations and apply for the associated orders relevant to these investigations. HMPPS will also obtain the power to seize, detain and request the forfeiture of cash; and the power to seize, detain and request the forfeiture of money held in bank and building society accounts through forfeiture orders or forfeiture notices. The use of these powers will enable HMPPS to prevent access to illicit funds, remove them from the economy altogether. This in turn will limit the ability of individuals, gangs and organised crime groups to continue with further criminal activity, both in prison and in the community.
- 7.5 The list of organisations in the 2015 Order is regularly reviewed and updated to ensure the public sector has access to the relevant tools it needs to tackle money laundering, financial crime and to recover the proceeds of crime. The importance of keeping this list up to date is evident through the Government's commitment in its Asset Recovery Action Plan 2019 to expand the list of public sector organisations who have access to powers under POCA. This instrument forms part of delivering that commitment to embed the recovery of the proceeds of crime and financial investigation techniques in the criminal justice system.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This instrument does not consolidate the Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) (England and Wales) Order 2015. Consolidation will be considered when the provisions in the Criminal Finances Act 2017, which designate additional public agencies who may access AFIs, are commenced UK wide.

## **10. Consultation outcome**

- 10.1 The Ministry of Justice conducted a period of stakeholder engagement between December 2019 and February 2020. This included a number of key stakeholders such as the Home Office, the NCA, HMPPS Wales, private prison providers, trade unions, third sector organisations and prisoner engagement forums.
- 10.2 The engagement concerned HMPPS employed AFIs and indicated support for the proposal to use powers under POCA to tackle the illicit economy and crime in prisons. Partners welcomed the move whilst emphasising the importance of maintaining ongoing cooperation and intelligence sharing between police and prison teams. Third sector organisations also welcome the proposal and highlighted the importance of ensuring clear communications during investigations, that decision making is transparent and that these powers be used alongside corruption investigations where relevant and appropriate.
- 10.3 Should another agency of the MoJ require access to the POCA powers being conferred by this SI, the agency would need to demonstrate the necessity and proportionality of this approach to the Home Office and the NCA. The agency may support such a request to directly employ AFIs by conducting a separate consultation.

## **11. Guidance**

- 11.1 Training and accreditation of financial investigators is provided and approved by the NCA. Once financial investigators are trained and accredited, the continued use of their powers is closely monitored and reviewed by the NCA. In addition, codes of practice apply to some of the functions detailed in the 2015 Order. These include a code of practice providing guidance on the lawful and proportionate use of search, seizure and detention powers, investigation powers and the new power to recover listed assets.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There will be a limited impact on the public sector. As these impacts are not anticipated to be significant, an impact assessment has not been prepared for this instrument.
- 12.3 However, there may be additional costs for HMPPS which currently relies upon and funds police AFIs to perform financial investigations relating to prisons. The intention is to gradually increase the number of AFIs working on prison related investigations following this instrument by adopting a mixed model where HMPPS directly employs its own AFIs whilst continuing to fund police seconded AFIs. Existing funding has been secured to cover these and proposed additional posts.
- 12.4 HMPPS will receive a share of any money recovered through its investigations as funding to support further work in recovering the proceeds of crime. This is managed

by the Home Office under the Asset Recovery Incentivisation Scheme (ARIS) and allows organisations to further invest in their capabilities to investigate and pursue proceeds of crime.

- 12.5 Limited additional costs will be incurred by the Ministry of Justice in respect of civil court proceedings.

### **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

### **14. Monitoring & review**

- 14.1 Section 3 of POCA requires the NCA to monitor the performance of AFIs. This monitoring takes the form of continuing professional development (“CPD”) activities, work based CPD submissions via the NCA’s financial investigation professional register, regular communication with an NCA appointed regulator and regular liaison with individual financial investigators and bodies. A sample of all evidence submitted in support of the continued correct use of the powers will mean that the actual casework is examined by an AFI’s NCA appointed regulator as part of CPD requirements. Any incorrect use of the powers could result in the withdrawal of accredited status.
- 14.2 The NCA publishes an annual report which details how it has discharged its statutory obligations and objectives set by its annual plan. On a more informal basis, the Secretary of State can also request a report from the NCA on specific matters.

### **15. Contact**

- 15.1 Richard Bishop, Ministry of Justice (email: Richard.Bishop1@justice.gov.uk) and Jacque Connor, Her Majesty’s Prison and Probation Service (email: jacque.connor@justice.gov.uk) can answer any queries regarding the instrument.
- 15.2 Rachel Pascual, Deputy Director for Prison Safety, Security and Operational Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Buckland QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.