

EXPLANATORY MEMORANDUM TO

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

2016 No. 33

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the 33Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 355(3A) of the Proceeds of Crime Act 2002 (c. 29) ("POCA") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Order applies certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (1989 No. 1341 (N.I. 12)) ("PACE NI"), with modifications, to search and seizure warrants (and the powers of seizure under them) obtained in Northern Ireland under section 352 of POCA for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation.
- 2.2. The purpose is to ensure that the protections and safeguards within PACE NI in relation to the exercise of powers of search and seizure are applied to a confiscation investigation, a money laundering investigation or a detained cash investigation. The provisions which may be applied with modifications under the enabling power in section 355 of POCA are Articles 17, 18, 23 and 24 of PACE NI only.

3. Background

- 3.1. The Order revokes and replaces 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) ("the 2003 Order") in so far as it extends to Northern Ireland. The 2003 Order was revoked for England and Wales only by the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 (S.I. 2015/759) on 1st June 2015.
- 3.2. The Order extends the application of PACE NI provisions to warrants obtained for the purposes of detained cash investigations to those in place for confiscation investigations and money laundering investigations. This is because of amendment to POCA made by section 66 of the Policing and Crime Act 2009 (c. 26), transferring the jurisdiction for obtaining warrants relating to detained cash investigations from the High Court to the Crown Court. The commencement date for this provision in Northern Ireland is 1st March 2016. The provision came into operation in England and Wales on 1st June 2015.
- 3.3. PACE NI provides safeguards and procedures in relation to the execution of search warrants issued by a court with criminal jurisdiction, specifically

in relation to warrants relating to a criminal investigation. Under POCA, certain search and seizure warrants are issued by the Crown Court, which is a court with criminal jurisdiction – warrants relating to confiscation investigations, money laundering investigations and detained cash investigations (see sections 343 and 352 of POCA). It is therefore a sensible and consistent approach to have the safeguards and procedures that relate to warrants relating to criminal investigations to also apply to the warrants issued by the Crown Court in relation to POCA investigations. There are a few technical modifications so that the provisions work in a POCA context.

- 3.4. Codes of practice are issued under POCA as guidance to officers exercising POCA functions to ensure that the functions are exercised lawfully. The Department of Justice is responsible for three Northern Ireland codes of practice. The operation of POCA powers in Northern Ireland by reserved bodies, and for reserved functions, is covered by codes of practice issued by the Secretary of State. There is detailed guidance on the use of the search and seizure warrant provisions in the codes of practice and the changes made by this Order are reflected in POCA codes of practice with the coming into operation date of 1st March 2016.
- 3.5. The National Crime Agency (NCA) has responsibility to train, accredit and monitor financial investigators under section 3 of POCA. The specialist unit in the NCA, the Proceeds of Crime Centre, trains and monitors all financial investigators using the powers under POCA. The Proceeds of Crime Centre will ensure that investigators are aware of all matters relating to the commencement of amendments to POCA and connected matters, including this Order. This will be achieved either by way of Continuous Professional Development activity and/or e-learning.

4. Consultation

- 4.1. There was no consultation on the Order.

5. Equality Impact

- 5.1. The Department of Justice considered its responsibilities under section 75 of the Northern Ireland Act 1998. No equality issues were identified in relation to the Order.

6. Regulatory Impact

- 6.1. There is no impact on business, charities or voluntary bodies. The impact on the public sector is neutral as warrants relating to a detained cash investigation are already issued by the High Court. The only change is that the Crown Court will issue these warrants. An impact assessment has not been prepared for this Order.

7. Financial Implications

- 7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. In the view of the Department of Justice the provisions of the Order are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Equivalent provision was made in relation to England and Wales only under The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 which came into operation on 1st June 2015.

11. Additional Information

11.1. Not applicable.