

EXPLANATORY MEMORANDUM TO

The Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order (Northern Ireland) 2016

SR 2016 No. 66

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department 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 the Proceeds of Crime Act 2002 (c. 29) and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. This Order provides that a code of practice entitled "Code of Practice issued under section 377ZA of the Proceeds of Crime Act 2002: Investigations (Northern Ireland)" comes into operation on 1st March 2016.

3. Background

- 3.1. Codes of practice are made under the Proceeds of Crime Act 2002 ("POCA") as guidance to officers exercising POCA functions to ensure that the functions are exercised lawfully. The codes are also of interest to persons who are the subject of the powers. The codes should be made available where the powers are likely to be used, for example in police stations.
- 3.2. The Department of Justice is responsible for bringing forward distinct Northern Ireland codes of practice. Guidance on the operation of POCA powers in Northern Ireland was covered by codes of practice issued by the Secretary of State up to the date of the coming into operation of three new Northern Ireland codes. As well as the code related to this Order, two additional codes are being brought into operation on the same date - a code entitled "Code of Practice issued under section 195T of the Proceeds of Crime Act 2002: Search, Seizure and Detention of Property (Northern Ireland) and a code entitled "Code of Practice issued under section 293A of the Proceeds of Crime Act 2002: Recovery of Cash: Search Powers (Northern Ireland)".
- 3.3. The codes of practice take account of amendments to POCA, principally made by the Policing and Crime Act 2009 ("the 2009 Act") (c. 26), the Crime and Courts Act 2013 ("the 2013 Act") (c.22) and the Serious Crime Act 2015 ("the 2015 Act") (c. 9) to extend certain existing functions and create new functions. Amendments not yet in force in Northern Ireland at the date of the coming into operation of the new codes of practice will be commenced on that date. This is to bring the POCA regime in Northern Ireland up to date and into line with England, Wales and Scotland, subject to jurisdictional variations.

- 3.4. The "Code of Practice issued under section 377ZA of the Proceeds of Crime Act 2002: Investigations (Northern Ireland)" ("the section 377ZA code") provides guidance on the exercise of functions under POCA as further detailed in paragraphs 3.5 to 3.10 below:
- 3.5. Part 8 of POCA concerns investigation powers in the United Kingdom. Chapter 2 of Part 8 of POCA applies to England and Wales and Northern Ireland. Up to the date of the coming into operation of this Order, the use of the relevant powers in Northern Ireland was covered by a code issued by the Secretary of State under section 377 brought into operation on 1st April 2008 by S.I. 2008/946.
- 3.6. The new section 377ZA code made by Department of Justice applies to the exercise of functions of constables and accredited financial investigators in Northern Ireland in relation to confiscation investigations, detained cash investigations and money laundering investigations. The powers of investigation covered by the code are the powers relating to production orders, search and seizure warrants, customer information orders, account monitoring orders and disclosure orders.
- 3.7. The most recent amendments to POCA investigation provisions that apply to constables and accredited financial investigators in Northern Ireland are detailed in the following paragraphs and are reflected in the new section 377ZA code:
- 3.8. The nature of a confiscation investigation was widened by the 2015 Act, so that an investigation can be undertaken after a confiscation order has been made so as to assist in enforcement. The investigation powers can be used to identify the extent or whereabouts of property that might be realised to satisfy a confiscation order (see section 38 of the 2015 Act). This provision will commence in Northern Ireland on 1 March 2016.
- 3.9. Section 66 of the 2009 Act transferred applications for a production order and a search and seizure warrant for a detained cash investigation (which assist in the preparation of a case for forfeiting cash seized under Chapter 3 of Part 5 of POCA) from the High Court to the Crown Court in Northern Ireland. The change was commenced in England and Wales on 1 June 2015. This provision will commence in Northern Ireland on 1 March 2016.
- 3.10. A code of practice made under section 377 of POCA by the Secretary of State applies to the exercise of functions of the following officers in Northern Ireland under Chapter 2 of Part 8 of POCA: National Crime Agency officers; officers of Revenue and Customs; and immigration officers. The section 377 code of practice also covers the operation of functions under Part 8 of POCA by these officers and by the Director General of the National Crime Agency, constables and accredited financial investigators in England and Wales.

4. Consultation

- 4.1. A draft of the section 377ZA code was subject to a twelve week public consultation from 11 August 2015 to 2 November 2015 (see <https://www.dojni.gov.uk/consultations/codes-practice-issued-under-proceeds-crime-act-2002>). Four substantive consultation responses were

received. The Department of Justice considered the representations made and modified the draft code, where appropriate.

5. Equality Impact

- 5.1. The Department of Justice considered its responsibilities under section 75 of the Northern Ireland Act 1998 and carried out an Equality Impact Screening exercise on the draft codes of practice prior to consultation. It was concluded that a full Equality Impact Assessment was not required. No equality issues were identified in the screening exercise or in the responses to the consultation.

6. Regulatory Impact

- 6.1. There is no impact on business, charities or voluntary bodies. An impact assessment has not been prepared for this Statutory Rule.

7. Financial Implications

- 7.1. The impact on the public sector is minimal. The National Crime Agency is tasked with managing a training programme to cover all of the amendments to POCA to date and the codes of practice will be one component of that programme. The overall cost of the training is likely to be less than £5,000 for the United Kingdom and it is coordinated by the Home Office.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. In the view of the Department of Justice the provisions of the Order and the section 377ZA code 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 codes of practice for England and Wales are made by the Secretary of State and for Scotland by Scottish Ministers. Codes made by the Secretary of State also cover the use of POCA powers in Northern Ireland by reserved bodies, such as the National Crime Agency and HM Revenue and Customs.
- 10.2. A separate code, issued under section 377A of POCA, has been prepared by the Attorney General and the Advocate General for Northern Ireland to provide guidance on the use of investigative powers of prosecutors under POCA in England and Wales and Northern Ireland and, along with four POCA codes made by the Secretary of State, will come into operation on the same date as the Northern Ireland codes.
- 10.3. As POCA is a United Kingdom-wide Act, and to ensure consistency of approach and language across jurisdictions, the Northern Ireland codes closely follow the equivalent codes for England and Wales, with appropriate adaptations.

11. Additional Information

- 11.1. The section 377ZA code will be reviewed should issues arise as a matter of its operation in practice, but also where amendments are made to POCA which require a revised or new code of practice to be produced. Any revised or new code of practice must be consulted on.