

EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (SEARCH, RECOVERY OF CRYPTOASSETS AND INVESTIGATIONS: CODES OF PRACTICE) REGULATIONS 2024

2024 No. XXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 These Regulations bring into operation two revised codes of practice, and one new code of practice, relating to asset recovery and investigation powers under the Proceeds of Crime Act 2002 (c. 29) (“POCA”).
- 2.2 The revised and new codes are required because of amendments to POCA made by the Economic Crime (Transparency and Enforcement) Act 2022 (c. 10) (“the 2022 Act”) and the Economic Crime and Corporate Transparency Act 2023 (c. 56) (“the W2023 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, except that regulations 2(a) and 4(a) extend to England and Wales only; and regulations 2(b) and 4(b) extend to England and Wales and Northern Ireland only.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom, except that regulations 2(a) and 3(a) apply to England and Wales only; and regulations 2(b) and 4(b) apply to England and Wales and Northern Ireland only.

5. European Convention on Human Rights

- 5.1 The Rt. Hon. Tom Tugendhat has made the following statement regarding Human Rights:

“In my view the provisions of the Proceeds of Crime Act 2002 (Search, Recovery of Cryptoassets and Investigations: Codes of Practice) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 POCA provides powers to recover the proceeds of crime. This instrument brings into operation two revised codes of practice and one new code of practice concerning the use of asset recovery powers in POCA. This includes the first exercise of the power to

bring into operation a code of practice under section 303Z35 of POCA as inserted by the 2023 Act. Equivalent codes can be made by the Scottish Ministers and the Department of Justice in Northern Ireland in respect of the use of these powers by certain law enforcement agencies in those jurisdictions.

Search, Seizure and Detention of Property (England and Wales) Code

- 6.2 Sections 47A to 47S of POCA provide for search and seizure powers in England and Wales to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. “Realisable property” is defined in section 83 of POCA. Section 47C contains the seizure powers, while sections 47D to 47F contain the search powers. A code of practice is made by the Secretary of State under section 47S of POCA in relation to the use of these powers.
- 6.3 Part 1 of Schedule 8 to the 2023 Act amends some of these sections of POCA to include powers to search for, and seize, “cryptoasset-related items”, information from which can be used in order to seize cryptoassets (such as, for example, bitcoin).
- 6.4 The code of practice brought into operation by these Regulations replaces the previous code that came into force by means of S.I. 2018/82.

Recovery of Cryptoassets and Related Items: Search Powers Code

- 6.5 Schedule 9 to the 2023 Act inserts new Chapters 3C to 3F into Part 5 of POCA, to create a new civil forfeiture regime for certain cryptoassets. This is along the lines of the existing regimes for forfeiture of cash (Chapter 3) and (as a result of amendments made by the Criminal Finances Act 2017 (c. 22)) “listed assets” (Chapter 3A) and money in bank accounts (Chapter 3B).
- 6.6 New sections 303Z21 to 303Z32 of POCA now provide for searches for, and seizure and detention of, cryptoassets and related items in the United Kingdom where the cryptoassets are reasonably suspected of deriving from, or are intended for use in, unlawful conduct.
- 6.7 A code of practice is made by the Secretary of State under section 303Z25 of POCA in relation to the use of these powers. Section 303Z25 applies the code of practice provisions in section 303G of POCA which deal with listed assets.

Investigations Code

- 6.8 Part 8 of POCA concerns investigation powers which may be used to support a financial or asset recovery investigation in the United Kingdom. Chapter 2 of Part 8 applies to England and Wales and Northern Ireland. A code of practice is made by the Secretary of State under section 377 of POCA in relation to the Chapter 2 powers.
- 6.9 These powers include the making of “unexplained wealth orders” under provisions introduced by the Criminal Finances Act 2017 and subsequently amended by Part 2 of the 2022 Act.
- 6.10 The code of practice brought into operation by these Regulations replaces the previous code that came into force by means of S.I. 2021/170.

7. Policy Background

What is being done and why?

- 7.1 The 2022 Act and the 2023 Act deliver a suite of wide-ranging reforms to tackle economic crime, terrorist financing, and improve transparency over corporate entities. These provisions will bear down on kleptocrats, criminals and terrorists who abuse our financial system, strengthening the UK's reputation as a place where legitimate business can thrive, whilst driving dirty money out of the UK.
- 7.2 The 2022 Act reformed and strengthened the UK's unexplained wealth order ("UWO") regime to expand the scope of UWOs, and to increase and reinforce operational confidence in using UWO powers.
- 7.3 The 2023 Act amends both criminal confiscation powers in Parts 2, 3 and 4 of POCA and civil recovery powers in Part 5 of POCA to enable enforcement agencies to more effectively tackle criminal use of cryptoassets.
- 7.4 These reforms will enable officers to seize cryptoassets, and other property, during the course of an investigation without first having arrested someone for an offence; enable officers to seize cryptoasset-related items; and enable the courts to better enforce unpaid confiscation orders against a defendant's cryptoassets.
- 7.5 They also bring cryptoassets within the scope of civil forfeiture powers in Part 5 of POCA.
- 7.6 They ensure that forfeiture powers are accompanied by supplementary investigative powers in Part 8 of POCA, similar to investigatory powers that exist to support the forfeiture of cash, listed assets and funds in certain accounts.
- 7.7 A code of practice made under POCA provides guidance to the officers and other persons exercising their functions under those Acts, and establishes procedural requirements to ensure that the functions concerned are exercised lawfully, proportionately, consistently, and in a focused manner. This code is also of interest to persons who are the subject of the powers.
- 7.8 When the function covered by the code of practice is revised or new functions are created, the existing code is replaced with a revised code. The codes are therefore being amended in light of the commencement of the 2022 Act and 2023 Act.
- 7.9 The codes include detailed and clear explanations of the powers and the legal requirements that must be met before these powers are exercised by officers. They set out guidance on how to consider those legal requirements, on balancing the need for using intrusive powers against the interference with a person's privacy or possessions, and what further issues should be considered when using the powers. The codes require an officer who is contemplating using the powers to consider the impact on the community in their use, balanced against the public interest and the benefit the use of the powers would add to the case. The codes also contain direct operational guidance or procedural requirements in relation to various aspects of the actual use of the powers, including the time of day at which, and the manner in which, they should be used.

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 A consolidation will not be taking place.

10. Consultation outcome

10.1 The two revised and one new code of practice were subject to a twelve-week public consultation from 28th March to 20th June 2023. See the following link for the consultation document: <https://www.gov.uk/government/consultations/draft-codes-of-practice-issued-under-poca-2002-and-the-terrorism-act-2000>

10.2 There were six responses – five from law enforcement and prosecutorial agencies and one from a safer communities network. The responses were generally supportive of the codes but contained a number of suggestions or recommendations to ensure the guidance is as clear as possible.

10.3 The safer communities network response suggested that the codes be amended to reference the Welsh language. This has been actioned. The response also noted duplication across multiple Codes and suggested they could be combined to form one document. While we recognise that many of the codes outline similar processes for officers, the codes are individually mandated in statute, so it is not possible to combine the codes.

10.4 The law enforcement agencies' responses requested clarification of certain definitions in the legislation and additional guidance on the practical operation of the powers to seize cryptoassets and related items. Responses also suggested that the Investigations Code be updated to include the use of secure digital recording network devices and reference to the use of investigatory powers in an international context. Where relevant to the content in the codes, these responses have been actioned. The responses were also useful in highlighting minor technical drafting errors which have been corrected.

10.5 The Home Office also invited representations from the Attorney General's Office, His Majesty's Treasury, the Department of Justice in Northern Ireland and the Scottish Government on the relevant draft Codes of Practice to the extent that the Secretary of State was required to do so under POCA. Each organisation has confirmed they are content.

11. Guidance

11.1 The codes of practice brought into operation by this instrument contain guidance and operational requirements as to the use of the powers to which they relate.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because, rather than preparing separate assessments for each statutory instrument in the package, the

overall impact of commencing both the EC(TE) Act and the ECCT Act has been considered. See the following link for the impact assessment on the reforms to UWOs in the EC(TE) Act:

<https://bills.parliament.uk/publications/45474/documents/1584>

- 12.4 See the following link for the impact assessment on the cryptoasset measures in the ECCT Act:

<https://bills.parliament.uk/publications/47792/documents/2815>

13. Regulating small business

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

14. Monitoring and review

- 14.1 The approach to monitoring of this legislation is that the codes are reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to POCA which require a revised or new code of practice to be produced.

15. Contact

- 15.1 Holly Brennan at the Home Office (email: Holly-Anne.Brennan@homeoffice.gov.uk) can answer any queries regarding these instruments.
- 15.2 Tom Bell, Deputy Director for Criminal Finances and Asset Recovery, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon. Tom Tugendhat at the Home Office can confirm that this Explanatory Memorandum meets the required standard.