

EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) (No. 2) ORDER 2016

2016 No. 498

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 makes amendments to the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425) (“the 2003 Order”) which are consequential on the commencement of amendments to the Proceeds of Crime Act 2002 (c. 29) (“POCA”) in Northern Ireland. It makes amendments to the 2003 Order following those made by the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2016 (S.I. 2016/291)
- 2.2 The 2003 Order, as amended, sets out the procedures for enforcement of investigation orders and search and seizure warrants obtained for the purposes of certain investigations under Part 8 of POCA. Specifically, the enforcement of orders and warrants in a jurisdiction of the United Kingdom different from the one in which they had been issued.
- 2.3 The 2003 Order ensures that officers from any part of the United Kingdom will follow the code of practice which applies in the jurisdiction in which they are operating. With effect from 1st March 2016, powers operated by an accredited financial investigator or a police officer in Northern Ireland are subject to the code of practice issued by the Department of Justice in Northern Ireland under section 377ZA of POCA. Powers operated by other officers, namely an immigration officer or an officer of Revenue and Customs, are subject to the code of practice issued by the Secretary of State under section 377 of POCA. This order amends the 2003 Order to ensure that the correct code of practice applies to the operation of any officer in Northern Ireland, regardless that the officer may be a member of a force in Scotland or England and Wales.

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 Investigation orders made and warrants issued by a judge of the High Court in Northern Ireland under Part 8 of POCA can be enforced throughout the United Kingdom by virtue of section 18 of the Civil Jurisdiction and Judgments Act 1982 (c. 27) (enforcement of UK judgments in other parts of UK), but orders made and warrants issued by a judge of the Crown Court cannot. The 2003 Order sets out the procedures for enforcement of those orders and search and seizure warrants which have been obtained under Part 8 of POCA, and which do not fall within the scope of section 18 of the Civil Jurisdiction and Judgments Act 1982.
- 4.2 The operation of these powers is subject to the codes of practice issued under Part 8 of POCA which provide guidance on their use. In relation to Northern Ireland officers using the powers in Northern Ireland, section 377 of POCA provides that those agencies which are reserved, and the officers that work for those agencies, are subject to the code issued by the Secretary of State under that section. These are the National Crime Agency, HM Revenue and Customs and immigration officers. Those agencies and their staff which are devolved, namely the police and other agencies which have accredited financial investigators, are subject to the code issued by the Department of Justice in Northern Ireland under section 377ZA of POCA. Other agencies in Northern Ireland which have accredited financial investigators include the Department of Agriculture and Rural Development in Northern Ireland; the Department of the Environment in Northern Ireland, the Department for Regional Development in Northern Ireland and the Department for Social Development in Northern Ireland.
- 4.3 The operation of the 2003 Order means that these codes of practice apply to the use of the powers in Northern Ireland as they would under Part 8 of POCA. So, for example, if a Scottish constable was executing a Scottish warrant in Northern Ireland under the terms of the 2003 Order, that police officer would be subject to the code of practice issued by the Department of Justice in Northern Ireland under section 377ZA of POCA. Similarly, if an English immigration officer was executing an English search and seizure warrant in Northern Ireland under the terms of the 2003 Order, they would be subject to the code of practice issued by the Secretary of State under section 377 of POCA.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is United Kingdom wide.
- 5.2 The territorial application of this instrument is United Kingdom wide.

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

What is being done and why

- 7.1 This Order together with the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2016 (S.I. 2016/291) makes necessary consequential amendments to ensure that the commencement of amendments to POCA in Northern Ireland are made fully effective. It provides that

investigation orders and search and seizure warrants obtained in relation to detained cash investigations in Northern Ireland can be enforced in another part of the United Kingdom. A detained cash investigation is an investigation for the purposes of determining whether cash detained under a relevant power derives from, or is intended for use in, unlawful conduct and so can be forfeited in proceedings before the magistrates' court.

- 7.2 Part 8 of POCA provides a range of powers, such as search and seizure powers and disclosure powers, relating to criminal and civil investigations. The powers are available to "appropriate officers" as defined in section 378 of POCA, and are exercisable by warrant or by order of the court. The 2003 Order provides the general framework in which investigation orders and warrants relating to certain investigations under Part 8 of POCA in one part of the United Kingdom, are recognised and enforced in another part of the United Kingdom.
- 7.3 Officers are required to follow codes of practice when using the powers in Part 8 of POCA. The codes of practice contain guidance on the use of the investigation powers which is an important safeguard and ensures consistent, proportionate and effective use of the powers. It also provides comfort to the general public that the powers are being used in a focused manner. The codes include a detailed simple explanation of the powers and the legal requirements. They detail what officers are required to consider when using the powers, which includes considering the legal requirements, the need for using intrusive powers balanced against the interference with a person's privacy and possessions, the impact on community considerations, the public interest and benefit the use of the powers would add to the case and the actual use of the powers to ensure effective use with minimal inconvenience. They also detail the requirement to record use of the powers and the need to justify their use, ensuring public and judicial accountability.
- 7.4 This Order specifically addresses the issue of the code of practice that will apply to actions performed by officers in Northern Ireland under the 2003 Order, as amended. As set out above, the amendments in this Order clarify which code of practice should be followed by officers from other parts of the United Kingdom when operating in Northern Ireland.

Consolidation

- 7.5 This is not a consolidation.

8. Consultation outcome

- 8.1 The terms of this Order have been agreed by the Department of Justice in Northern Ireland, the Office of the Advocate General and the Scottish Government.

9. Guidance

- 9.1 There is no guidance on this Order.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is neutral as warrants relating to a detained cash investigation are already issued in the High Court rather than (as will be the case) the Crown Court. All that is altering is the court that will issue these orders and warrants.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 The operation of this Order will be reported to the Home Office.

13. Contact

13.1 Stephen Goadby at the Home Office can answer any queries regarding the instrument:
Direct line telephone number 020 7035 1559 or email to
Stephen.goadby@homeoffice.x.gsi.gov.uk.