
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the fourth commencement regulations made under the Criminal Finances Act 2017 (c.22) (“the Act”), which amends the Proceeds of Crime Act 2002 (c. 29) (“POCA”), the Terrorism Act 2000 (c. 11) (“TACT”) and the Anti-terrorism, Crime and Security Act 2001 (c. 24) (“ATCSA”).

Regulation 2 brings into force on 30th January 2018 certain powers for the Secretary of State to make regulations concerning the manner in which administrative forfeiture notices (see below) are to be given, and the power to designate particular ranks of immigration officer as “senior officers” for certain specific purposes. These provisions are being brought fully into force before the main powers to which they relate to allow the relevant regulations and designations to be made and come into force at the same time as the main powers.

Regulation 3 brings into force on 31st January 2018 several provisions in the Act which amend POCA. These provisions introduce a new investigatory order (the unexplained wealth order) and a new procedure by which money in bank and building society accounts can be frozen and forfeited (this includes a power to forfeit the funds without court order, by giving an administrative forfeiture notice). The provisions also give access to POCA powers by law enforcement agencies, and allow certain law enforcement agencies greater access to the powers in POCA (including the Serious Fraud Office and Her Majesty’s Revenue and Customs). In addition, the provisions create new criminal offences concerning assaulting or obstructing law enforcement agents when carrying out POCA functions. The provisions also make technical amendments to the confiscation procedure, including extending the scope of an existing power of the court to order that seized money be paid over to satisfy a confiscation order, expanding the definition of a confiscation investigation, and allowing for the reconsideration of discharged confiscation orders. In addition, regulation 3 commences provisions which make certain technical amendments which apply in Scotland relating to recovery orders which involve heritable property and money received by administrators.

Regulation 3 also brings into force some amendments to TACT concerning disclosure orders and to ATCSA which relate to the recovery of terrorist property (“the terrorist financing provisions”). These include changes to the existing power to forfeit terrorist cash, which is amended to change the definition of “cash” to include gaming vouchers, fixed-value casino tokens and betting receipts, and to include a power to forfeit cash by giving an administrative forfeiture notice (as above). In addition, new powers to forfeit certain listed terrorist assets, and to forfeit terrorist funds in bank and building society accounts are introduced, which are equivalent to the powers in POCA commenced by regulations 3 and 4. These powers are available where the property is intended for use in terrorism, constitutes the proceeds of a proscribed organisation, or is “earmarked for terrorism” (meaning that it was derived from terrorism).

Regulation 4 provides that amendments to the definition of cash in POCA (as above) will come into force on 16th April 2018, along with a new procedure to seize, detain and forfeit certain listed items of property, which derives from, or is intended for use in, unlawful conduct.

Regulation 5 brings into force the minor and technical provisions in Schedule 5 to the Act which are consequent on the various substantive measure set out above. Many of these make technical amendments relating to the new procedures for forfeiting funds in bank or building society accounts, and for forfeiting certain listed items of property. As set out above, these main provisions are commencing on different dates, and accordingly regulation 5 ensures that these provisions will commence in tandem with the main powers to which they relate.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The provisions listed in regulation 1(3) are not being commenced in Northern Ireland. The regulations which are being commenced in Northern Ireland bring the terrorist financing provisions and paragraphs 25 and 27 of Schedule 5 to the Act into force.