

EXPLANATORY MEMORANDUM TO

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2024

SR 2024 No. 81

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 sections 355(3A) and 459(3) and (7A) of the Proceeds of Crime Act 2002 (c.29) ("POCA") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The purpose of this Order is to amend the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 ("the 2016 Order") to include new investigatory powers relating to cryptoassets.
- 2.2. Section 355 of POCA allows the Department of Justice to make an order which applies articles 17, 18, 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 No. 1341 (N.I. 12)) ("PACE") with modifications, in relation to the use of search and seizure warrants sought in the course of certain categories of investigation in Part 8 of POCA. For the purpose of POCA investigations, search and seizure warrants may be obtained by an "appropriate person" under section 352 of POCA.
- 2.3. The PACE provisions deal with safeguards in relation to the application for, and execution of, search warrants; and the granting of access to, and retention of, things seized under search warrants.
- 2.4. The 2016 Order applies the PACE provisions mentioned above with modifications for search and seizure warrants obtained in confiscation, money laundering, detained cash, detained property and frozen funds investigations (as defined in section 341 of POCA).
- 2.5. The Economic Crime and Corporate Transparency Act 2023 (c. 56) ("ECCTA") inserted new Chapters 3C to 3F into Part 5 of POCA, which contain new forfeiture powers. These provide for the forfeiture of cryptoassets seized by law enforcement, or held in a third party controlled wallet that is subject to a freezing order. The new powers apply where the relevant cryptoassets derive from, or are intended for use in, unlawful conduct. The new powers are supported by a new type of cryptoasset investigation in Part 8 of POCA. This Order amends the 2016 Order so that the relevant PACE provisions, and the modifications it makes in respect of the application of the PACE provisions, will also apply where search and seizure warrants are obtained in the new type of investigation.

3. Background

- 3.1. ECCTA delivers a suite of wide-ranging reforms to tackle economic crime, terrorist financing and improve transparency over corporate entities. It inserts certain new powers into POCA. This Order ensures that those powers can be used effectively in relation to cryptoassets.
- 3.2. The new powers are based on the existing forfeiture provisions in POCA and are intended to provide a mechanism by which cryptoassets (such as bitcoins or non-fungible tokens – “cryptoasset” is defined in section 303Z20 of POCA) can be forfeited using procedures in the magistrates’ courts, as is the case for the forfeiture of cash, listed asset and funds in accounts, under Chapters 3 to 3B of Part 5 of POCA.
- 3.3. There is evidence that cryptoassets are used to store or move value, including across international borders, that is derived from criminal conduct, and this power allows law enforcement agencies to seize and forfeit them where they suspect that to be the case. There is also evidence that crypto wallets (maintained by cryptoasset service providers) are used to hold cryptoassets purchased with criminal proceeds, and these powers allow for the freezing and forfeiture of those cryptoassets. The new powers apply where the relevant property derives from, or is intended for use in, unlawful conduct, and are intended to allow the recovery of that property.
- 3.4. The new powers are supported by a new type of investigation, a “detained cryptoasset investigation” as defined in section 341 of POCA (as amended by ECCTA). Part 8 of POCA contains various investigatory powers which are available to officers, which can be exercised if the officer is undertaking an investigation listed in section 341. These powers include search and seizure warrants, which can be obtained under section 352 of POCA.
- 3.5. PACE provides safeguards and procedures in relation to the execution of search warrants issued by a Crown Court with criminal jurisdiction. The 2016 Order ensured that the safeguards and procedures that relate to warrants relating to criminal investigations would also apply to the warrants issued by the court in relation to those POCA investigations, with any necessary modifications.
- 3.6. The new powers are modelled on the existing procedure for the forfeiture of cash, listed assets and funds in accounts, and so orders and warrants under Part 8 of POCA will be obtained in the Crown Court, as in detained cash, property or frozen funds investigations. This Order amends the 2016 Order so that the PACE provisions are applied in the context of the new investigations, with the same modifications as were made in respect of detained cash investigations. Specifically, this Order applies the safeguards in relation to the application for, and execution of, search warrants, as well as the granting of access to, and retention of, property seized under search warrants to the new investigations. In addition, the amendments made by this Order mean that the duty in article 23 of PACE to grant access to, or supply a photograph of, seized material does not arise where the officer in charge of the POCA investigation believes that to do so would prejudice any civil recovery or forfeiture proceedings under Chapters 2 to 3F of Part

5 of POCA. A similar modification is made to the application of article 22 of PACE, with the effect that the officer can retain any seized property for use as evidence in those civil recovery and forfeiture proceedings.

- 3.7. The power to forfeit cryptoassets will come into force on 26th April 2024. As a result, the amendments made by this Order in respect of detained property investigations will come into force on 26th April 2024.

4. Consultation

- 4.1. As the changes are essentially consequential and technical, no public consultation was carried out.

5. Equality Impact

- 5.1. As the changes are essentially consequential and technical, they are not considered to have an equality impact.

6. Regulatory Impact

- 6.1. An Impact Assessment has not been produced for this Statutory Rule as it has no or minimal impact on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. There are not considered to be material financial implications for law enforcement partners as a result of this Order, though it should give rise to an increase in seized items which may be converted into cash. The quantity of this is unknown at this stage.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The proposed legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The measure replicates legislation in England and Wales. Typically in relation to economic crime and confiscation provisions there is consistency of approach with England and Wales, not least given that a number of bodies operate in both Northern Ireland and Great Britain.

11. Additional Information

- 11.1. Not applicable.