

**EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (APPLICATION OF POLICE AND CRIMINAL
EVIDENCE ACT 1984) ORDER 2015**

2015 No. 759

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 To apply certain provisions of the Police and Criminal Evidence Act 1984 (c. 60) (“PACE”), with modifications, to search and seizure warrants (and the powers of seizure under them) obtained in England and Wales under section 352 of the Proceeds of Crime Act 2002 (c. 29) (“POCA”) for the purposes of a confiscation investigation, money laundering investigation or a detained cash investigation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This Order revokes and replaces, for England and Wales only, the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003 (S.I. 2003/174).

4.2 This Order extends the application of the PACE provisions to warrants obtained for the purposes of detained cash investigations, as well as confiscation investigations and money laundering investigations. This is because of amendments of POCA made by section 66 of the Policing and Crime Act 2009 (c. 26), transferring the jurisdiction for obtaining warrants relating to detained cash investigations from the High Court to the Crown Court.

4.3 The provisions which may be applied with modifications under the enabling power in section 355 of POCA are sections 15, 16, 21 and 22 of PACE only. PACE has been amended since the enabling power was enacted, but some of these amendments cannot be applied. For example, amendments concerning all premises search warrants and warrants authorising multiple entries. This is because the provision in PACE which give rise to these types of warrants (in new subsection (1A) of section 8) cannot be applied under the enabling power. Such amendments have not therefore been applied by this Order.

4.4 The repealed enactments which appear in modified section 22(2)(a) at inserted paragraph (iii) are there because they may apply in relation to offences which were committed before the date of repeal.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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 PACE provides safeguards and procedures in relation to the execution of search warrants issued by a court with criminal jurisdiction. These are specifically in relation to warrants relating to a criminal investigation. Under POCA, certain search and seizure warrants are issued by the Crown Court, which is a court with criminal jurisdiction – warrants relating to confiscation investigations, money laundering investigations and detained cash investigations (see sections 343 and 352 of POCA). It is therefore a sensible and consistent approach to have the safeguards and procedures that relate to warrants relating to criminal investigations to also apply to the warrants issued by the Crown Court in relation to POCA investigations. There are a few technical modifications so that the provisions work in a POCA context.

7.2 Matters relating to warrants issued by the High Court in relation to civil recovery investigations and exploitation proceeds investigations are explicitly provided for in section 356 of POCA. It is not appropriate to have the provisions of PACE applied to warrants issued by a court with civil jurisdiction.

- Consolidation

7.3 This is not a consolidation.

8. Consultation outcome

8.1 There has been no consultation.

9. Guidance

9.1 The National Crime Agency has responsibility to train, accredit and monitor financial investigators under section 3 of POCA. The specialist unit in the NCA, the Proceeds of Crime Centre, trains and monitors all financial investigators using the powers under POCA. They will ensure that investigators are aware of all matters relating to the

commencement of amendments to POCA and connected matters, including this order. This will be achieved either by way of a Continuous Professional Development activity and/or e-learning.

9.2 The Home Office is also engaged with the College of Policing and we understand that they will issue a digest of matters relating to amendments to POCA in the same exercise relating to the Serious Crime Act 2015.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is neutral as warrants relating to a detained cash investigation are already issued by the High Court rather than (as will be the case) the Crown Court. All that is altering is the court that will issue these 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 small business.

12. Monitoring & review

12.1 Under the Code of Practice issued by the Secretary of State relating to the investigation powers in POCA, there is detailed guidance on the use of the search and seizure warrant provisions. This includes the requirement for the use of the powers to be recorded on the relevant bodies' search register.

12.2 The Home Office keeps the operation of POCA under constant review. Matters relating to the use of the search and seizure warrants could arise at an investigation powers Criminal Procedural Rules sub-group, the Financial Investigators' Working Group which is a police chaired body with regional police and other law enforcement and the Criminal Finances Working Group which is a cross-Whitehall, law enforcement and prosecutor group that mainly addresses asset recovery performance. The Home Office has representation on all of these groups.

13. Contact

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