

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (APPLICATION OF POLICE AND
CRIMINAL EVIDENCE ACT 1984) (AMENDMENT) ORDER 2017

2017 No. 1222

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 The purpose of this instrument is to amend the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 (S.I. 2015/759) (“the 2015 Order”), to include two new types of investigation. Please see below for a more detailed description of the legislation.

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 Section 355 of the Proceeds of Crime Act 2002 (c.29) (“POCA”) allows the Secretary of State to make an order which applies sections 15, 16, 21 and 22 of the Police and Criminal Evidence Act 1984 (c. 60) (“PACE”) (“the PACE provisions”) 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.
- 4.2 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.
- 4.3 The 2015 Order applies the PACE provisions with modifications for search and seizure warrants obtained in confiscation, money laundering and detained cash investigations (as defined in section 341 of POCA).
- 4.4 The Criminal Finances Act 2017 (c. 22) (“CFA”) inserted Chapters 3A and 3B into Part 5 of POCA, which contain two new forfeiture powers (the “new powers”). These provide for, respectively, the forfeiture of certain listed items of personal (or moveable) property, and the forfeiture of funds in bank or building society accounts. The new powers apply where the relevant property derives from, or is intended for use in, unlawful conduct. The new powers are supported by two new types of

investigation, detained property investigations and frozen funds investigations, in Part 8 of POCA. This Order amends the 2015 Order so that 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 investigations.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application is England and Wales.

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 The new powers are based on the existing cash seizure provisions in POCA, and are intended to provide a mechanism by which certain listed items of property (such as jewels or precious metals- see section 303B of POCA) and funds in bank or building society accounts can be forfeited using procedures in the magistrates' courts, as is the case for cash forfeiture under Chapter 3 of Part 5 of POCA. There is evidence that the items listed in the Act are used to either store or move value, including across international borders, that is derived from criminal conduct, and this power allows law enforcement agencies to seize them where they suspect that to be the case. There is also evidence that UK bank accounts are used to hold money earned through criminal activity, and these powers allow for the freezing and forfeiture of that money. 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.

7.2 The new powers are supported by two new types of investigation; detained property investigations and frozen funds investigations, as defined in section 341 of POCA. 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.

7.3 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. Prior to the amendments made by the CFA, this applied to warrants relating to confiscation investigations, money laundering investigations and detained cash investigations (see sections 343 and 352 of POCA). The 2015 Order ensured that the safeguards and procedures that relate to warrants relating to criminal investigations would also apply to the warrants issued by the Crown Court in relation to those POCA investigations, with any necessary modifications.

7.4 The new powers are modelled on the existing procedure for cash forfeiture, and so orders and warrants under Part 8 of POCA will be obtained in the Crown Court, as in detained cash investigations. This Order amends the 2015 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; and 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 section 21 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 Chapter 2, 3, 3A or 3B of Part 5 of POCA. A similar modification is made to the application of section 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.

- 7.5 The power to forfeit funds in bank and building society accounts will come into force on 31 January 2018, but the power to forfeit listed items of property will not come into force until 16 April 2018. As a result, the amendments made by this Order in respect of detained property investigations will come into force on 16 April 2018, with the remaining provisions coming into force on 31 January 2018 (see Article 1).

8. Consultation outcome

- 8.1 The Home Office consulted with relevant stakeholders on the provisions for the new powers and the new investigations, inviting and reviewing suggestions and observations amongst the groups potentially affected by this legislative change. No consultation has been undertaken with regard to this Order specifically.

9. Guidance

- 9.1 There is no guidance planned with regard to this Order specifically.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 The impact on the public sector is minimal.
10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that may be undertaken by small businesses.

12. Monitoring & review

- 12.1 The Home Office together with the Proceeds of Crime Centre in the National Crime Agency will monitor the extension of this provision to the additional types of investigation to ascertain whether they are operating effectively.

13. Contact

- 13.1 Justin Millar at the Home Office can answer any queries regarding this instrument (Telephone: 0207 035 1578 or email: justin.millar@homeoffice.x.gsi.gov.uk).