

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (APPLICATION OF POLICE AND
CRIMINAL EVIDENCE ACT 1984) (AMENDMENT) ORDER 2024

2024 No. 426

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Tom Tugendhat, Security Minister at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Bell, Deputy Director for the Criminal Finances and Asset Recovery Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Holly Brennan at the Home Office:
HomelandSecurityCriminalFinancesandAssetRecoveryUnit@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This legislation amends an Order that provides safeguards and procedures in relation to the execution of search warrants issued by a court under certain powers introduced in the Economic Crime and Corporate Transparency Act 2023 (c.56) (“ECCT Act”) in relation to investigations involving assets known as “cryptoassets” such as bitcoin.

4.2 The ECCT Act will enable law enforcement to take control of and recover cryptoassets discovered when executing a search warrant, enable law enforcement to recreate devices known as “crypto wallets” and transfer assets into those wallets. It also provides for the recovery of cryptoassets directly from a third party cryptoasset service provider in certain circumstances.

4.3 This instrument accordingly amends 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 new investigatory powers. This will ensure that the same safeguards and procedures are in place for search and seizure warrants, based on the existing provisions in the Proceeds of Crime Act 2002 (c.29) (“POCA”).

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

- 5.1 POCA provides law enforcement with powers to investigate and recover the proceeds of crime. This includes powers to disrupt criminal activity by recovering assets obtained from, or intended for use in, unlawful conduct (Part 5 of POCA), criminal powers that require an individual to pay back their proceeds of crime (Part 2 of POCA for England and Wales) and powers to investigate (Part 8 of POCA). This is essential to reducing the profits of crime and ensuring that crime is not invested into further criminality.
- 5.2 Where various sections of POCA were drafted with tangible property and cash in mind, there has been a rise in cases related to cryptoassets that are extremely high-value. For operational reasons, it is not possible to provide specific numbers and values on these seizures and funds, although some figures are already published in the public domain. For example, the Metropolitan Police seized a record £180 million of crypto currency in London in 2021.
- 5.3 Given the technological and jurisdictional novelties, intervention was required to design a bespoke regime that facilitates more efficient recovery of cryptoassets. The ECCT Act:
- Reforms the criminal ‘confiscation’ powers in Part 2 of POCA (and Parts 3 and 4 for Scotland and Northern Ireland): to ensure they better cater for intangible assets and enable cryptoassets to be seized earlier in the confiscation process, so that those assets can be more easily confiscated at a later date.
 - Inserts a new non-conviction civil forfeiture scheme into Part 5 of POCA: so that cryptoassets can be recovered swiftly in the magistrates’ court.
 - Amends the investigatory powers in Part 8 of POCA: to enable the use of existing powers in “cryptoasset investigations”.

What was the previous policy, how is this different?

- 5.4 Agencies have reported an increase in the use of cryptoassets to store or move value, including across international borders, for the purpose of conducting crime that has presented challenges in being able to apply ordinary POCA powers to cryptoassets cases. Due to operational sensitivities, we cannot publish details on these cases. However, in general, cryptoassets can be subject to high fluctuations and, when seized or detained, can change value during forfeiture proceedings. The ECCT Act makes provision for cryptoassets to be converted into fiat currency to mitigate this fluctuation. The provisions also enable the seizure of physical cryptoasset-related items such as those containing password seeds which enable the cryptoassets themselves to be accessed.
- 5.5 Cryptoassets are sometimes held in crypto wallets (maintained by third party cryptoasset service providers). This is similar to money in a bank account. The new powers enable an order to be placed on cryptoasset service providers.
- 5.6 The new powers are supported by a new type of investigation: a “detained cryptoasset investigation”. Part 8 of POCA contains various investigatory powers which are available to officers, which can be exercised if the officer is undertaking an investigation under POCA, including search and seizure warrants.
- 5.7 The Police and Criminal Evidence Act 1984 (c. 60) (“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, in England and Wales certain search and seizure warrants are issued by the Crown Court, which is a court with criminal jurisdiction. 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.

- 5.8 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.
- 5.9 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.
- 5.10 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 Chapters 2 to 3F 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.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Section 355 of POCA allows the Secretary of State to make an order which applies sections 15, 16, 21 and 22 of 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.
- 6.2 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.
- 6.3 The ECCT Act inserts 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 2015 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.

Why was this approach taken to change the law?

- 6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

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

8. Applicable Guidance

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

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument as the change did not warrant an impact assessment. However, we have considered the overall impact of commencing the 2023 Act during Bill passage rather than preparing separate assessments for each statutory instrument in this package. The full list of impact assessments can be found at this link:

<https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-impact-assessments>.

- 9.2 An impact assessment has been drafted for the cryptoassets - https://assets.publishing.service.gov.uk/media/63d27043e90e071baeb3a7c2/b_Cryptoassets_IA_Jan_2023_-_signed.pdf. All benefits are monetised. Total benefits are estimated in a range of £107.6 to £1,721.5 million (PV), with a central estimate of £430.4 million (PV) over 10 years. All the benefits fall to the public sector and are derived from asset recovery receipts. The data and assumptions surrounding cryptoassets are limited due to the technology being relatively new and rapidly changing. It is also sensitive, and many figures and police data are not suitable for the public domain.

Impact on businesses, charities and voluntary bodies

- 9.3 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.4 The legislation does not impact small or micro businesses.
- 9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is 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. In line with Government requirements, the ECCT Act will be formally reviewed within 5 years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

12.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).