EXPLANATORY MEMORANDUM TO

THE CRIMINAL FINANCES ACT 2017 AND ECONOMIC CRIME AND CORPORATE TRANSPARENCY ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

2024 No.

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 Dan Jarvis, Minister for Security 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 Amelia Smith (email: Amelia.smith37@homeoffice.gov.uk) in the Criminal Finances and Asset Recovery Unit at the Home Office 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 The Proceeds of Crime Act 2002 ("POCA") provides law enforcement with powers to investigate and recover the proceeds of crime. This includes powers to recover assets derived from unlawful conduct (Part 5 of POCA), criminal powers that require an individual to pay back their proceeds of crime (Parts 2 to 4 of POCA) and powers to carry out investigations (Part 8 of POCA).

4.2 The Economic Crime and Corporate Transparency Act 2023 ("ECCT Act") introduced changes to better enable POCA powers to be used in cryptoasset cases. This included reforms to Part 8 of POCA which provides law enforcement with powers to investigate and gather information on assets suspected of being obtained through or intended for use in unlawful conduct.

4.3 A small number of additional consequential amendments are required to Part 8 for cryptoasset investigations and other asset forfeiture investigations to ensure that search and seizure powers can be exercised for the purposes of investigating criminal cryptoassets. These Regulations make amendments to POCA consequential on the ECCT Act, and one amendment consequential on the Criminal Finances Act 2017 ("CFA"). This will provide clarity for law enforcement exercising the powers under this Part of POCA.

Where does the legislation extend to, and apply?

4.4 Regulation 1 and regulation 2(1) and (2) extend to the United Kingdom. Regulation 2(3) and (4) extends to England and Wales and Northern Ireland. Regulation 2(5) and (6) extends to Scotland.

4.5 Regulation 1 and regulation 2(1) and (2) apply to the United Kingdom. Regulation 2(3) and (4) apply to England and Wales and Northern Ireland. Regulation 2(5) and (6) applies to Scotland.

5. Policy Context

What is being done and why?

5.1 Recent law enforcement activity has seen a huge rise in the use of digital technologies and cryptoassets which has provided criminals with new methods to conduct crime and deposit gains from criminality. This rise has required the development of a bespoke regime to seize and recover cryptoassets that are suspected of being obtained through, or intended for use in, criminal conduct.

5.2 The ECCT Act introduced changes to better enable POCA powers to be used in cryptoassets cases. The ECCT Act:

a) Reformed the criminal confiscation powers in Parts 2 to 4 of POCA 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.

b) Inserted a new non-conviction civil forfeiture scheme into Part 5 of POCA so that cryptoassets can be recovered swiftly in the magistrates' or sheriff court.

c) Amended the investigatory powers in Part 8 of POCA to enable the use of existing powers in "cryptoasset investigations".

5.3 Additional consequential amendments are required to sections 341, 352, 353, 387 and 388 of POCA so that search and seizure powers are exercisable and effective for the purposes of cryptoasset investigations. This instrument makes amendments to POCA consequential on the ECCT Act and CFA so that the Part 8 investigative powers include references to the relevant types of asset in the relevant sections. This is to ensure that the powers function properly and in accordance with the policy intention behind the provisions.

5.4 This legislation is complex, and a number of additional consequential amendments have been identified as being required to Part 8 of POCA to ensure that the powers can be exercised as intended in cryptoasset investigations. Specifically:

a) Section 341 of POCA: Under section 341(3), forfeiture powers are excluded from the definition of a civil recovery investigation. The subsection is amended to ensure that cryptoasset investigations do not fall under the definition of a civil recovery investigation.

b) Sections 352 and 353 of POCA: These sections define an "appropriate person" for the purposes of exercising search and seizure warrants. This instrument adds a definition of appropriate person for the purposes of investigations into cryptoassets.

c) Section 353 of POCA: This section lists the conditions to exercise search and seizure warrants. The second set of conditions requires that there is material on the premises specified in the application for the warrant and that the material falls

within subsections of certain types of investigations. Cryptoasset investigations are not on this list meaning that property related to cryptoasset investigations would not be considered materials on the premises that would give reasonable grounds for using a search and seizure warrant. This instrument amends this section so that the conditions for the exercise of search and seizure warrants includes cryptoassets.

d) Section 387 of POCA: This section specifies that sheriffs in Scotland act in the exercise of their civil jurisdiction when issuing certain search warrants. This instrument amends this provision by adding reference to cryptoasset investigations into that provision to ensure that search warrants are exercisable for cryptoasset investigations.

e) Section 388 of POCA: This section contains the same omission as (c) in Scotland. This instrument amends this provision to ensure that the conditions for the exercise of search and seizure warrants in Scotland include cryptoassets.

What was the previous policy, how is this different?

5.5 Cryptoassets present a novel challenge to law enforcement in that they do not neatly operate like cash or other tangible property, which can be seized without the cooperation of the owner, but retain certain other qualities such as owner anonymity. This has made cryptoassets cases particularly difficult to investigate and enforce using existing POCA powers.

5.6 Prior to the ECCT Act, no provisions in POCA were specifically designed for the investigation and recovery of cryptoassets. The ECCT Act amended POCA to enable law enforcement to apply POCA powers more effectively to cryptoassets cases.

6. Legislative and Legal Context

How has the law changed?

6.1 The Secretary of State makes these Regulations in exercise of the powers conferred by section 54(1) and (5) of the Criminal Finances Act 2017 and section 216(1) and (2) of the ECCT Act.

6.2 Regulation 2(2) amends section 341(3) of POCA to ensure that cryptoasset investigations (a type of investigation introduced by the ECCT Act), do not fall under the definition of a 'civil recovery investigation' as defined in section 341(2) of POCA. This ensures clarity over which Part 8 powers are intended to be exercised for each investigation to ensure that powers are used proportionately.

6.3 Regulation 2(3) amends section 352(3) of POCA, which details what the application for a search and seizure warrant must specify. It adds references to subsections (7C) to (7H) of section 353 which deal with detained property investigations, frozen funds investigations and cryptoasset investigations. This amendment ensures that search and seizure warrants can be sought in relation to cryptoasset investigations.

6.4 Regulation 2(3) also amends section 352(5) of POCA to define an 'appropriate person' for the purposes of a cryptoassets investigation in England and Wales and Northern Ireland. Regulation 2(4)(d) makes an equivalent amendment to section 353(10) of POCA. Section 352(5) defines which agencies have appropriate persons that can exercise search and seizure powers for which investigations. The amendment defines an 'appropriate person' for the purposes of a cryptoasset investigation in England and Wales and Northern Ireland.

6.5 Regulation 2(4) further amends section 353 by inserting new subsections (7G) and (7H) to specify the conditions required to issue search and seizure warrants in relation to cryptoassets in England and Wales and Northern Ireland. Regulation 2(6)(a) and (b) inserts the equivalent new subsections into section 388 of POCA to specify the conditions required for the exercise of search and seizure warrants in Scotland.

6.6 Regulation 2(5) amends section 387(2) of POCA. It adds reference to cryptoasset investigations into that provision which specifies that sheriffs in Scotland act in the exercise of their civil jurisdiction when issuing certain search warrants.

Why was this approach taken to change the law?

6.7 This is the only possible approach that enables the consequential amendments to be addressed.

7. Consultation

Summary of consultation outcome and methodology

7.1 The amendments are consequential and technical in nature and therefore no public consultation has been carried out.

8. Applicable Guidance

8.1 The Codes of Practice[1] issued by the Secretary of State and Attorney General, provides guidance and operational requirements on the use of investigation powers.

8.2 The Proceeds of Crime Centre (part of the National Crime Agency)[2], which has responsibility for the training, monitoring and accreditation of financial investigators under section 3 of POCA, will provide necessary guidance as appropriate.

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 ECCT Act during the Bill's passage rather than preparing separate assessments for each statutory instrument in this package.[3]

9.2 All benefits are monetised. Total benefits are estimated in a range of £107.6 to £1,721.5 million, with a central estimate of £430.4 million 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.

[1] https://www.gov.uk/government/collections/proceeds-of-crime-act-2002-codes-of-practice
[2] https://www.nationalcrimeagency.gov.uk/contact-us/13-proceeds-of-crime-centre

[3] https://bills.parliament.uk/publications/47792/documents/2815

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 This instrument will not be subject to formal review as the changes it makes are essentially consequential and technical. The Home Office will monitor the use of amendments introduced by the ECCT Act with key stakeholders by hosting feedback sessions every three months. In line with Government requirements, the ECCT Act will be formally reviewed within five 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 The Minister for Security has made the following statement regarding Human Rights:

"In my view the provisions of The Criminal Finances Act 2017 and Economic Crime and Corporate Transparency Act 2023 (Consequential Amendments) Regulations 2024 are compatible with the Convention rights."

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").