EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 AND TERRORISM ACT 2000 (CERTAIN INFORMATION ORDERS: CODE OF PRACTICE) REGULATIONS 2024

2024 No. XX

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. Purpose of the instrument

2.1 This instrument is made under the Proceeds of Crime Act 2002 (c. 29) ("POCA") and the Terrorism Act 2000 (c. 11) ("TACT"). It brings into force one new code of practice providing guidance and procedural requirements for the exercise of certain powers under POCA and TACT.

2.2 The new code is required due to amendments made to both POCA and TACT by the Economic Crime and Corporate Transparency Act 2023 (c. 26) ("the ECCT Act"), which relate to new powers for law enforcement to request information. The code of practice is being brought into force by this instrument and governs the use of these powers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt. Hon. Tom Tugendhat, has made the following statement regarding Human Rights:

"In my view, the provisions of the following instrument are compatible with the Convention rights: the Proceeds of Crime Act 2002 and Terrorism Act 2000 (Certain Information Orders: Code of Practice) Regulations 2024".

6. Legislative Context

6.1 This instrument brings into operation one new code of practice concerning the use of certain "information order" powers in Part 7 of POCA and Part 3 of TACT. These enable certain law enforcement officers to apply to a court to seek information from businesses in the "regulated sector" (as defined in Schedule 9 to POCA and Schedule 3A to TACT) to assist in tackling money laundering and terrorist financing.

6.2 Powers known as "further information orders" under each of those Acts were first introduced by the Criminal Finances Act 2017 (c. 22) and have now been expanded and re-named "information orders" in amendments made by the ECCT Act. The ECCT Act amendments include a new duty on the Secretary of State to issue a code of practice about the making of certain information orders under the revised powers and enable a single code to be issued under both POCA and TACT.

7. Policy Background

What is being done and why?

7.1 The ECCT Act amends both Part 7 of POCA and Part 3 of TACT to create additional information order powers to support the National Crime Agency's (NCA's) operational and strategic analysis of information that is relevant to money laundering or suspected money laundering and/or terrorist financing or suspected terrorist financing.

7.2 The new code of practice brought into force by this instrument provides guidance for NCA officers on the appropriate use of these powers and applies UK-wide.

7.3 The code of practice issued under section 339ZL of POCA and section 22F of TACT provides guidance to NCA officers exercising their functions under those Acts and establishes procedural requirements to ensure that the functions concerned are exercised lawfully, proportionately, consistently and in a focused manner. The code is also of interest to persons who are the subject of the powers.

7.4 The code includes detailed and clear explanations of the powers and the legal requirements that must be met before these powers are exercised. It sets out guidance on how to consider those legal requirements, on balancing the need for using intrusive powers against the interference with a person's privacy or possessions, and what further issues should be considered when using the powers. The code also contains direct operational guidance on procedural requirements in relation to various aspects of the actual use of the powers.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 A consolidation will not be taking place.

10. Consultation outcome

10.1 This new code of practice was subject to a five-week public consultation from 16th May to 20th June 2023. See the following link for the consultation document: Draft codes of practice issued under POCA 2002 and the Terrorism Act 2000 - GOV.UK (www.gov.uk)

10.2 Four responses were received from:

- UKFIU (UK Financial Intelligence Unit within the National Crime Agency (NCA))
- Jonathan Hall KC (Independent Reviewer of Terrorism Legislation)
- The Wales Safer Communities Network (WSCN)

- UK Finance

10.3 The responses were generally supportive of the code; however, there were some suggestions to assist with ensuring the guidance is as clear as possible.

10.4 UKFIU had previous input into the drafting of the information order code and confirmed they did not have further comments in response to the consultation.

10.5 The Independent Reviewer of Terrorism Legislation suggested amending the code to ensure that the application to the relevant court from the authorising officer explicitly demonstrated how it meets the statutory requirements. This suggestion has been actioned. He also suggested the inclusion of non-exhaustive examples to demonstrate scenarios in which an information order might be sought. The code has been updated to include such examples. He also noted a misplaced reference to 'seizure' which has also been removed from the revised code.

10.6 The WSCN suggested including a timescale for how soon the code will be updated after a judicial decision to make any legislative changes. This has not been included in the code as timescales will vary according to parliamentary timings. The WSCN also suggested including appropriate actions for those under the age of 18. This suggestion has not been actioned as it is already included under the 'General provisions' section of the code.

10.7 UK Finance suggested including guidance on how information orders fit in with other investigative orders under Parts 8 and 11 of POCA. We are of the view that this would not be appropriate as the powers in Part 8 and 11 are separate to the powers in this code and are covered in their respective codes. UK Finance felt that the role of the Financial Intelligence Unit (FIU) within the NCA in making an application for an information order was unclear and should be detailed in the code. Therefore, we have included some non-exhaustive examples that demonstrate the circumstances in which the FIU function of the NCA might make an application for an information order in these circumstances.

11. Guidance

11.1 The code of practice brought into operation by this instrument contains guidance and operational requirements as to the use of the powers to which it relates.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as 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. See the following link for the impact assessment: Economic Crime and Corporate Transparency Bill 2022: impact assessments - GOV.UK (www.gov.uk)

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring and review

14.1 The approach to monitoring of this legislation is that codes of practice are reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to POCA or TACT, which require a revised or new code of practice to be produced.

15. Contact

15.1 Holly Brennan at the Home Office (email: Holly-Anne.Brennan@homeoffice.gov.uk) can answer any queries regarding these instruments.

15.2 Tom Bell, Deputy Director for Criminal Finances and Asset Recovery, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Tom Tugendhat at the Home Office can confirm that this Explanatory Memorandum meets the required standard.