EXPLANATORY MEMORANDUM TO

The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order (Northern Ireland) 2016

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the Proceeds of Crime Act 2002 (c. 29) and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. This Order provides that a code of practice entitled "Code of Practice issued under section 293A of the Proceeds of Crime Act 2002: Recovery of Cash: Search Powers (Northern Ireland)" comes into operation on 1st March 2016.

3. Background

3.1. Codes of practice are made under the Proceeds of Crime Act 2002 ("POCA") as guidance to officers exercising POCA functions to ensure that the functions are exercised lawfully. The codes are also of interest to persons who are the subject of the powers. The codes should be made available where the powers are likely to be used, for example in police stations.

3.2. The Department of Justice is responsible for bringing forward distinct Northern Ireland codes of practice. Guidance on the operation of POCA powers in Northern Ireland was covered by codes of practice issued by the Secretary of State up to the date of the coming into operation of three new Northern Ireland codes. As well as the code related to this Order, two additional codes are being brought into operation on the same date - a code entitled "Code of Practice issued under section 195T of the Proceeds of Crime Act 2002: Search, Seizure and Detention of Property (Northern Ireland)" and a code entitled "Code of Practice issued under section 377ZA of the Proceeds of Crime Act 2002: Investigations (Northern Ireland)".

3.3. The codes of practice take account of amendments to POCA, principally made by the Policing and Crime Act 2009 ("the 2009 Act") (c. 26), the Crime and Courts Act 2013 ("the 2013 Act") (c.22) and the Serious Crime Act 2015 ("the 2015 Act") (c. 9) to extend certain existing functions and create new functions. Amendments not yet in force in Northern Ireland at the date of the coming into operation of the new codes of practice will be commenced on that date. This is to bring the POCA regime in Northern Ireland up to date and into line with England, Wales and Scotland, subject to jurisdicional variations.

3.4. The "Code of Practice issued under section 293A of the Proceeds of Crime Act 2002: Recovery of Cash: Search Powers (Northern Ireland)" ("the section 293A code") provides guidance on the exercise of functions under POCA as further detailed in paragraphs 3.5 to 3.8 below:

3.5. Chapter 3 of Part 5 of POCA provides for the search, seizure and detention of cash which is reasonably suspected of having been obtained through unlawful conduct or of being intended for use in such conduct, and for the forfeiture of such cash, in the United Kingdom.

3.6. Section 289 of POCA, which contains the power to conduct searches, was amended by section 63 of the 2009 Act so that searches can be conducted of vehicles as well as of persons and of premises. This provision was commenced in England and Wales on 1st June 2015, but not in Northern Ireland. The provision will be commenced in Northern Ireland on the same date as the code of practice is brought into operation by this Order and the code of practice reflects the change.

3.7. The section 293A code applies to a constable or an accredited financial investigator exercising the functions in Northern Ireland.

3.8. A code of practice issued under section 292 of POCA applies to officers of Revenue and Customs and immigration officers exercising the functions in England, Wales, Scotland and Northern Ireland and to accredited financial investigators and constables in relation to the exercise of functions in England and Wales only.

4. Consultation

4.1. A draft of the section 293A code was subject to a twelve week public consultation from 11 August 2015 to 2 November 2015 (see https://www.dojni.gov.uk/consultations/codes-practice-issued-under-proceeds-crime-act-2002). Four substantive consultation responses were received. The Department of Justice considered the representations made and modified the draft code, where appropriate.

5. Equality Impact

5.1. The Department of Justice considered its responsibilities under section 75 of the Northern Ireland Act 1998 and carried out an Equality Impact Screening exercise on the draft codes of practice prior to consultation. It was concluded that a full Equality Impact Assessment was not required. No equality issues were identified in the screening exercise or in the responses to the consultation.

6. Regulatory Impact

6.1. There is no impact on business, charities or voluntary bodies. An impact assessment has not been prepared for this Statutory Rule.

7. Financial Implications

7.1. The impact on the public sector is minimal. The National Crime Agency is tasked with managing a training programme to cover all of the amendments to POCA to date and the codes of practice will be one component of that programme. The overall cost of the training is likely to

be less than £5,000 for the United Kingdom and it is coordinated by the Home Office.

8. Section 24 of the Northern Ireland Act 1998

8.1. In the view of the Department of Justice the provisions of the Order and the section 293A code are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Equivalent codes of practice for England and Wales are made by the Secretary of State and for Scotland by Scottish Ministers. Codes made by the Secretary of State also cover the use of POCA powers in Northern Ireland by reserved bodies, such as the National Crime Agency and HM Revenue and Customs.

10.2. A separate code, issued under section 377A of POCA, has been prepared by the Attorney General and the Advocate General for Northern Ireland to provide guidance on the use of investigative powers of prosecutors under POCA in England and Wales and Northern Ireland and, along with four POCA codes made by the Secretary of State, will come into operation on the same date as the Northern Ireland codes.

10.3. As POCA is a United Kingdom-wide Act, and to ensure consistency of approach and language across jurisdictions, the Northern Ireland codes closely follow the equivalent codes for England and Wales, with appropriate adaptations.

11. Additional Information

11.1. The section 293A code will be reviewed should issues arise as a matter of its operation in practice, but also where amendments are made to POCA which require a revised or new code of practice to be produced. Any revised or new code of practice must be consulted on.