EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIVE POWERS OF PROSECUTORS: CODE OF PRACTICE) ORDER 2024

2024 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This Order is made under the Proceeds of Crime Act 2002 (c. 29) ("POCA") and brings into operation on 26th April 2024 a revised code of practice providing guidance and procedural requirements for the exercise of certain functions under POCA.

2.2 The revised code is required due to amendments made to POCA by the Economic Crime (Transparency and Enforcement) Act 2022 (c. 10) ("EC(TE) Act") and the Economic Crime and Corporate Transparency Act 2023 (c. 56) ("ECCT Act").

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 extent of this Order (that is, the jurisdiction(s) which the Order forms part of the law of) is England and Wales and Northern Ireland.

4.2 The territorial application of this Order (that is, where the Order produces a practical effect) is England and Wales and Northern Ireland.

5. European Convention on Human Rights

5.1 The Solicitor General, Robert Courts MP, has made the following statement regarding Human Rights:

"In my view, the provisions of the Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order brings into operation a revised code of practice for prosecutors in England and Wales and Northern Ireland. This code replaces the earlier code of practice issued under section 377A of POCA on 28th June 2021 (S.I. 2021/747).

6.2 POCA provides powers to recover the proceeds of crime. The operation of certain powers within POCA are subject codes of practice issued by the Home Secretary, the Attorney General and the Advocate General for Northern Ireland, the Department of Justice Northern Ireland, and Scottish Ministers.

6.3 Part 8 of POCA concerns investigation powers which may be used to support a financial or asset recovery investigation in the United Kingdom. Chapter 2 of Part 8 applies to England and Wales and Northern Ireland. These powers include the making of Unexplained Wealth Orders ("UWOs") under provisions introduced by the Criminal Finances Act 2017.

6.4 Section 377A of POCA requires that the Attorney General and the Advocate General for Northern Ireland ("the Attorney General") make a code of practice as to the exercise by the Director of Public Prosecutions, the Director of the Serious Fraud Office, the Director of Public Prosecutions for Northern Ireland, and officers of the Serious Fraud Office, of the powers they have under Chapter 2 of Part 8 of POCA.

6.5 The Law Officers Act 1997 (c. 60) enables any functions of the Attorney General to be exercised by the Solicitor General.

6.6 Amendments to Part 8 of POCA have been made by the EC(TE) Act and the ECCT Act, which have required the code of practice to be revised.

6.7 Part 2 of the EC(TE) Act amends Part 8 of POCA to make various changes to the UWO regime.

6.8 Part 4 of the ECCT Act amends POCA to explicitly apply criminal and civil asset recovery powers to cryptoassets. Section 179 of, and Schedule 8 to, the ECCT Act amend Parts 2, 3 and 4 of POCA to make provision in connection with cryptoassets and confiscation orders. Section 180 of, and Schedule 9 to, the ECCT Act amend Part 5 of POCA to make provision for a civil recovery regime in relation to cryptoassets. Part 1 of Schedule 9 to the ECCT Act inserts four new Chapters, Chapters 3C to 3F, into Part 5 of POCA. Paragraph 8 of Part 2 of Schedule 9 to the ECCT Act amends Part 8 of POCA to make various consequential amendments to reflect the insertion of new Chapters 3C to 3F into POCA.

Related instruments

6.9 This Order is linked to three other instruments that bring into force five other codes of practice issued by the Home Secretary. The first is The Proceeds of Crime Act 2002 (Search, Recovery of Cryptoassets and Investigations: Codes of Practice) Regulations 2024. This brings into force one new code of practice and two revised codes of practice due to the amendments made to POCA by the EC(TE) Act and ECCT Act. These codes are:

(i) Code of Practice issued under section 47S of the Proceeds of Crime Act 2002: Search, Seizure and Detention of Property (England and Wales)

(ii) Code of Practice issued under section 303Z25 of the Proceeds of Crime Act 2002: Recovery of Cryptoassets - Search Powers

(iii) Code of Practice issued under section 377 of the Proceeds of Crime Act 2002: Investigations

6.10 The second is The Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2024. This brings into force a revised Code of Practice for Officers Acting under Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 ("ACTSA"). The revised code is required as a result of amendments to ATCSA made by the ECCT Act.

6.11 The third is the Proceeds of Crime Act 2002 and Terrorism Act 2000 (Certain Information Orders: Code of Practice) Regulations 2024. This brings into force a new

Code of Practice issued under section 339ZL to the Proceeds of Crime Act 2002 and section 22F to the Terrorism Act 2000 about certain Information Orders. The new code is required as a result of amendments to POCA and the Terrorism Act 2000 made by the ECCT Act.

7. Policy background

What is being done and why?

7.1 The EC(TE) Act and the ECCT Act deliver a suite of wide-ranging reforms to tackle economic crime, terrorist financing, and improve transparency over corporate entities. These provisions will bear down on kleptocrats, criminals and terrorists who abuse our financial system, strengthening the UK's reputation as a place where legitimate business can thrive, whilst driving dirty money out of the UK.

7.2 The EC(TE) Act reformed and strengthened the UK's UWO regime to expand the scope of UWOs and to increase and reinforce operational confidence in using UWO powers.

7.3 The ECCT Act amends both criminal confiscation powers in Parts 2, 3 and 4 of POCA and civil recovery powers in Part 5 of POCA to enable enforcement agencies to more effectively tackle criminal use of cryptoassets. These reforms will enable officers to seize cryptoassets, and other property, during the course of an investigation without first having arrested someone for an offence; enable officers to seize cryptoasset-related items; and enable the courts to better enforce unpaid confiscation orders against a defendant's cryptoassets. They also bring cryptoassets within the scope of civil forfeiture powers in Part 5 of POCA. They ensure that forfeiture powers are accompanied by supplementary investigative powers in Part 8 of POCA, similar to investigatory powers that exist to support the forfeiture of cash, listed assets and funds in certain accounts.

7.4 Codes of practice are made under POCA to provide guidance to the persons exercising relevant functions under POCA and to establish procedural requirements to ensure that the functions concerned are exercised lawfully, proportionately, consistently and in a focussed manner. The codes are also of interest to persons who are the subject of the powers.

7.5 When functions covered by the codes of practice are revised, or new functions are created, the code must be revised or a new code made as appropriate. The code issued by the Attorney General under section 377A of POCA is therefore being amended in light of the amendments to POCA made by the EC(TE) Act and the ECCT Act.

7.6 The codes include a detailed and clear explanation of the powers and the legal requirements that must be met before they are exercised. They set 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 codes require those contemplating using the powers to consider the impact on the community of their use, balanced against the public interest and the benefit the use of the powers would add to the case. The codes also contain direct operational guidance or procedural requirements in relation to various aspects of the actual use of the powers, including the time of day at, and the manner in, which they should be used. This is intended to ensure effective use of the powers is recorded and to clarify the need to justify the use of the powers thereby ensuring public and judicial accountability.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 The Attorney General's Office conducted two 12-week consultations on the revised code of practice, in tandem with Home Office consultations on related codes of practice.

10.2 The first consultation, on a revised draft of the code of practice following the amendments to POCA made by the EC(TE) Act, ran from 29th June 2022 to 21st September 2022. See the following link for the consultation document:

https://www.gov.uk/government/consultations/consultation-on-amendments-to-the-attorney-generals-code-of-practice-issued-under-section-377a-of-the-proceeds-of-crime-act-2002--2

10.3 The AGO received two responses to this consultation from criminal justice agencies, with both responses indicating they were content with the proposed revisions to the code. The Home Office received one response from a law enforcement agency to its separate consultation on a related code of practice. This proposed minor and technical changes that are relevant to the code of practice issued by the Attorney General under section 377A of POCA and, where appropriate, amendments have been made to the code.

10.4 The second consultation, on a revised draft of the code of practice following the additional amendments to POCA to be made by the ECCT Act, ran from 28th March 2023 to 20th June 2023. See the following link for the consultation document:

https://www.gov.uk/government/consultations/consultation-on-draft-code-of-practice-issued-by-the-attorney-general-under-section-377a-of-the-proceeds-of-crime-act-2002

10.5 Three responses were received to this consultation. Two were from criminal justice agencies and one from a community safety network. The Home Office received six responses to its separate consultation on five related codes of practice, four of which were relevant to the code of practice issued by the Attorney General under section 377A of POCA.

10.6 While these responses did not raise any significant concerns with the code, they proposed several amendments to improve drafting or factual clarity. These proposals have been carefully considered and, where appropriate, relevant amendments have been made to the code. This includes inserting reference to the use of investigatory powers in an international context, inserting reference to the Welsh language, removing some repetition from the code, clarifying the requirements relating to production orders in respect of cryptoasset investigations, and inserting reference to the use of secure digital recording network devices when conducting interviews. Some minor drafting amendments have also made to the code to ensure it is as clear as possible.

11. Guidance

11.1 The code of practice brought into operation by this Order contains guidance and operational requirements as to the use of the powers to which they relate.

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 because, rather than preparing separate assessments for each statutory instrument in the package, the overall impact of commencing both the EC(TE) Act and the ECCT Act has been considered. See the following link for the impact assessment on the reforms to UWOs in the EC(TE) Act:

https://bills.parliament.uk/publications/45474/documents/1584

12.4 See the following link for the impact assessment on the cryptoasset measures in the ECCT Act:

https://bills.parliament.uk/publications/47792/documents/2815

13. Regulating small business

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

14. Monitoring & review

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

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 John Foster at the Attorney General's Office (John.Foster@attorneygeneral.gov.uk) can answer any queries regarding the Order.

15.2 Kelby Harmes, Director of the Attorney General's Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, the Solicitor General, can confirm that this Explanatory Memorandum meets the required standard.