EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (SEARCH, SEIZURE AND DETENTION OF PROPERTY: CODE OF PRACTICE) ORDER 2018

2018 No. **

THE PROCEEDS OF CRIME ACT 2002 (CASH SEARCHES: CODE OF PRACTICE) ORDER 2018

2018 No. **

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS: CODE OF PRACTICE) ORDER 2018

2018 No. **

THE PROCEEDS OF CRIME ACT 2002 (RECOVERY OF LISTED ASSETS: CODE OF PRACTICE) (ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2018

2018 No. **

1. Introduction

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

2. Purpose of the instruments

2.1 These four instruments are made under the Proceeds of Crime Act 2002 (c.29) ("POCA"), and bring into force three revised codes of practice and one new code of practice providing guidance and procedural requirements for the exercise of certain functions under POCA. The revised and new codes are required because of amendments to POCA made by the Criminal Finances Act 2017 (c.22) ("CFA"). These amendments to POCA extend certain existing functions and create new functions. The commencement date of these four instruments is the date that the amendments to POCA will be brought into force, ensuring that the revised and new codes of practice come into operation at the same time as the POCA functions to which they relate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 The Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property (Code of Practice) Order 2018 – this entire instrument applies only to England and Wales.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of this entire instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provisions in relation to the relevant territory were included in an Act of the relevant devolved legislature.

3.4 Disregarding minor or consequential changes, the territorial application of the Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018 includes Scotland and Northern Ireland.

3.5 Disregarding minor or consequential changes, the territorial application of the Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018 includes Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

3.6 Disregarding minor or consequential changes, the territorial application of the Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018 includes England and Wales and Scotland.

3.7 The provisions in the CFA which have necessitated amendments to these codes and required the new code under section 303G to be produced will initially be commenced in England and Wales and Scotland only. Where a code of practice brought into force by these instruments is to apply in Northern Ireland, reference is made in the code to any provisions which have not been commenced in Northern Ireland.

4. Legislative Context

4.1 Three of the instruments bring into operation revised codes of practice (concerning the use of search, seizure and detention powers in confiscation, search powers in cash recovery and investigation powers) and the fourth introduces a new code of practice concerning a new search power available in respect of certain items of personal or moveable property. Equivalent codes can be made by the Scottish Ministers and the Department of Justice Northern Ireland in respect of the use of these powers by certain law enforcement agencies in those territories. The codes of practice provide guidance and procedural requirements for the exercise of certain functions as further detailed below.

The Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018

4.2 Sections 47A to 47S of POCA provide for search and seizure powers in England and Wales to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. “Realisable property” is defined in section 83 of POCA. Section 47C contains the seizure powers, while sections 47D to 47F contain the search powers. A code of practice is made under section 47S of POCA in relation to the use of these powers. The CFA amended a number of POCA provisions relating to these search, seizure and detention of property powers. These include extension of the powers to the Serious Fraud Office, a rationalisation of the authorisation process for civilian police staff using the powers and the extension of related obstruction offences to include obstruction of Serious Fraud Office (“SFO”) officers and immigration officers exercising relevant powers (sections 453B and 453C, inserted by sections 23 and 25 of the CFA). The existing code of practice required revision to address these amendments.

4.3 The appropriate officers who may exercise the powers are specified in section 47A of POCA. Paragraph 3 of Schedule 1 to the CFA amends section 47A to include an SFO officer. Each of the search powers in sections 47D to 47F and the seizure power in section 47C may only be exercised with appropriate approval unless, in the circumstances, it is not practicable to obtain such approval in advance. Section 47G(2) provides that "appropriate approval" is the prior approval of a justice of the peace or (if this is not practicable) of a senior officer. Section 47G(3) specifies who is a senior officer. Paragraph 4 of Schedule 1 to the CFA amends section 47G(3) to include the Director of the SFO. Section 31(2) of the CFA also amends section 47G to enable accredited financial investigators (AFIs) who are members of staff of a police force to seek approval from a senior police officer (an inspector).

4.4 The conditions for the exercise of the powers are set out in section 47B of POCA, which states that a criminal investigation or proceedings for an indictable offence must have been started, or that an application under section 19 to 22 or 27 or 28 of POCA must have been made by a prosecutor. Property may be seized from the defendant in anticipation of a confiscation order being made. If a confiscation order is made, the property may be sold in order to satisfy the confiscation order.

4.5 Section 47C contains the power for an appropriate officer to seize certain realisable property if it may otherwise be made unavailable for satisfying any confiscation order made under section 6 of POCA, or the value of the property may be otherwise diminished as a result of conduct by the defendant or any other person.

4.6 Sections 47D to 47F contain search powers, which allow an appropriate officer to conduct searches of premises, people and vehicles for property which the officer has reasonable grounds for suspecting may be found and which may be seized under section 47C.

4.7 Section 47H requires that an appropriate officer must give a written report to a person appointed by the Secretary of State in any case where either the officer seizes property under section 47C without the approval of a justice of the peace and any of the property seized is not detained for more than 48 hours, or where the search powers under section 47D to 47F are exercised without the approval of a justice of the peace but no property is seized.

4.8 The current code of practice brought into operation by The Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018 replaces the one that came into force in March 2016 (by means of S.I. 2016/207). In addition to making necessary consequential amendments, the code has also been slightly restructured to make it easier to read and understand.

The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018

4.9 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 being intended for use in such conduct, and for the forfeiture of such cash. The power to search is provided in section 289 of POCA. Section 294 of POCA contains the power to seize cash and section 295 provides that cash can be detained for an initial period of 48 hours after which time officers can apply to the magistrates' court for an order for further detention. The procedure for forfeiting the cash by order of the magistrates' court is set out in section 298, or alternatively there is a procedure for administrative forfeiture of cash in sections 297A to 297G. A code of practice is

made by the Secretary of State under section 292 of POCA in relation to the use of these powers.

4.10 The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018 brings into operation an amended code of practice which has been revised to take account of a number of changes introduced by the CFA which relate to the search, seizure and detention of cash. Section 289 lists those officers who may exercise cash search powers. Paragraph 11 of Schedule 1 to the CFA amends section 289 to include SFO officers. Section 18(4) of the CFA removes a restriction on the use of these powers by officers of Revenue and Customs in relation to "excluded matters" (this term is defined in the Commissioners for Revenue and Customs Act 2005 (c. 11)). In effect, the powers could not previously be used in relation to criminality that had historically been within the functions of Inland Revenue. Additionally, the code has been revised to take account of amendments to the definition of cash to include gaming vouchers, fixed value casino tokens and betting receipts (section 289(6) of POCA, amended by section 14(1) of the CFA). Sections 23 and 25 of the CFA establish offences relating to assault and/or obstruction in respect of SFO and immigration officers.

4.11 Section 290 of POCA provides that the powers in section 289 can only be exercised with prior approval of a judicial officer or a senior officer, except where it is not practicable to obtain prior approval. Section 290 defines the senior officers who can provide prior approval for the exercise of the powers in section 289 POCA. Section 290 is amended by paragraph 12 of Schedule 1 to the CFA to include the Director of the SFO as a senior officer for the purpose of giving prior approval for cash searches in cases in which SFO officers are exercising the power. In addition, civilian AFIs who work for police forces are now able to seek prior approval for cash searches from a senior police officer, by virtue of the amendment made to POCA by section 31(4) of the CFA. The revised code of practice reflects these two amendments.

4.12 The revised code of practice will replace the code applicable in England and Wales, Scotland and Northern Ireland brought into operation in March 2016 (see SI 2016/208). However, many of the POCA provisions amended and created by the CFA initially apply to England and Wales and Scotland only. This territorial applicability issue is made clear in the code.

The Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018

4.13 Part 8 of POCA concerns investigation powers in the United Kingdom. Chapter 2 of Part 8 applies to England and Wales and Northern Ireland, and Chapter 3 applies to Scotland. The categories of investigations for which the powers in Part 8 are available are set out in section 341 of POCA. The CFA amended some investigation powers, introduced new powers and widened the definitions of an investigation for the purposes of POCA.

4.14 Section 1 of the CFA creates, in Chapter 2 of Part 8, unexplained wealth orders (UWOs), which require the respondent to the order to provide a statement to explain the origin of assets that appear to be disproportionate to the respondent's known income, and to provide such other information in connection with the property as is specified in the order. "The respondent" is the person whom the enforcement authority thinks holds the property (see section 362A(2)(b) of POCA). The UWO is available where the respondent is a politically exposed person (as defined in section 362B(7) of POCA), or where there are reasonable grounds for suspecting that the

respondent is (or has been) involved in serious crime, or is connected to a person who is (or has been) so involved. "Serious crime" is defined in section 362B(9)(a) of POCA, and section 362B(9)(b) sets out how it is to be determined whether a person is "connected" to someone involved in serious crime.

4.15 An application for a UWO can be made to the High Court by an enforcement authority, defined by new section 362A(7) of POCA as the National Crime Agency, Her Majesty's Revenue and Customs, the Financial Conduct Authority, the Director of the SFO and the Director of Public Prosecutions. Section 2 of the CFA creates interim freezing orders, which allow for the freezing of property which is subject to a UWO, so as to prevent its dissipation. An interim freezing order may be applied for in the same proceedings as the UWO.

4.16 Section 7 of the CFA amends sections 357 and 358 of POCA to include money laundering in the range of investigations for which a disclosure order may be sought. A disclosure order is an order authorising a law enforcement officer to give notice to any person who is considered to have relevant information requiring that person to answer questions, provide information and produce documents, in connection with an investigation. Section 7 of the CFA also amends section 362 of POCA to change the application authorisation process for a disclosure order by transferring this function from a prosecutor to a senior appropriate officer in confiscation and money laundering investigations.

4.17 Paragraph 39 of Schedule 5 to the CFA amends section 341 of POCA to add detained property investigations and frozen funds investigations to the list of investigations in Part 8 of POCA. These new investigations correspond, respectively, to the new powers to forfeit listed items of personal (or moveable) property in Chapter 3A of Part 5 of POCA, and to forfeit funds in bank accounts in Chapter 3B of Part 5 of POCA. Section 19 of the CFA amends section 378 of POCA to include an officer of Revenue and Customs as appropriate officers for the purposes of civil recovery investigations. Section 20 of the CFA amends section 378 of POCA to include Financial Conduct Authority officers as appropriate officers for the purposes of civil recovery investigations. Section 18 of the CFA amends POCA so that the investigation powers are now available in relation to all criminality that is within the functions of HMRC; the powers were not previously available in relation to "excluded matters", that is criminality relating to functions that were historically the preserve of the Inland Revenue. Sections 23 and 25 of the CFA establish offences relating to assault and/or obstruction in respect of SFO and immigration officers exercising these POCA functions.

4.18 The code of practice made under section 377 of POCA applies to the exercise of functions of the following persons under Chapter 2 of Part 8 of POCA:

a) The Director of the National Crime Agency;

b) National Crime Agency officers;

c) AFIs (in England and Wales);

d) Constables (in England and Wales);

e) Officers of Revenue and Customs;

f) Immigration officers; and

g) Financial Conduct Authority officers.

4.19 Chapter 2 of Part 8 of POCA applies to England and Wales and Northern Ireland. The revised code of practice will replace the one that is applicable in relation to England and Wales and Northern Ireland issued in March 2016 (see SI 2016/209). However, many of the amendments to Part 8 of POCA made by the CFA will initially apply to England and Wales only, and this is made clear in the text of the revised code of practice.

The Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018

4.20 Section 15 of the CFA amends Part 5 of POCA (by inserting new sections 303B to 303Z) to create new powers relating to the forfeiture of certain personal (or moveable) property. These powers enable the seizure and forfeiture of items of personal property ('listed assets'), including precious metals and stones, which are suspected to be recoverable property or intended for use in unlawful conduct. Property seized under these provisions may be detained for an initial period of 48 hours, after which an order for further detention can be obtained from the magistrates' court under section 303L. The law enforcement agency can apply to the magistrates' court for an order to forfeit the property under section 303O, or alternatively the magistrates' court can refer certain complex cases to the High Court under section 303R.

4.21 'Relevant officers' may seize items defined by these provisions. Section 303C(9) defines a 'relevant officer' as an officer of Revenue and Customs, a constable, an SFO officer or an AFI. Section 303C also provides powers for relevant officers to search for certain personal (or moveable) property, including the power to search a vehicle.

4.22 Section 303E requires a relevant officer to obtain appropriate approval before any of the search powers under section 303C are exercised unless, in the circumstances, it is not practical to obtain that approval. 'Appropriate approval 'means approval from a judicial officer or (if that is not practical) a senior officer. A senior officer is defined according to the agency exercising the power (section 303E(4)).

4.23 If prior approval by a senior officer for a search is impractical, a search may be conducted but, within the terms of the code, the officer conducting the search should explain the reasons for the search, together with reasons for not obtaining approval, to a senior officer as soon as reasonably practical and in any event no later than 24 hours following the exercise of the power. If a search under section 303C is conducted without prior judicial approval, regardless of whether senior officer approval has been obtained, the relevant officer must prepare a report if no listed asset is seized, or a listed asset is seized and detained for more than 48 hours. This report must be submitted to the 'Appointed Person' who is appointed by the Government to oversee the exercise of POCA search powers.

4.24 The duty to make a written report does not apply if, during the course of exercising a power under section 303C, the relevant officer seizes cash under section 294 and the cash is detained for more than 48 hours.

4.25 It is also of note that sections 23 and 25 of the CFA establish offences of assault and/or obstruction in respect of SFO and immigration officers exercising those POCA powers.

4.26 These Regulations bring into force a new code of practice under section 303G relating to the use of the power to search for seizable listed assets under section 303C.

5. Extent and Territorial Application

The Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018

5.3 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

5.4 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

The Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018

5.5 The extent of this instrument is England and Wales and Northern Ireland.

5.6 The territorial application of this instrument is England, Wales and Northern Ireland.

The Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018

5.7 The extent of this instrument is England and Wales and Scotland.

5.8 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

6.1 The Minister of State for the Home Department, Ben Wallace, has made the following statement regarding Human Rights:

"In my view, the provisions of the following instruments are compatible with the Convention rights:

a) the Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice Order 2018,

b) the Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018,

c) the Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018, and

d) the Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018".

7. Policy Background

What is being done and why

7.1 Codes of practice are made under POCA to provide guidance to the officers exercising the 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, and the codes themselves make clear that they should be made widely available, for example in police stations and border control areas, where the powers are likely to be used.

7.2 When functions covered by the codes of practice are revised or new functions are created, existing codes must be revised and new ones made as necessary.

7.3 Following amendments made by the CFA to POCA, three of the existing POCA codes have been amended to reflect those changes, as well as being restructured to make them easier to follow and one new code has been produced in relation to a new power inserted into POCA by the CFA. All the codes include detailed and clear explanation of the powers and the legal requirements that must be met before they are exercised, including the amendments made to POCA by the CFA. 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 also require an officer who is contemplating using the powers to consider the impact on the community in 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 which the powers should be used and the manner in which they should be used. This is intended to ensure effective use of the powers to be recorded and to clarify the need to justify the use of the powers ensuring public and judicial accountability.

7.4 In order to assist the Committee in understanding the policy and the operational application of the codes, the following paragraphs will give some context as to how the powers might be used and the types of cases to which they apply.

Search, Seizure and Detention of Property Code

7.5 A confiscation order can only be made after a criminal conviction. Following conviction, a court can proceed to make a confiscation order if asked to do so by the prosecution, or if the court believes it is appropriate to do so. It usually forms part of the sentencing process.

7.6 POCA contains powers to prevent a suspect from dissipating their assets during a confiscation investigation. Suspects may hide or dispose of their property when they recognise assets are at risk from future confiscation proceedings.

7.7 A restraint order can be made by the court to prevent a suspect from dealing with property, provided that the conditions set out in the statutory regime are met. A restraint order is an effective interim measure in respect of businesses and immovable property and assets such as houses, but it is less effective with portable assets such as cars, jewellery, electric goods and clothing. These assets are often of high value and are easily moved, hidden and sold. Powers contained in sections 47B to 47M of POCA were taken to address this issue by allowing for the preservation of portable assets so that they are available for sale once a confiscation order has been made.

7.8 The powers to search for, seize and detain property are intrusive and the code provides guidance on their lawful, effective and proportionate use.

7.9 In cases where the law enforcement agency is considering recovering the proceeds of crime, they may start an investigation into the financial affairs of the suspect at the same time as the criminal investigation. The financial investigation is known as a confiscation investigation, which can be lengthy depending on the complexity of the matter. The seizure of property could be important to ensure that assets are secured so that they are available to be sold once a confiscation order is made.

7.10 The code addresses the use of the search, seizure and detention powers, including the persons who may use them and the process for obtaining the necessary approval for exercising them. In the majority of cases, particularly those which have a degree of planning, it is expected that the approval of a justice of the peace or a senior officer would be obtained before the powers are used. However, there may be occasions where the need to act immediately is clear, particularly where there is a risk that property of interest will be lost.

7.11 The code of practice has been revised in accordance with changes to POCA brought about by the CFA. One change to these powers is provided in paragraph 4 of Schedule 1 to the CFA which amends section 47G(3) of POCA to include the Director of the SFO as a senior officer for the purposes of approving search and seizure powers. This is in line with the inclusion of SFO officers as appropriate officers for many of the functions under POCA. Another change is section 31(2) of the CFA which amends section 47G of POCA to enable civilian AFIs working for police forces to seek approval for exercising functions under sections 47C to 47F of POCA from a senior police officer. This simplifies the process for AFIs obtaining approval; currently AFIs are required to seek approval from another AFI of a specified grade. This is not always practicable.

7.12 The Appointed Person is another important safeguard in the use of these powers and the code provides direction on how officers should contact that person. The Appointed Person is an independent officer who oversees the use of the search and seizure powers in order to ensure that they are being used in a proportionate, effective and focussed manner. In cases where judicial approval has been given or the case progresses to further detention, there is independent oversight; a justice of the peace will have considered the facts of the case in giving his or her approval and/or a court will consider the case in granting further detention beyond 48 hours (see below). So, in all cases where the powers are exercised, their use will be considered by an independent person, whether that be a judge, justice of the peace or the Appointed Person.

7.13 An officer may seize property in time-sensitive circumstances as set out above, but after further consideration conclude that detention of the property is not justified, or that it must be returned as the legal test for ongoing retention is not met. Alternatively, the suspect may provide a reasonable explanation as to why the property should be returned. The 48 hour period allows for a suitable period between an administrative seizure and obtaining judicial approval for retention of the seized property.

7.14 The code also addresses other circumstances that could arise in the operational application of the powers including a requirement for a senior officer to formally review the continued retention of seized property every three months.

Cash search code

7.15 Chapter 3 of Part 5 of POCA provides powers to search for, seize, detain and seek the forfeiture of cash which is either the proceeds of crime or suspected of being intended for use in crime. This is a civil procedure in the magistrates' courts in respect of the cash itself; it does not require a criminal conviction.

7.16 Illicit funds may be moved using a variety of means. In response to the widening range of mechanisms employed by criminals to conceal and transport illicit wealth, section 14(1) of the CFA amends section 289(6) of POCA to include gaming vouchers, fixed value casino tokens and betting receipts in the definition of items of

'cash' which may be seized and forfeited under POCA. The code has been revised to take account of this and other changes as listed in paragraph 4.11 and 4.12, above.

7.17 The code provides guidance and procedural requirements for searches of the person, vehicles and property. This is detailed and systematic guidance and directions on considering the use of the powers, the actual search and subsequent requirements including making a record of the search (to be available to the public).

7.18 The code also provides, similar to paragraph 7.11 above, guidance and directions on communicating with the Appointed Person who oversees the use of the search powers.

7.19 The code also addresses various other issues that arise when using the powers, for example the procedure when a record of a search is made electronically. The code also emphasises the need to ensure an effective, proportionate and transparent use of the search powers.

Investigation code

7.20 Part 8 of POCA provides various investigation powers to help build a case to be taken for either the prosecution of money laundering or for the recovery of the proceeds of crime. The CFA introduces a package of measures to strengthen Part 8 as part of the Government's response to money laundering and to increase the amount of criminal assets confiscated by the state. The measures include the introduction of UWOs and interim freezing orders, the provision of civil recovery powers for HM Revenue and Customs and the Financial Conduct Authority and increasing the scope and improving access to disclosure orders.

7.21 Sections 1 to 6 of the CFA introduce a new investigative power in Part 8 of POCA. UWOs provide certain agencies with a power to apply to the High Court for an order requiring a person to explain the origin of assets that appear to be disproportionate to his or her known income. A failure to provide a full and genuine response would give rise to the presumption that the property is recoverable in any subsequent civil recovery action. The UWO power was introduced because there are cases where it may be difficult for law enforcement agencies to satisfy the evidential standard at the outset of an investigation, particularly if all relevant information is outside of the jurisdiction. The revised code specifies which law enforcement agencies can make an application for a UWO, gives detailed guidance on the grounds for an application and the manner in which an application should be made, and specifies operational requirements.

7.22 The CFA amends section 357 of POCA to allow applications for disclosure orders in money laundering investigations. A disclosure order is a powerful investigative tool that authorises a law enforcement officer to require anyone that they think has relevant information to an investigation to answer questions, provide information or produce documents. As amended, section 357 also streamlines the process for authorising applications, this function passing from prosecutors to senior appropriate officers in the applicant's own agency. The code of practice has been revised to take account of these changes.

7.23 Other amendments in the CFA to the investigation powers in POCA include extending their availability to SFO officers, an extension of the scope of confiscation investigations to better allow them to support recalculations of the amount available to satisfy a confiscation order under section 22 of POCA, and the creation of new detained property investigations and frozen funds investigations.

7.24 Each of the amendments to the POCA investigation provisions requires additional guidance in the relevant code of practice. This ensures that investigators will use their powers in a consistent, fair and focussed manner. This is particularly important in relation to the execution of search and seizure warrant. The codes ensure that full consideration is given before forced entry and search is used, and that, if used, the power is exercised in a proportionate and transparent manner, with a requirement that a full public record is made.

Recovery of listed assets code

7.25 This new code takes account of new powers inserted into POCA by section 15 of the CFA to seize (section 303J) and forfeit (section 303O) listed types of personal or moveable property ('listed assets') that are suspected to be the proceeds of unlawful conduct or intended for use in such conduct. Section 15 of the CFA inserts section 303B into POCA and defines 'listed assets' as precious metals, precious stones, watches, artistic works, face-value vouchers and postage stamps.

7.26 These items are already potentially recoverable under a recovery order under section 266 of POCA. A recovery order is made in the High Court, whereas the power under section 303O is a forfeiture power in the magistrates' court. Section 303O therefore provides a forfeiture power similar to that provided for cash under section 298 of POCA.

7.27 These new powers have been introduced in response to criminals' resourcefulness in using any means of holding and moving illicit funds. The list of items covered can be expanded to take account of any change in criminal behaviour in using different items to hold or move illicit funds. The powers will strengthen law enforcement's ability to disrupt criminal funding and allow the recovery of criminal property.

7.28 The code provides guidance on the use of search powers connected with these powers, including the process for obtaining approval for the conduct of such searches. In common with other codes, in particular the search, seizure and detention code, the code ensures that proportionality and necessity are taken into account when exercising these powers. This includes guidance on completing search records, the making of reasonable enquiries before conducting a search and having regard for respect for private and family life and the protection of property under the European Convention of Human Rights.

Consolidation

7.29 There is no need for consolidation.

8. Consultation outcome

8.1 The draft codes of practice were subject to a four week public consultation from 31 July 2017 to 25 August 2017. See https://www.gov.uk/government/consultations/proceeds-of-crime-act-2002-and-anti-terrorism-crime-and-security-act-2001-codes-of-practice

8.2 There were six responses – one from private industry (a bank), one from a non-governmental organisation and four from law enforcement agencies. Those responses were generally supportive of the codes of practice but contained certain specific suggestions or recommendations.

8.3 The private industry response requested clarification of certain terms in the legislation, and guidance as to how bank staff should deal with UWOs (where they

were aware that such an order had been made). None of these issues are suitable for the investigation code of practice which is limited to providing guidance and procedural requirements to law enforcement officers with access to the powers. Other comments by the bank were not relevant to the codes.

8.4 The NGO response made two recommendations. The first was concerned with costs and UWOs in general; but was not an issue relating to the investigation code of practice. The second was concerned with ensuring proper assurance and authorisation in the making of applications for UWOs. This does not correlate to a specific legislative requirement for the use of the relevant powers and so was not included in the code of practice, but the Home Office will recommend that relevant agencies have robust procedures to ensure that only appropriate applications are made.

8.5 The law enforcement agencies' responses were useful in highlighting minor technical drafting errors which have been corrected. One comment concerned the interaction of POCA and other legislation; this is outside the terms of the investigation code of practice and so will be dealt with in a different way.

9. Guidance

9.1 The codes of practice brought into operation by these instruments contain guidance and operational requirements as to the use of the powers to which they relate.

10. Impact

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

10.2 The impact on the public sector is minimal. The NCA's Proceeds of Crime Centre (POCC) will devise a training programme for all financial investigators covering all amendments to POCA made by the CFA. The codes of practice will be one component of that programme.

10.3 Impact assessments have not been prepared for these instruments.

11. Regulating small business

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

12. Monitoring and review

12.1 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.

13. Contact

13.1 John Woodthorpe at the Home Office, telephone: 0207 035 1913 or email: john.woodthorpe@homeoffice.x.gsi.gov.uk can answer any queries regarding these instruments.