EXPLANATORY MEMORANDUM TO

The Proceeds of Crime Act 2002 (Search, Recovery of Cryptoassets and Investigations: Codes of Practice) Order (Northern Ireland) 2024

2024 No. 0000

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 sections 195T(5), 303I(4) and 377ZA(4) of the Proceeds of Crime Act 2002 (c.29) ("the 2002 Act") and is subject to the draft affirrmative resolution procedure.

2. Purpose

2.1. The purpose of the Statutory Rule, issued under the 2002 Act, is to bring into operation (on 17th July 2024) two revised codes of practice and one new code of practice.

2.2. The revised codes are required because of amendments made to the 2002 Act by the Economic Crime and Corporate Transparency Act 2023 (c.56) ("the 2023 Act"). These amendments concern cryptoassets.

2.3. When the function covered by the code of practice is revised, or new functions are created, the existing code is replaced with a revised code. The codes are therefore being amended in light of the commencement of the 2023 Act.

2.4. These reforms will enable officers to seize cryptoassets, and other property, during the course of an investigation; enable officers to seize cryptoasset-related items; and enable 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 the 2002 Act. They ensure that forfeiture powers are accompanied by supplementary investigative powers in Part 8 of the 2002 Act, similar to investigatory powers that exist to support the forfeiture of cash, listed assets and funds in certain accounts.

2.5. The Statutory Rule provides for revised codes of practice as follows:
- a revised code of practice relating to the powers of certain officers under Part 2 of the 2002 Act to search for, seize and detain property, including cryptoassets and related items;
- a revised code of practice relating to the investigation powers of certain officers under Chapter 2 of Part 8 of the 2002 Act; and
- a new code of practice relating to the powers of certain officers under Part 5 of the 2002 Act to search for, seize and detain cryptoassets and related items. This represents the first exercise of the power to bring into operation a code of practice under section 303Z35 of the 2002 Act.

2.6. The 2021 versions of the Search, Seizure and Detention of Property code, as well as the Investigations code (brought into operation on 28 June by

S.R. 2021/170 and S.R. 2021/168) are revoked. This Statutory Rule revokes S.R. 2021/170 and S.R. 2021/168.

3. Background

3.1. The Statutory Rule will be known as The Proceeds of Crime Act 2002 (Search, Recovery of Cryptoassets and Investigations: Codes of Practice) Order (Northern Ireland) 2024. The purpose of the Statutory Rule is to bring codes of practice into operation, on 17th July 2024, under the following provisions.

3.2. (i) Section 195T of the 2002 Act - Search, Seizure and Detention of Property: The code of practice provides guidance on the use of search, seizure and detention of property powers in Northern Ireland to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. Appropriate officers who may carry out the search and seizure functions under the code are constables and accredited financial investigators.

3.3. The seizure powers allow an appropriate officer to seize certain property if it may otherwise be made unavailable for satisfying any confiscation order made under section 156 of the 2002 Act, or the value of the property may otherwise be diminished.

3.4. The search powers 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 195C of the 2002 Act.

3.5. The relevant search and seizure functions may only be carried out with appropriate approval of a lay magistrate or, if that is not practicable, of a senior officer, and section 195G of the 2002 Act specifies who is a senior officer. The code also provides guidance on the detention of property which has been seized by an appropriate officer.

3.6. The code of practice was first brought into operation in March 2016. Prior to the 2024 revision it was last updated in 2021 to account for amendments to the 2002 Act introduced by the Criminal Finances Act 2017. The 2024 version of the 195T code of practice provides guidance on the additional powers given to law enforcement authorities to enable them to more quickly and easily seize cryptoassets and crypotoasset related items which are the proceeds of crime.

3.7. (ii) Section 303Z25: This concerns the civil recovery of the proceeds of unlawful conduct. This is a new code of practice which provides guidance on the powers to search and recover cryptoassets or cryptoasset-related items. The enforcement officers in Northern Ireland subject to the guidance in the code are constables and accredited financial investigators.

3.8. (iii) Section 377ZA of the 2002 Act - Investigations: This relates to powers to conduct investigations by appropriate officers concerned with the recovery of the proceeds of criminal conduct. The code of practice applies to constables and accredited financial investigators in Northern Ireland.

3.9. The code applies to the following confiscation investigations; detained cash investigations; money laundering investigations; detained property investigations; frozen funds investigations: and, as a result of amendments to the 2002 Act made by the 2023 Act, cryptoasset investigations. The powers of investigation dealt with by this code are the powers relating to production orders; search and seizure warrants; customer information orders; account monitoring orders; and disclosure orders. The code also covers requirements for interviews under disclosure orders.

3.10. The code of practice was first brought into operation in March 2016. Prior to the 2024 revision it was last updated in 2021 to account for amendments to the 2002 Act introduced by the Criminal Finances Act 2017. The 2024 updated version of the code of practice takes account of amendments to the 2002 Act introduced by the 2023 Act.

3.11. The codes include detailed and clear explanations of the powers and the legal requirements that must be met before powers are exercised. They set out guidance on how to consider legal requirements, balancing the need for using 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 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.

3.12. The Statutory Rule also revokes two previous Orders which brought into force the 2021 Code of Practice on Search, Seizure and Detention of Property (Northern Ireland), as well as the 2021 Code of Practice on Investigations (Northern Ireland).

4. Consultation

4.1. The Department consulted on three draft codes of practice, prepared under the 2002 Act, between 15 February 2024 and 10 April 2024. This related to two updated codes of practice on Search, Seizure and Detention of Property, as well as Investigations, and one new code on Recovery of Cryptoassets and Related Items. The updates and consultation were necessary to reflect amendments to the 2002 Act introduced by the Economic Crime and Corporate Transparency Act 2023.

4.2. Only one response was received which did not have any comments of substance.

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. An Impact Assessment has not been produced for this Statutory Rule as it has no or minimal impact on business, charities or voluntary bodies.

7. Financial Implications

7.1. There are no Departmental spend implications. Costs in connection with training for the exercise of powers under the 2002 Act fall to individual agencies but are not significant. Training and accreditation and continuous professional development on the use of the relevant 2002 Act powers in England and Wales and Northern Ireland is coordinated by the Proceeds of Crime Centre housed within the National Crime Agency.

8. Section 24 of the Northern Ireland Act 1998

8.1. The proposed legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The 2002 Act is UK wide legislation. Equivalent codes of practice are in place for England and Wales, and Scotland, where appropriate for those jurisdictions, made by the Secretary of State (the Home Secretary) and Scottish Ministers.

10.2. A range of comparable codes are in place for bodies operating in the rest of the UK, as well as where they are authorised to operate in Northern Ireland. This includes officers of His Majesty's Revenue and Customs, National Crime Agency, Serious Fraud Office and the Financial Conduct Authority. A separate code 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 the 2002 Act in England and Wales and Northern Ireland, along with the codes made by the Secretary of State.

10.3. As the 2002 Act is UK wide, 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. Not applicable.