EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (ADMINISTRATIVE FORFEITURE NOTICES) (ENGLAND AND WALES AND NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2021

2021 No. 639

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) Regulations 2017 (S.I. 2017/1223) (the "2017 Regulations") in order to make provision for how senior officers in Northern Ireland are to give account forfeiture notices. An account forfeiture notice relates to money in a bank or building society in respect of which there is a reasonable suspicion that it is the proceeds of crime, or is intended to be used in unlawful conduct, and in respect of which an account freezing order under section 303Z3 of the Proceeds of Crime Act 2002 ("POCA") has been made. An account forfeiture notice informs the recipient of the senior officer's intention to forfeit the money without a court order before a magistrates' court. This instrument's extension of the account forfeiture notice provisions in the 2017 Regulations to Northern Ireland, reflects the later coming into force of account freezing and forfeiture provisions in POCA in Northern Ireland compared to England and Wales.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This statutory instrument is part of a wider package to commence the Criminal Finances Act 2017 in Northern Ireland and will come into force on the same day as eight other statutory instruments. These instruments have a shared purpose of commencing the new Criminal Finances Act 2017 ("CFA") powers in Northern Ireland.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Sections 303Z1 to 303Z19 of POCA were inserted as a new Chapter (3B of Part 5 of POCA) by section 16 of the CFA. Chapter 3B makes provision for the freezing and forfeiture of money held in accounts maintained with relevant financial institutions, where there are reasonable grounds for suspecting that that money is the proceeds of unlawful conduct) or funds which are intended for use in unlawful conduct.

6.2 Sections 303Z9 to 303Z13 set out a procedure under which frozen funds in a relevant financial institution account can be forfeited without a court order ("administrative forfeiture").

6.3 Section 303Z9(2) provides for when a senior officer may give a notice for the purpose of forfeiting money held in a frozen account. Section 303Z2(4) defines who a "senior officer" is for those purposes.

6.4 Section 303Z10(1) requires the Secretary of State to make Regulations about how an account forfeiture notice is to be given.

7. Policy background

What is being done and why?

7.1 This instrument amends the 2017 Regulations in order to make provision for senior officers in Northern Ireland to give an account forfeiture notice. These provisions are already in place for senior officers in England and Wales, this instrument will extend the 2017 Regulations to Northern Ireland.

7.2 Under the amendments made to POCA by the CFA and Financial Services Act 2021, funds held in an account maintained with a relevant financial institution can be forfeited (whether in full or in part) where there is reasonable suspicion that the funds derive from, or are intended for use in, unlawful conduct.

7.3 Before funds can be forfeited, they must be subject to an "account freezing order" made in the magistrates' court. An account freezing order can only be made where the funds under suspicion amount to at least the minimum amount (currently set at £1,000). The funds will remain frozen in the relevant account until proceedings have concluded. There are two procedures which may be used to forfeit such funds: by way of a further court order in the magistrates' court (an account forfeiture order), or by the giving of an administrative account forfeiture notice. This instrument is solely concerned with the latter.

7.4 The administrative account forfeiture provisions form part of the new account freezing and forfeiture provisions (Part 5, Chapter 3B of POCA, as inserted by the CFA). The powers are based on the procedure for administrative forfeiture of cash, in sections 297A to 297G of POCA.

7.5 Sections 303Z9 to 303Z13 of POCA make provision for a senior officer to give an account forfeiture notice to relevant persons in respect of funds frozen in an account. The senior officer must be satisfied that the funds derive from or are intended to be used in unlawful conduct.

7.6 The period for any objections must be at least 30 days and can be made by anyone in writing. If no objection is received, at the end of the period the amount of money specified in the account forfeiture notice will be forfeited. Any money forfeited under an account forfeiture notice is paid into the Consolidated Fund.

7.7 If, however, an objection is received, the funds cannot be forfeited as a result of the notice that had been given. Instead, for forfeiture to proceed, the senior officer must pursue forfeiture under the magistrates' court account forfeiture procedure. For this reason, these provisions do not prevent those wishing to contest the forfeiture from having the matter heard before the courts.

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 is not taking place.

10. Consultation outcome

10.1 The Home Office consulted with the Department of Justice in Northern Ireland on these Regulations. No further public consultation has been undertaken in relation to this specific instrument.

11. Guidance

11.1 There is no guidance planned with regard to the use of this instrument.

12. Impact

12.1 The overall impact of the commencement of the CFA in Northern Ireland on business, charities or voluntary bodies has been considered and is negligible.

12.2 The impact of the commencement of the CFA in Northern Ireland on the public sector has been considered and is negligible.

12.3 An Impact Assessment has not been prepared for this instrument as we have considered the overall impact of commencing the CFA in Northern Ireland rather than preparing separate assessments for each statutory instrument in this package.

13. Regulating small business

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

14. Monitoring & review

14.1 In conjunction with key stakeholders, the Home Office will monitor the use of this legislative change in its early stages. The approach to monitoring of this instrument

thereafter will involve consideration of the effectiveness and suitability of its provisions in the event that issues arise as a matter of their operation in practice. This instrument will not be subject to formal review.

15. Contact

15.1 Holly Brennan at the Home Office, telephone: 07823554404 or email: holly-anne.brennan@homeoffice.gov.uk can answer any queries regarding this instrument.

15.2 Maria Hannan, Deputy Director for Criminal Finances, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Williams of Trafford at the Home Office can confirm that this Explanatory Memorandum meets the required standard.