EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (APPEALS UNDER PART 2) (AMENDMENT) ORDER 2015

2015 No. 1855

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 instrument

2.1 This Order amends the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 (SI 2003/82 as amended by S.I. 2011/1242 and 2013/24) ("the principal Order"). The amendment provides for appeals to the Supreme Court in relation to compliance orders. A compliance order is an order under section 13A of the Proceeds of Crime Act 2002 (POCA) for securing compliance with a confiscation order under that Act. The new power provided by section 13A was inserted into POCA by section 7 of the Serious Crime Act 2015 (c. 9) ("SCA 2015"). The power was commenced on 1 June 2015.

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 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred by sections 89(3), 90(2) and 459(2) of POCA. The principal Order makes provision corresponding to provisions (subject to specified modifications) in the Criminal Appeal Act 1968 (c. 19) (the 1968 Act). The 1968 Act sets out the procedure for general domestic criminal appeals.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Part 2 of POCA provides a regime for the restraint and confiscation of assets. This Order amends the principal Order which provides appeals procedure in relation to confiscation proceedings in England and Wales under Part 2 of POCA. The principal Order parallels the general provisions under the 1968 Act relating to criminal appeals procedure. This amending Order reflects amendments that have been made to POCA by section 7 of SCA 2015.

7.2 Section 7 of SCA 2015 inserted new sections 13A and 13B into POCA. Section 41(7) of POCA confers on the Crown Court, when making a restraint order, the power to make such order as it believes appropriate for the purposes of ensuring that a restraint order is effective. Such a power has been used to, amongst other things, impose an overseas travel ban on the person subject to a restraint order. Section 13A confers a similar power on the Crown Court to make a "compliance order" when making a confiscation order under section 6 or at any later time on the application of the prosecutor. The Court may impose any restrictions, prohibitions or requirements as part of a compliance order that the court considers are appropriate for the purpose of ensuring that the confiscation order is effective, but it must consider whether to impose a ban on the defendant's travel outside the UK (section 13A(4)).

7.3 New section 13B provides for a right of appeal to the Court of Appeal and subsequently to the Supreme Court, by the prosecutor against a decision by the Crown Court not to make a compliance order, or by the prosecutor or person affected by a compliance order against the decision to make, vary or discharge a compliance order (including the terms of such an order as made or varied). These rights of appeal mirror those in sections 43 and 44 of POCA in respect of restraint orders. This Order provides that the existing general appeal procedures provided by the principal Order will apply to appeals relating to compliance orders. This will ensure a consistent approach in dealing with such appeals and will ensure that such appeals are subject to the same procedures as other appeals relating to confiscation proceedings.

8. Consultation outcome

8.1 The Order is purely consequential on amendments made to POCA by SCA 2015 and so there has been no consultation.

9. Guidance

9.1 Guidance is not necessary and will not be issued. The Order amends the principal Order which makes provision corresponding to provision in the 1968 Act and so judges and legal representatives will be familiar with the provisions.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 Compliance orders will be recorded on the Joint Asset Recovery Database which records all asset recovery cases. The Home Office will therefore be able to monitor their use and the appeals made against such orders.

13. Contact

13.1 Stephen Goadby at the Home Office Tel: 020 7035 1559 or email stephen.goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.