EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (APPLICATION OF POLICE AND CRIMINAL EVIDENCE ACT 1984) (AMENDMENT NO. 2) ORDER 2024

2024 No. 1029

1. Introduction

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

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

2. Declaration

2.1 Dan Jarvis, Minister for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Bell, Deputy Director for Criminal Finances and Asset Recovery at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amelia Smith (email: Amelia.smith37@homeoffice.gov.uk) in the Criminal Finances and Asset Recovery Unit at the Home Office can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to amend the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 ("2015 Order") to ensure that it covers the retention of property by law enforcement for forensic examination as part of an investigation into cryptoassets. The current Order allows retention for other purposes but not specifically forensic examination.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 The Proceeds of Crime Act 2002 ("POCA") allows the Secretary of State to make an order which applies sections 15, 16, 21 and 22 of the Police and Criminal Evidence Act 1984 ("PACE") with modifications, in relation to search and seizure warrants obtained in the course of certain categories of investigation in Part 8 of POCA. The

2015 Order was amended in 2024 but the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2024 ("the 2024 Order") omitted reference to retention for the purposes of forensic examination which is now being added.

What was the previous policy, how is this different?

5.2 A "cryptoasset" is a cryptographically secured digital form of property such as bitcoin. The rapid development and evolution of cryptoassets and other digital assets is increasingly being used by criminals to commit crime and store, deposit and launder the proceeds of their offences. The Government has a responsibility to ensure that law enforcement agencies have the right legislative framework in place to recover cryptoassets. Without it, those assets could be used to fund further criminality.

5.3 POCA provides powers for law enforcement to search for and seize assets derived from criminal conduct. Originally, this was created with cash in mind but the evolution of digital technologies has required a bespoke regime to be produced for the seizure of cryptoassets. The new powers are modelled on the existing procedure for the forfeiture of cash, listed assets and funds in accounts, and so orders and warrants under Part 8 of POCA will be obtained in the Crown Court, as in detained cash, property or frozen funds investigations.

5.4 The new powers are supported by a new type of investigation: a "cryptoasset investigation" as defined in section 341 of POCA (as amended by the Economic Crime and Corporate Transparency Act 2023 ("ECCT Act")). Part 8 of POCA contains various investigatory powers which are available to officers, which can be exercised if the officer is undertaking an investigation listed in section 341. These powers include search and seizure warrants, which can be obtained under section 352 of POCA.

5.5 Certain search and seizure warrants are issued by the Crown Court, which is a court with criminal jurisdiction in England and Wales. PACE provides safeguards and procedures in relation to the execution of search warrants issued by a court with criminal jurisdiction. The 2015 Order was introduced to ensure that the safeguards and procedures that relate to warrants relating to criminal investigations would also apply to the warrants issued by the Crown Court in relation to those POCA investigations, with any necessary modifications.

5.6 In April 2024, the 2015 Order was amended to introduce safeguards in relation to the application for, and execution of, search warrants; and the granting of access to, and retention of, property seized under search warrants to the new investigations into cryptoassets.

5.7 A modification was also made to the application of section 22 of PACE, with the effect that an officer can retain any seized property for use as evidence in those civil recovery and forfeiture proceedings. However, the 2024 Order omitted a reference to cryptoasset investigations. This meant that the Order did not cover instances where property can be retained for forensic examination as part of an investigation into cryptoassets. This Order corrects that omission so that the 2015 Order in relation to search and seizure warrants correctly covers cryptoasset investigations in line with the Government's intention. The instrument fulfils a commitment made in response to the report by the Joint Committee on Statutory Instruments published on 17 May 2024: https://committees.parliament.uk/publications/44804/documents/222512/default/.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 355 of POCA allows the Secretary of State to make an order which applies sections 15, 16, 21 and 22 of PACE with modifications, in relation to the use of search and seizure warrants sought in the course of certain categories of investigation to reflect POCA legislation. The PACE provisions deal with safeguards in relation to the application for, and execution of, search warrants; and the granting of access to, and retention of, things seized under search warrants.

6.2 In 2015, an Order was created to establish the procedures in relation to the powers. The 2024 Order amended the 2015 Order so that the relevant PACE provisions, and the modifications it makes in respect of the application of the PACE provisions, will also apply where search and seizure warrants are obtained in the new type of investigation. This Order corrects an omission made relating to section 22 of PACE to ensure that property can be retained for the purposes of a cryptoasset investigation as introduced by the ECCT Act.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The amendments are consequential and technical in nature and therefore no public consultation has been carried out.

8. Applicable Guidance

8.1 There is no guidance planned with regard to this Order specifically.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the change is technical and did not warrant an impact assessment. However, we have considered the overall impact of commencing the ECCT Act during the Bill's passage rather than preparing separate assessments for each statutory instrument in this package. The overarching assessment for the cryptoassets reforms in the ECCT Act saw all benefits are monetised. Total benefits are estimated in a range of £107.6 to £1,721.5 million, with a central estimate of £430.4 million over 10 years. All the benefits fall to the public sector and are derived from asset recovery receipts. The data and assumptions surrounding cryptoassets are limited due to the technology being relatively new and rapidly changing. It is also sensitive, and many figures and police data are not suitable for the public domain.

Impact on businesses, charities and voluntary bodies

9.2 This instrument makes no, or no significant, impact on business, charities or voluntary bodies.

9.3 The instrument does not impact small or micro businesses.

9.4 This instrument is technical so there are no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is that the 2015 Order is reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to POCA which engage the powers in PACE.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects an error in S.I. 2024/426 previously reported by the Joint Committee on Statutory Instruments.[1]

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

[1] https://committees.parliament.uk/publications/44804/documents/222512/default/