STATUTORY INSTRUMENTS

2017 No. 1222

PROCEEDS OF CRIME, ENGLAND AND WALES

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2017

Made - - - -	*6th December 2017*
Laid before Parliament	*11th December 2017*
Coming into force in accordance with article 1	

The Secretary of State makes the following Order in exercise of the powers conferred by sections 355(2) and 459(2) of the Proceeds of Crime Act 2002(**a**).

Citation, commencement and extent

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2017.

(2) This Order comes into force on 16th April 2018 so far as it relates to amendments referring to detained property investigations.

(3) Otherwise, this Order comes into force on 31st January 2018.

(4) This Order extends to England and Wales only.

Amendment of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015

2.—(1) The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015(**b**) is amended as follows.

(2) In article 2 (application of section 15 PACE), for "or a detained cash investigation" in each place where it occurs, substitute ", a detained cash investigation, a detained property investigation or a frozen funds investigation".

(3) In article 3 (application of section 16 of PACE), for "or a detained cash investigation", substitute ", a detained cash investigation, a detained property investigation or a frozen funds investigation";

(4) In article 4 (application of section 21 of PACE)—

(a) in paragraph (1), for "or a detained cash investigation", substitute ", a detained cash investigation, a detained property investigation or a frozen funds investigation";

(b) in paragraph (2), for "or detained cash investigation" substitute ", detained cash investigation, detained property investigation or frozen funds investigation";

(**a**) 2002 c. 29; relevant amendments made by section 66(6) of the Policing and Crime Act 2009 (c. 26), by paragraph 49 of Schedule 5 to the Criminal Finances Act 2017 (c. 22) and S.I. 2010/976.
(**b**) S.I. 2015/759.

(c) for paragraph (7)(c), substitute—

"(c) in paragraph (c) after "proceedings" insert "(including proceedings related to the making of a confiscation order) or any proceedings under Chapter 2, 3, 3A or 3B of Part 5 of the Proceeds of Crime Act 2002".".

(5) In article 5 (application of section 22 of PACE)—

(a) in paragraph (1), for "or a detained cash investigation", substitute ", a detained cash investigation, a detained property investigation or a frozen funds investigation";

(b) in paragraphs (2) and (3), for "or detained cash investigation" substitute ", detained cash investigation, detained property investigation or frozen funds investigation";

(c) in paragraph (3)(d), in inserted sub-paragraph (iv), for "Chapter 3" substitute "Chapter 2, 3, 3A or 3B".

Ben Wallace
Minister of State
Home Office

6th December 2017

EXPLANATORY NOTE

(This note is not part of the Order)

Section 355 of the Proceeds of Crime Act 2002 (c.29) ("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 (c. 60) ("PACE") ("the PACE provisions") with modifications, in relation to search and seizure warrants obtained in the course of certain categories of investigation in Part 8 of POCA. For the purpose of POCA investigations, search and seizure warrants may be obtained by an "appropriate person" under section 352 of POCA. 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.

The Criminal Finances Act 2017 (c. 22) ("CFA") inserted Chapters 3A and 3B into Part 5 of POCA, which contain two new forfeiture powers (the "new powers"). These provide for, respectively, the forfeiture of certain listed items of personal (or moveable) property, and the forfeiture of funds in bank or building society accounts. The new powers apply where the relevant property derives from, or is intended for use in, unlawful conduct. The new powers are supported by two new types of investigation in Part 8 of POCA – these are detained property investigations and frozen funds investigations ("the new investigations").

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 (S.I. 2015/759)("the 2015 Order") is made under section 355 of POCA, and applies the PACE provisions with modifications for search and seizure warrants obtained in confiscation, money laundering and detained cash investigations. This Order amends the 2015 Order so that the modifications it makes in respect of the application of the PACE provisions will apply to the new investigations.

This Order also introduces a new modification to the application of section 21(8) of PACE, in the context of the new investigations as well as in the context of detained cash investigations. Section 21(8) of PACE provides that the duty to grant access to, or supply a photograph or copy of, anything seized under a warrant does not arise where the officer in charge of the investigation has reasonable grounds to believe that to grant access or supply a photograph or copy would prejudice a criminal investigation or proceedings. Article 2(4)(c) of this Order extends this to civil proceedings under Chapter 2, 3, 3A or 3B of POCA (that is, in relation to the existing civil recovery and cash forfeiture powers, and in relation to the new powers).

Article 2(5)(c) of this Order makes a further modification to the application of section 22(2)(a) of PACE, to provide that material seized under a warrant in the context of the new investigations

may be retained for use as evidence in proceedings in relation to the new powers, and the existing cash forfeiture and civil recovery powers.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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£4.25

UK201712071001 12/2017 19585

http://www.legislation.gov.uk/id/uksi/2017/1222

ISBN 978-0-11-116281-1

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