EXPLANATORY MEMORANDUM TO

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2021

2021 No. 155

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 section 355(3A) of the Proceeds of Crime Act 2002 (c. 29) ("POCA") and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the Order is to amend the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Order 1989) Order (Northern Ireland) 2016 (2016 No. 33) ("the 2016 Order") to include two new types of investigation under Part 8 of the Proceeds of Crime Act 2002 ("POCA"). The 2016 Order applies certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (1989 No. 1341 (N.I. 12)) ("PACE NI"), with modifications, to search and seizure warrants (and the powers of seizure under them) obtained in Northern Ireland under section 352 of POCA, for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation. This Order applies the same PACE NI provisions to two new categories of investigation under POCA, detained property investigations and frozen funds investigations.

2.2. The purpose of the 2016 Order and this Order is to ensure that the protections and safeguards within PACE NI in relation to the exercise of powers of search and seizure are applied to a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation and a frozen funds investigation. The PACE NI provisions which may be applied with modifications under the enabling power in section 355 of POCA are Articles 17, 18, 23 and 24 only.

3. Background

3.1. POCA contains measures to enable the recovery of unlawfully held assets and includes powers to apply for search and seizure warrants under certain investigations under Part 8 of POCA.

3.2. Section 355 of POCA applies to search and seizure warrants sought for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation and powers of seizure under them. In relation to such warrants and powers, the Department of Justice in Northern Ireland may make an order which applies, in relation to Northern Ireland, Article 17 (search warrants - safeguards), Article 18 (execution of warrants), Article

23 (access and copying) and Article 24 (retention) of PACE NI. For the purpose of POCA investigations, search and seizure warrants may be obtained by an "appropriate person" under section 352 of POCA.

3.3. Provision relating to detained property investigations and frozen funds investigations was added to POCA by the Criminal Finances Act 2017 (c. 22) ("the CFA 2017") in support of two new forfeiture powers ("the new powers"). The new powers, under new Chapters 3A and 3B of POCA, respectively provide for the forfeiture of certain listed items of personal (or moveable) property ("listed assets") and the forfeiture of money held in an account maintained with a bank or building society. The new powers apply where the relevant property derives from, or is intended for use in, unlawful conduct and are intended to allow the recovery of that property.

3.4. The new powers are based on the existing cash seizure provisions in POCA and are intended to provide a mechanism by which certain listed items of property (specified under section 303B of POCA, such as precious metals and stones, watches, artistic works) and money in bank or building society accounts can be forfeited using procedures in the Magistrates' Courts, as is the case for cash forfeiture under Chapter 3 of Part 5 of POCA. The purpose of the new powers is to disrupt the storage or movement of items of value derived from criminal conduct, including across international borders, and to deter the use of UK bank accounts to hold money earned through criminal activity.

3.5. The new powers are supported by two new types of investigation – detained property investigations (relating to listed assets) and frozen funds investigations (relating to forfeiture of money in accounts) as defined in section 341 of POCA. 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 of POCA. These powers include search and seizure warrants, which can be obtained under section 352 of POCA.

3.6. PACE NI provides safeguards and procedures in relation to the execution of search warrants issued by a court with criminal jurisdiction, specifically in relation to warrants relating to a criminal investigation. Under POCA, certain search and seizure warrants are issued by the Crown Court, which is a court with criminal jurisdiction. Prior to the amendments made by the CFA 2017, this applied to warrants relating to confiscation investigations, money laundering investigations and detained cash investigations (see sections 343 and 352 of POCA). The 2016 Order ensured 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 POCA investigations, with technical modifications so that the provisions work in a POCA context.

3.7. Specifically, this Order amends the 2016 Order so that the PACE NI provisions are applied in the context of the new detained property and frozen funds investigations, with the same modifications as were made in respect of detained cash investigations under the 2016 Order. This Order applies the 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. In addition, the amendments made by this Order mean that the duty in Article 23 of PACE NI to grant access to, or supply a photograph of, seized material does not arise where the officer in charge of the POCA investigation believes that to do so would prejudice any civil recovery or forfeiture proceedings under Chapter 2, 3, 3A or 3B of Part 5 of POCA. A similar modification is made to the application of Article 24 of PACE NI, with the effect that the officer can retain any seized property for use as evidence in those civil recovery and forfeiture proceedings.

3.8. Codes of practice are issued under POCA as guidance to officers exercising POCA functions to ensure that the functions are exercised lawfully. The Department of Justice is responsible for four Northern Ireland codes of practice. The operation of POCA powers in Northern Ireland by reserved bodies, and for reserved functions, is covered by codes of practice issued by the Secretary of State. There is detailed guidance on the use of the search and seizure warrant provisions in the codes of practice and the changes made by this Order are reflected in POCA codes of practice with the coming into operation date of 28 June 2021.

3.9. The Proceeds of Crime Centre within the National Crime Agency (NCA) has responsibility to train, accredit and monitor financial investigators using powers under POCA. The Proceeds of Crime Centre will ensure that investigators are aware of all matters relating to amendments to POCA as a result of the commencement of the Part 1 provisions of the CFA 2017 in Northern Ireland and connected matters, including this Order. This will be achieved either by way of Continuous Professional Development activity and/or e-learning.

4. Consultation

4.1. There was no consultation on the Order.

5. Equality Impact

5.1. The Department of Justice considered its responsibilities under section 75 of the Northern Ireland Act 1998. No equality issues were identified in relation to the Order.

6. Regulatory Impact

6.1. There is no impact on business, charities or voluntary bodies. The impact on the public sector is minimal. POCA search warrants relating to confiscation investigations, money laundering investigations and detained cash investigations are already issued by the Crown Court and subject to this Order are available for detained property investigations and frozen funds investigations. An impact assessment has not been prepared for this Order.

7. Financial Implications

7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. In the view of the Department of Justice the provisions of the Order are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Equivalent provision was made in relation to England and Wales only under The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2017 (2017 No. 1222) which was laid before Parliament on 11th December 2017.

11. Additional Information

11.1. Not applicable.