EXPLANATORY MEMORANDUM TO

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2022

2022 No. 74

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) and 459(3) and (7A) 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 Statutory Rule is to amend the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 (S.R. 2016 No. 33) ("the 2016 Order") to correct six minor drafting errors relating to the modification of the Police and Criminal Evidence (Northern Ireland) Order 1989 (1989 No. 1341 (N.I. 12)) ("the 1989 Order") and to add a Schedule.

2.2. The new Schedule sets out, for ease of reference, how Article 17 (search warrants—safeguards); Article 18 (execution of warrants); Article 23 (access and copying); and Article 24 (retention) of the 1989 Order should be applied to warrants and search and seizure powers under POCA investigations.

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 the Act.

3.2. In relation to warrants for the purposes of confiscation investigations, money laundering investigations, detained cash investigations, detained property investigations and frozen funds investigations and powers of seizure under them, the Department of Justice may make an order under section 355(3A) of POCA which applies, in relation to Northern Ireland, Article 17, Article 18, Article 23, and Article 24 of the 1989 Order, subject to any specified modifications.

3.3. The 2016 Order applies the relevant provisions of the 1989 Order in a POCA context, 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 the investigations listed at paragraph 3.2 above. Consequently, the 2016 Order ensures that the protections and safeguards for warrants relating to criminal investigations under the 1989 Order also apply to the warrants issued by the Crown Court in relation to the designated POCA investigations, with technical modifications so that the provisions work in a POCA context.

3.4. This Order corrects six minor drafting errors in the 2016 Order relating to the modification of the 1989 Order.

4. Consultation

4.1. Given its technical nature, 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. 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. Not applicable.

11. Additional Information

11.1. Not applicable.