EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (ENFORCEMENT IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2015
2015 No. 1749

THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND ORDERS) (AMENDMENT) ORDER 2015
2015 No. 1750

THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL INVESTIGATIONS) (AMENDMENT) ORDER 2015
2015 No. 1751

THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL INVESTIGATIONS) (AMENDMENT) (NO. 2) ORDER 2015
2015 No. 1752

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

2. Purposes of the instruments

2.1 These four Orders and the Orders which they amend are made under Part 11 of the Proceeds of Crime Act 2002 ("the 2002 Act"). Part 11 provides that Orders in Council may make provision for cooperation in the investigation and enforcement of orders relating to recovering the proceeds of crime. There are separate Orders that provide for cooperation between the jurisdictions of the United Kingdom for the enforcement of court orders, and for the United Kingdom to assist overseas authorities.

2.2 These Orders are necessary because of amendments made to the 2002 Act by the Policing and Crime Act 2009 ("the 2009 Act"), the Crime and Courts Act 2013 ("the 2013 Act") and the Serious Crime Act 2015 ("the 2015 Act"). These Acts introduced various new powers by amending the provisions in the 2002 Act relating to the investigation and recovery of the proceeds of crime. The Orders being amended need to be updated in light of those amendments so equivalent powers are available in providing assistance to other jurisdictions of the United Kingdom and overseas courts and authorities.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

The Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) (Amendment) Order 2015

4.1 The Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 (SI 2002/3133) made arrangements for orders made by a court in one

United Kingdom jurisdiction under Parts 2, 3 and 4 of the 2002 Act in relation to confiscation proceedings to be enforced in the other United Kingdom jurisdictions. Amendments to the 2002 Act have created three new types of orders which may require enforcement in another jurisdiction of the United Kingdom and this amending Order provides a legal basis for this.

4.2 Sections 7, 16 and 29 of the 2015 Act amend the 2002 Act to provide for a compliance order to be made by the court that also makes the related confiscation order. This provides the court with the power to make such an order as it believes appropriate for the purposes of ensuring that a confiscation order is paid. The court is at liberty to impose any restrictions, prohibitions or requirements as part of a compliance order provided they are considered appropriate for the purpose of securing that the confiscation order is effective, but it must consider whether to impose a ban on the defendant's travel outside the United Kingdom. These provisions came into force in England, Wales and Northern Ireland on 1 June 2015; the intention is that Scottish Ministers will commence these provisions on 1 February 2016.

4.3 Sections 55, 56 and 57 of the 2009 Act amend the 2002 Act to provide for powers to search for, seize and detain property to ensure its availability to be realised for a future confiscation order. The new sections introduced into the 2002 Act include a new detention order where a court authorises continued detention of property that has been seized (see sections 47M, 127 M and 195M in respect of the three separate United Kingdom jurisdictions). These provisions came into force on 1 June 2015 in England, Wales and Scotland; the intention is that they will come into force in Northern Ireland on 1 February 2016.

4.4 Sections 58, 59 and 60 of the 2009 Act amend the 2002 Act to provide a powers for the court to order the sale of property that has been seized and detained under the powers outlined in paragraph 4.3 above. The proceeds of the sale will be used as payment towards the settlement of a connected confiscation order. These provisions came into force on 1 June 2015 in England, Wales and Scotland; the intention is that they will come into force in Northern Ireland on 1 February 2016.

The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015

4.5 Section 444 of the 2002 Act provides for the freezing of property in the United Kingdom which may be needed to satisfy overseas orders in relation to the recovery of criminal proceeds, and for the enforcement of such orders by the realisation of property in any part of the United Kingdom. The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (SI 2005/3181) made such provision corresponding to the domestic provisions in Parts 2, 3 and 4 (confiscation) and Part 5 (civil recovery) of the 2002 Act.

4.6 The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015 amends the 2005 Order to reflect the amendments made to the 2002 Act which are set out in the following paragraphs. The Amendment Order does not extend to Northern Ireland. Amendments are not made in relation to Scotland unless the corresponding provision in Part 3 of the 2002 Act has commenced.

4.7 Sections 11, 20 and 33 of the 2015 Act amended the 2002 Act in relation to restraint orders. A restraint order has the effect of freezing property that may be liable to confiscation following a criminal conviction and the making of a confiscation order. These sections

amended the provisions relating to restraint orders in two ways. Firstly, the condition for exercise of the power to make a restraint order where a criminal investigation has been started was changed from "there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct" to "there are reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct". Secondly, where a restraint order has been made in cases where there is an ongoing investigation, there is a need to regularly report to the court on the development of that investigation to ensure that the case is progressing. The provisions in the 2002 Act came into force on 1 June 2015 in England, Wales and Northern Ireland; the intention is that these provisions will come into force in Scotland on 1 February 2016.

4.8 Sections 52 to 60 of the 2009 Act amended the 2002 Act to provide that certain property that may be used in the future to satisfy a confiscation order can be detained. This is either property that has been seized under another power or property that has been seized under new bespoke powers introduced by the 2009 Act. This property can be sold to pay towards the settlement of a confiscation order. These provisions came into force on 1 June 2015 in England, Wales and Scotland; the intention is that they will come into force in Northern Ireland on 1 February 2016.

4.9 Provision is also made for compliance orders in this Order. A full explanation of compliance orders is given at paragraph 4.2 above.

4.10 Sections 5 and 28 of the 2009 Act amended the 2002 Act in relation to England, Wales and Northern Ireland in respect of the time given by a court for a defendant to satisfy a confiscation order. The expectation is that a confiscation order is paid immediately unless the defendant can show that this is impossible. The defendant can then be given extensions of time to pay up to a maximum of six months but must show the court their efforts to meet this deadline. These provisions came into force on 1 June 2015.

4.11 Sections 286A(4) and 286B(5) of the 2002 Act, as inserted by the Serious Organised Crime and Police Act 2005, provide in England and Wales for the Lord Chancellor to make regulations. These regulations control the amount of money drawn from assets that have been frozen in a civil process so as to restrict their dissipation. An enabling provision is inserted into the Order to allow for regulations to be made also in respect of "prohibition orders". A "prohibition order" is an interim order that can be obtained in a civil case in advance of a final recovery order being made and/or being forwarded to the United Kingdom for recognition and enforcement. It is anticipated that any new regulations will parallel The Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 (SI 2005/3382).

The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015

4.12 Section 445 of the 2002 Act makes provision for investigative powers to be made available in respect of overseas investigations, known as "external investigations". The domestic investigation orders and warrants are provided for in Part 8 of the 2002 Act and external investigations are defined in section 447(3) of that Act as the overseas equivalents to domestic confiscation, money laundering and civil recovery investigations.

4.13 The Proceeds of Crime Act 2002 (External Investigations) Order 2013 (SI 2013/2605) made provision equivalent to the civil recovery investigation provisions in Part 8 of the 2002

Act. These investigation powers are available in cases where the expectation that a subsequent court order to recover the proceeds of crime will be made in a civil proceeding, i.e. where there is no criminal conviction.

4.14 The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 amends the 2013 Order in relation to England and Wales and Scotland to correspond to amendments made to the 2002 Act by the 2013 Act.

4.15 Section 49 of, and Schedule 19 to, the 2013 Act amended Part 8 of the 2002 Act to allow for civil recovery investigations to be conducted against persons as well as known property. These provisions came into force in England, Wales and Scotland on 1 June 2015. The intention is that they will come into force in Northern Ireland on 1 February 2016.

The Proceeds of Crime Act 2002 (External Investigations) (Amendment) (No. 2) Order 2015

4.16 The Proceeds of Crime Act 2002 (External Investigations) Order 2014 made provision that assistance could be provided to overseas countries in relation to their equivalents of confiscation investigations. A confiscation investigation is an investigation into whether a person has benefited from a crime or the extent and whereabouts of that benefit. Such an investigation gathers evidence for the purposes of supporting an application for a court order, following a criminal conviction, to confiscate the proceeds of crime and also provides that property can be identified after a confiscation order has been made to assist in the enforcement of that order.

4.17 The effect of the Proceeds of Crime Act 2002 (External Investigations) (Amendment) (No. 2) Order 2015 is that members of staff of the Serious Fraud Office will have access to these powers and so can assist in cases where they have the expertise. The officers to whom powers are extended are those investigators who have been trained and accredited as financial investigators by the National Crime Agency, who are designated by the Secretary of State as a body whose accredited financial investigators can have access to the investigation powers in the 2002 Act and who are under the direction of either the Director of Public Prosecutions or the Director of the Serious Fraud Office.

5. Territorial Extent and Application

5.1 The extent of the four Orders is as follows –

- The Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) (Amendment) Order 2015 extends to the whole of the United Kingdom.

- The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015 extends to England and Wales and Scotland. Another Order will be required once powers in the 2002 Act are commenced in relation to Northern Ireland and Scotland.

- The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 extends to England and Wales and Scotland. Another Order will be required once powers in the 2002 Act are commenced in Northern Ireland.

- The Proceeds of Crime Act 2002 (External Investigations) (Amendment) (No. 2) Order 2015 extends to England and Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As these Orders are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Orders that are being amended provide intra-United Kingdom and international cooperation in investigating, freezing and recovering the proceeds of crime. The 2009 Act, 2013 Act and 2015 Act made a number of amendments to the equivalent domestic schemes in the 2002 Act, including in particular the introduction of a new scheme to search for, seize, detain and sell property in confiscation cases, the making of a compliance order to assist in the enforcement of a confiscation order and the extension of civil recovery powers. These amendments necessitate parallel amendments to the Orders so that the co-operation, enforcement and investigation regimes in them continue to function effectively.

8. Consultation outcome

8.1 Drafting of these Orders was developed in consultation with the Serious Fraud Office, the Crown Prosecution Service, the National Crime Agency and the Devolved Administrations. As these Orders make amendments to the cooperation powers which are equivalent to those made already in the 2009 Act, 2013 Act and 2015 Act to the 2002 Act, they are essentially consequential and technical; no public consultation has therefore been carried out.

9. Guidance

9.1 The Codes of Practice issued by the Secretary of State and Attorney General providing guidance on the use of investigation powers (see sections 377 and 377A of the 2002 Act) and the search and seizure powers (see section 47S of the 2002 Act) shall apply to the use of the relevant powers under these Orders.

9.2 The Proceeds of Crime Centre (part of the National Crime Agency), which has responsibility for the training, monitoring and accreditation of financial investigators under section 3 of the Proceeds of Crime Act 2002, will provide necessary guidance as appropriate.

9.3 These Orders make provision corresponding to amended provisions in Parts 2, 3, 4 and 8 of the 2002 Act. Investigators, prosecutors, judges and legal representatives will be familiar with the provisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for these instruments. It is of note that these Orders amend existing Orders and are equivalent to the domestic provisions in the 2002 Act. Businesses are already familiar with these.

11. Regulating small business

11.1 Small businesses will be subject to the same requirements and liabilities as they are under the operation of the domestic powers under the 2002 Act. The impact on small businesses is negligible.

12. Monitoring and reviewing

12.1 Mutual legal assistance request from overseas countries will be made through the Secretary of State. The Home Office will therefore be able to closely monitor the number of these cases and the standard of these requests with the burden they place on investigators, prosecutors, the courts and respondents to the orders made by the courts.

13. Contact

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