STATUTORY INSTRUMENTS

2021 No. 638

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021

Made - - - -	*26th May 2021*
Laid before Parliament	*2nd June 2021*
Coming into force - -	*28th June 2021*

At the Court at Windsor Castle, the 26th day of May 2021

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by sections 444, 445 and 459(2) of the Proceeds of Crime Act 2002(**a**), is pleased, by and with the advice of Her Privy Council, to order as follows:

PART 1

Introduction

Citation and commencement

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021.

(2) It comes into force on 28th June 2021.

Interpretation

2. In this Order—

the "2005 Order" means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**b**);

(**a**) 2002 c. 29. Sections 444 and 445 were amended by the Serious Organised Crime and Police Act 2005 (c. 15), section 108, the Serious Crime Act 2007 (c. 27), Schedule 8, paragraph 139, S.I. 2010/976, the Crime and Courts Act 2013 (c. 22), Schedule 8, paragraphs 149 and 150, S.I. 2014/834 and the Criminal Finances Act 2017 (c. 22), section 24 and Schedule 5, paragraph 84.

(**b**) S.I. 2005/3181; amended by S.I. 2006/594, 2008/302, 2009/2054, 2011/1242, 2013/472, 2013/534, 2013/2604, 2014/1341, 2015/1750, 2016/662, 2016/1034, 2018/1078 and paragraph 339 of Schedule 24 to the Sentencing Act 2020 (c. 17).

the "2013 Order" means the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**a**);

the "2014 Order" means the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**b**).

PART 2

Amendment of the 2005 Order

CHAPTER 1

Extension to Northern Ireland and Miscellaneous

Introduction

3. The 2005 Order is amended in accordance with this Chapter.

Serious Fraud Office powers: Northern Ireland extent

4. The amendments made by the following articles of the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018(**c**) extend to Northern Ireland—

(a) article 23 (extension of powers to the Serious Fraud Office: appropriate approval) (which amends article 17F(3) of the 2005 Order);

(b) article 24 (extension of powers to the Serious Fraud Office: definition of "appropriate officer") (which amends article 55 of the 2005 Order).

Article 213 (general interpretation)

5. In article 213(1), in the definition of "enforcement authority", for paragraph (c) substitute—

"(c) in relation to Northern Ireland, means the Financial Conduct Authority, Her Majesty's Revenue and Customs, the National Crime Agency, the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland,".

Part 5A heading

6. In the heading of Part 5A omit "in England and Wales and Scotland".

Article 213A (action to give effect to an external order)

7. In article 213A—

(a) in paragraph (1)(a) after "Wales" insert ", the Chief Constable of the Police Service of Northern Ireland";

(b) in paragraph (2)(a) after "Wales" insert "or Northern Ireland".

Article 213AA (extent)

8. After article 213A insert—

(**a**) S.I. 2013/2605; amended by S.I. 2014/834, 2015/1751, 2018/1078 and paragraph 4 of Schedule 3 to the European Union (Future Relationship) Act 2020 (c. 29).

(**b**) S.I. 2014/1893; amended by S.I. 2015/1752 and 2018/1078.

(**c**) S.I. 2018/1078. Article 2(4)(a) of S.I. 2018/1078 limited the extent of the amendments made by articles 23 and 24 to England and Wales.

"Extent

213AA. This Part extends to England and Wales, Scotland and Northern Ireland."(**a**).

Article 213D (searches: supplemental provision)

9. In article 213D(1)(d)(i), (ii) and (iii) after "Wales" insert "or Northern Ireland".

Article 213E (prior approval)

10. In article 213E—

(a) in paragraph (3)(a) after "Wales" insert "and Northern Ireland";

(b) after paragraph (8)(b) insert—

";

(c) in relation to Northern Ireland, a person appointed by the Department of Justice.".

Article 213I (detention of seized property)

11. In article 213I(4)(d) for "in England and Wales" substitute "in the part of the United Kingdom within which the property is seized".

Article 213L (forfeiture)

12. In article 213L—

(a) after paragraph (2)(a) insert—

"(aa) in Northern Ireland, a magistrates' court;";

(b) in paragraph (3)(a) after "Wales" insert "or Northern Ireland".

Article 213M (associated and joint property)

13. In article 213M(2) after "Wales" insert "and Northern Ireland".

Article 213P (articles 213L to 213O: appeals)

14. After article 213P(3)(b) insert—

";

(c) in relation to Northern Ireland, to a county court.".

Article 213S (victims and other owners)

15. In article 213S(2)(a) after "Wales" insert "or Northern Ireland".

Article 213T (compensation)

16. In article 213T—

(a) in paragraph (2)(a) after "Wales" insert "or Northern Ireland";

(b) after paragraph (6)(b) insert—

";

(**a**) Part 5A was inserted by article 30 of S.I. 2018/1078, but the effect of article 2(4) of that Order was that this amendment did not extend to Northern Ireland.

(c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000(**a**), it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.".

Article 213U (powers for prosecutors to appear in proceedings)

17. In article 213U(1) after "Prosecutions" insert "or the Director of Public Prosecutions for Northern Ireland".

Part 5B heading

18. In the heading of Part 5B omit "in England and Wales and Scotland".

Article 213X (general)

19. In article 213X(1)(a) after "Wales" insert "or Northern Ireland".

Article 213XA (extent)

20. After article 213X insert—

"Extent

213XA. This Part extends to England and Wales, Scotland and Northern Ireland."(**b**).

Article 213Y (action on receipt of an external request)

21. In article 213Y(a) after "Wales" insert ", the Chief Constable of the Police Service of Northern Ireland".

Article 213Z (action to give effect to an external order)

22. In article 213Z(a) after "Wales" insert ", the Chief Constable of the Police Service of Northern Ireland".

Article 213Z1 (application for account freezing order)

23. In article 213Z1—

(a) in paragraph (1)(a) omit "to an enforcement officer";

(b) in paragraph (1)(b) for "the enforcement officer" substitute "an enforcement officer";

(c) in paragraph (6), in the definition of "relevant court", in sub-paragraph (a), after "Wales" insert "and Northern Ireland".

Article 213Z3 (making of account freezing order)

24. In article 213Z3(2) after "of the account" insert ")".

Article 213Z5 (exclusions)

25. In article 213Z5(6)(b) for ", be made available" to the end substitute—

"—

(**a**) 2000 c. 32.

(**b**) Part 5B was inserted by article 31 of S.I. 2018/1078, but the effect of article 2(4) of that Order was that this amendment did not extend to Northern Ireland.

(i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**), or

(ii) be funded by the Legal Services Agency Northern Ireland.".

Article 213Z9 (appeals)

26. After article 213Z9(1)(b) insert—

";

(c) from an order or decision of a magistrates' court in Northern Ireland, to a county court.".

Article 213Z10 (application of money forfeited under account forfeiture order)

27. In article 213Z10(1) after "paragraph" insert "(9)(a)".

Article 213Z11 (compensation)

28. After article 213Z11(6)(b) insert—

";

(c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.".

Article 213Z12 (powers for prosecutors to appear in proceedings)

29. In article 213Z12(1) after "Prosecutions" insert "or the Director of Public Prosecutions for Northern Ireland".

CHAPTER 2

Financial Services Act 2021: "relevant financial institution"

Introduction

30. Part 5B of the 2005 Order (giving effect to external requests and orders by means of the freezing and forfeiture of money held in certain accounts) is amended in accordance with this Chapter.

New definition of "relevant financial institution" to replace references to "banks" and "building societies"

31. In—

(a) article 213X(1) (general) for "money held in bank and building society accounts (within the meaning of article 213Z1(6))" substitute "money held in accounts maintained with relevant financial institutions (within the meaning of article 213Z1(6))";

(b) article 213Z1(6) insert at the appropriate place—

""relevant financial institution" has the same meaning as in section 303Z1(**b**) of the Act;";

(c) article 213Z13 (interpretation), in the definition of "account forfeiture order", for "money in a bank or building society account" substitute "money held in an account maintained with a relevant financial institution".

(**a**) 2012 c. 10.

(**b**) Section 303Z1 of the Proceeds of Crime Act 2002 (c. 29) was inserted by section 16 of the Criminal Finances Act 2017; the definition of "relevant financial institution" was inserted in section 303Z1 by the Financial Services Act 2021 (c. 22), Schedule 12, paragraph 14.

Amendments in consequence of new definition

32. In the headings of Part 5B and Chapter 2 of Part 5B for "Bank and Building Society" substitute "Certain".

33. In the following articles for "bank or building society" substitute "relevant financial institution"—

(a) article 213X (general), paragraphs (2) and (3);

(b) article 213Y (action on receipt of an external request);

(c) article 213Z (action to give effect to an external order);

(d) article 213Z2(3) (restrictions on applications: branches in Scotland);

(e) article 213Z6(1) (restriction on proceedings and remedies);

(f) article 213Z7(9)(a) (forfeiture order).

34. In article 213Z1(6) (account freezing orders: interpretation) omit the definitions of "bank" and "building society".

35. In article 213Z13—

(a) insert at the appropriate place—

""relevant financial institution" has the meaning given in article 213Z1(6);";

(b) omit the definitions of "bank" and "building society".

PART 3

Amendment of the 2013 Order

Introduction

36. The 2013 Order is amended in accordance with this Part.

Words preceding article 1 and article 1 heading

37.—(1) For the words "GENERAL" preceding article 1 substitute—

"PART A1

Introduction"

(2) Insert as the heading of article 1 "Citation, commencement and extent".

Article 1(2) (extent)

38. For article 1(2) substitute—

"(2) Part 1 extends to England and Wales and Northern Ireland only.".

Article 2 (interpretation)

39. In article 2—

(a) in paragraph (1)(b) and (c) omit "in England and Wales,";

(b) in paragraph (11)(b) and (c) omit "(in England and Wales)";

(c) in paragraph (12), in the definition of "enforcement authority"—

(i) omit "(in relation to England and Wales)";

(ii) for paragraph (e) substitute—

"(e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland);".

Article 3 (scope of Part 1)

40. In article 3(1) and (2) omit "in England and Wales".

Article 4 (action on receipt of request in relation to an external investigation)

41. In article 4(1) and (2) omit "or (in England and Wales)".

Article 13 (search and seizure warrants)

42. In article 13(5) omit in both places it occurs "(in England and Wales)".

Article 14 (requirements where production order not available)

43. In article 14(8) omit in both places it occurs "(in England and Wales)".

Article 21A (unexplained wealth orders)

44. In article 21A—

(a) in the heading omit "(England and Wales)";

(b) in paragraph (2) omit "in England and Wales".

Article 21B (requirements for making of unexplained wealth order)

45. In article 21B—

(a) in paragraph (4)(b)(i) for "England and Wales" substitute "a part of the United Kingdom";

(b) in paragraph (8)(a)—

(i) for "in England and Wales" substitute "in a part of the United Kingdom";

(ii) for "section 2" substitute "sections 2, 2A and 3";

(iii) omit the words "(involvement" to the end.

Article 21E (statements)

46. In article 21E(2)—

(a) in sub-paragraphs (a) and (b)—

(i) for "Part 2" substitute "Part 2 or 4";

(ii) after "Wales" insert "or Northern Ireland";

(b) in sub-paragraph (c) after "1911" insert "or Article 10 of the Perjury (Northern Ireland) Order 1979(**a**)".

Article 21GA (supplementary: Northern Ireland)

47. After article 21G insert—

(**a**) S.I. 1979/1714 (N.I. 19).

"Supplementary: Northern Ireland

21GA.—(1) An application to the High Court in Northern Ireland to discharge or vary an unexplained wealth order may be made by—

(a) the enforcement authority, or

(b) the respondent.

(2) The High Court in Northern Ireland—

(a) may discharge the order;

(b) may vary the order.".

Article 21I (variation and discharge of interim freezing order)

48. In article 21I—

(a) in paragraph (6)(d) for "in England and Wales" substitute "in the part of the United Kingdom in which the interim freezing order concerned is made";

(b) in paragraph (9)(a) after "article 8" insert "or 95".

Article 21J (exclusions)

49. In article 21J(6)(b) for ", be made available" to the end substitute—

"—

(i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or

(ii) be funded by the Legal Services Agency Northern Ireland.".

Article 21M (powers of receivers appointed under article 21L)

50. In article 21M(4)(a) and (5) for "in England and Wales" substitute "(in England and Wales or, as the case may be, Northern Ireland)".

Article 46B (requirements for making of unexplained wealth order: Scotland)

51. In article 46B—

(a) in paragraph (4)(b)(i) for "Scotland" substitute "in a part of the United Kingdom";

(b) in paragraph (8)(a)—

(i) for "Scotland" substitute "in a part of the United Kingdom";

(ii) for "section 2A" substitute "sections 2, 2A and 3";

(iii) omit the words "(involvement" to the end.

PART 4

Amendment of the 2014 Order

Introduction

52. The 2014 Order is amended in accordance with this Part.

Article 1 (citation, commencement and extent)

53. For article 1(c) substitute—

"(c) extends to England and Wales and Northern Ireland.".

Article 2 (interpretation)

54. In article 2(1)—

(a) in the definition of "appropriate officer" omit "(in England and Wales)";

(b) in the definition of "enforcement authority"—

(i) omit "(England and Wales)";

(ii) for paragraph (e) substitute—

"(e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland);";

(c) in the definition of "senior appropriate officer" in sub-paragraph (ab) omit "(in England and Wales)".

Article 3 (scope of the Order)

55. In article 3—

(a) in paragraph (1) omit "in England and Wales";

(b) in paragraph (2) after "appropriate officer" insert "or enforcement authority (as the case may be)".

Part 5A heading and article 34A (unexplained wealth orders)

56.—(1) In the heading of Part 5A omit "England and Wales".

(2) In article 34A—

(a) in the heading omit "(England and Wales)";

(b) in paragraph (2)(b) omit "in England and Wales".

Article 34B (requirements for making of unexplained wealth order)

57. In article 34B—

(a) in paragraph (4)(b)(i) for "England and Wales" substitute "a part of the United Kingdom";

(b) in paragraph (8)(a)—

(i) for "in England and Wales" substitute "in a part of the United Kingdom";

(ii) for "section 2" substitute "sections 2, 2A and 3";

(iii) omit the words "(involvement" to the end.

Article 34E (statements)

58. In article 34E(2)—

(a) in sub-paragraphs (a) and (b)—

(i) for "Part 2" substitute "Part 2 or 4";

(ii) after "Wales" insert "or Northern Ireland";

(b) in sub-paragraph (c) after "1911" insert "or Article 10 of the Perjury (Northern Ireland) Order 1979".

Article 34GA (supplementary: Northern Ireland)

59. After article 34G insert—

"Supplementary: Northern Ireland

34GA.—(1) An application to the High Court in Northern Ireland to discharge or vary an unexplained wealth order may be made by—

(a) the enforcement authority, or

(b) the respondent.

(2) The High Court in Northern Ireland—

(a) may discharge the order;

(b) may vary the order.".

Article 34I (variation and discharge of interim freezing order)

60. In article 34I—

(a) in paragraph (6)(d) for "in England and Wales" substitute "in the part of the United Kingdom in which the interim freezing order concerned is made";

(b) in paragraph (9)(a) after "article 8" insert "or 95".

Article 34J (exclusions)

61. In article 34J(6)(b) for ", be made available" to the end substitute—

"—

(i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or

(ii) be funded by the Legal Services Agency Northern Ireland.".

Article 34M (powers of receivers appointed under article 34L)

62. In article 34M(4)(a) and (5) for "in England and Wales" substitute "(in England and Wales or, as the case may be, Northern Ireland)".

Article 35 (codes of practice)

63. For article 35 substitute—

"**Codes of practice**

35.—(1) A relevant code of practice applies to the functions conferred by this Order as it applies to the functions conferred by Chapter 2 of Part 8 of the Act in relation to confiscation investigations.

(2) In paragraph (1) a "relevant code of practice" means any code of practice which is in operation under any of the provisions of the Act mentioned in paragraph (3).

(3) The provisions are—

(a) section 377 (code of practice of Secretary of State etc.)(**a**);

(b) section 377ZA (code of practice (Northern Ireland))(**b**);

(c) section 377A (code of practice of Attorney General or Advocate General for Northern Ireland)(**c**).".

(**a**) Section 377 was amended by the Serious Crime Act 2007 (c. 27), Schedule 8, paragraph 114; S.I. 2010/976; the Finance Act 2013 (c. 29), Schedule 48, paragraph 17; the Crime and Courts Act 2013 (c. 22), Schedule 8, paragraph 143, Schedule 21, paragraph 37; the Criminal Finances Act 2017 (c. 22), Schedule 5, paragraph 58.

(**b**) Section 377ZA was inserted by S.I. 2010/976.

(**c**) Section 377A was inserted by the Serious Crime Act 2007, Schedule 8, paragraph 115 and amended by S.I. 2014/834 and the Criminal Finances Act 2017, Schedule 1, paragraph 24.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181) (the "2005 Order"), the Proceeds of Crime Act 2002 (External Investigations) Order 2013 (S.I. 2013/2605) and the Proceeds of Crime Act 2002 (External Investigations) Order 2014 (S.I. 2014/1893) (the "2014 Order") (together, the "relevant Orders").

The relevant Orders were made for the purpose of giving effect to overseas requests, orders and investigations into financial matters resulting from criminal conduct (external requests, external orders and external investigations, as defined in section 447 of the Proceeds of Crime Act 2002 (c. 29) (the "2002 Act")). The relevant Orders correspond to certain provisions of the 2002 Act and are made under sections 444 and 445 of that Act.

The provisions of the 2002 Act to which the relevant Orders correspond were amended by the Criminal Finances Act 2017 (c. 22) ("the 2017 Act"). The changes included new substantive powers (for example, to provide for the making of unexplained wealth orders and interim freezing orders and to provide for the freezing and forfeiture of certain moveable property or money held in bank and building society accounts). They also made changes to the agencies entitled to enforce certain provisions of the 2002 Act. These amendments were commenced in 2018, but not in relation to Northern Ireland. The amendments arising in consequence of this were made to the relevant Orders by the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078) (the "2018 Order").

This Order, in Chapter 1 of Part 2, Part 3 and Part 4, makes the amendments necessary to the relevant Orders to reflect the commencement of the amendments made by the 2017 Act to the 2002 Act in Northern Ireland. Minor corrections are also made to the relevant Orders.

Part 5B of the 2005 Order makes provision corresponding to Chapter 3B of Part 5 of the 2002 Act (as amended by the 2017 Act). This concerns powers to freeze and forfeit money held in bank and building society accounts. Part 3B of the 2002 Act was amended by the Financial Services Act 2021 (c. 22). The amendments broaden the definition of financial institutions to which these powers apply in England and Wales and in Scotland (using a new definition of "relevant financial institution", which is given a narrower meaning in relation to Northern Ireland). Chapter 2 of Part 2 of this Order makes the amendments necessary to the 2005 Order to reflect the changes to these underlying provisions to which the 2005 Order, in this respect, corresponds.

Article 63 updates references to codes of practice applied for the purposes of the 2014 Order for both England and Wales and Northern Ireland.

A full 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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