EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL INVESTIGATIONS) ORDER 2014

2014 No. 1893

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

2. Purpose of the instrument

2.1 This Order makes provision to assist an external investigation (ancillary to a criminal investigation or proceeding) by obtaining orders and warrants from the Crown Court. It contains provisions which correspond (subject to modifications) to those concerning confiscation investigations under Part 8 of the Proceeds of Crime Act 2002; namely production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders.

2.2 The investigation powers will be available in respect of overseas equivalents to confiscation investigations. A confiscation investigation is an investigation into whether a person benefited from his crime(s) 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.

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

3.1 None.

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred under sections 445 and 459(2) of the Proceeds of Crime Act 2002. It sets out how the United Kingdom may assist an external criminal investigation or proceedings brought by an overseas authority into the proceeds of criminal conduct. These investigations are for the purposes of obtaining an order to confiscate the proceeds of crime following a criminal conviction. The overseas requests to investigate that are civil in nature will continue to be dealt with through the provisions in the Proceeds of Crime Act 2002 (External Investigations) Order 2013.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales and to Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 8 of the Proceeds of Crime Act 2002 provides various powers to trace the proceeds of criminal and unlawful conduct.

7.2 The intention behind the Order is to ensure that the United Kingdom can assist an investigation by an overseas authority by obtaining orders and warrants in the United Kingdom. This might be because the proceeds of criminal conduct or evidence relating to such proceeds are located in the United Kingdom.

7.3 Requests to carry out financial investigations connected to a criminal case were previously processed using the provisions under the existing Crime (International Co-operation) Act 2003. This Act provides for evidence to be obtained for primary use in criminal prosecutions, although it could also be used in ancillary proceedings such as confiscation. There is a weakness, however, within this legislative approach in that requests for evidence which are solely in respect of the confiscation process are not covered by the Crime (International Co-operation) Act 2003 because these are not requests for evidence to be used in a criminal prosecution. This Order creates legal certainty that the UK will be able to assist in all cases.

7.4 Articles 5, 18 and 25 create new offences in England, Wales and Northern Ireland broadly equivalent to those in sections 342, 359 and 366 of the Proceeds of Crime Act 2002, namely offences of prejudicing an external investigation and failure to comply with certain requirements under a disclosure order and a customer information order. This is to ensure compliance with those investigative powers.

7.5 Government policy is that we should be able to assist overseas authorities in tracing the proceeds of criminal conduct. There are also obligations under international law and the United Kingdom is party to international agreements which require the ability to provide such investigative assistance, including the UN Convention Against Corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the recent mutual legal assistance treaty with Jordan. Section 445 of the Proceeds of Crime Act 2002, the Crime (International Co-operation) Act 2003, the Proceeds of Crime Act 2002 (External Investigations) Order 2013 and this Order delivers that policy aim in respect of financial investigations relating to criminal prosecutions.

8. Consultation outcome

8.1 Drafting of the Order was developed in consultation with the National Crime Agency and the Devolved Administrations.

9. Guidance

9.1 The Codes of Practice providing guidance on the use of investigation powers issued by the Secretary of State under section 377 of the Proceeds of Crime Act 2002 shall apply by virtue of article 35 of the Order.

9.2 The Proceeds of Crime Centre (part of the National Crime Agency), which carries out the 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. The Order makes provision corresponding to provisions in Part 8 of the Proceeds of Crime Act 2002 and so 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 this instrument. The requests that this Order covers were previously dealt with under existing legislation (Crime (International Co-operation) Act 2003). This Order provides legal certainty that all such cases can be acceded to. This instrument will not lead to an increase in cases, but will provide a new and more secure set of legal provisions. It is also of note that businesses are already subject to similar provisions under Part 8 of the Proceeds of Crime Act 2002 and so will have an understanding and processes in place to deal with investigation orders issued by the Crown Court.

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 power under Part 8 of the Proceeds of Crime Act 2002. The impact on small businesses is negligible.

12. Monitoring & review

12.1 Requests for investigative assistance will be made through the Secretary of State. The Home Office will therefore be able to closely monitor the number of cases and the standard of these requests with the burden they place on investigators, the courts and respondents to the investigation orders.

13. Contact

Stephen Goadby at the Home Office Tel: 020 7035 1559 or email: stephen.goadby@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.