EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2016

2016 No. 291

1. Introduction

1.1 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 amendments to the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425) ("the 2003 Order") which are consequential on the commencement of amendments to the Proceeds of Crime Act 2002 (c. 29) ("POCA") in Northern Ireland. The provisions making amendments to POCA are section 66 of the Policing and Crime Act 2009 (c. 26) ("PCA 2009"), the commencement of section 55(5) of the Crime and Courts Act 2013 (c.22), and on the making of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 (S.R. (NI) 2016 No 33)("the 2016 NI Order").

2.2 An Order has already been made in respect of England, Wales and Scotland, the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2015 (S.I. 2015/925).

2.3 The 2003 Order, as amended, sets out the procedures for enforcement of investigation orders and search and seizure warrants obtained for the purposes of certain investigations under Part 8 of POCA. Specifically, the enforcement of orders and warrants obtained in one jurisdiction of the United Kingdom which have been obtained in another jurisdiction.

2.4 It should be noted that the 2003 Order will shortly also be amended by the forthcoming Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom (Amendment) (No. 2) Order 2016. That Order will ensure that officers operating in Northern Ireland will be required to follow the code of practice which applies in respect of their activities. To achieve this, it will insert references to Codes of Practice issued by the Secretary of State under section 377 of POCA and by the Department of Justice in Northern Ireland under section 377ZA of POCA as appropriate to article 33 of the 2003 Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Investigation orders made and warrants issued by a judge of the High Court in Northern Ireland under Part 8 of POCA can be enforced throughout the United Kingdom by virtue of section 18 of the Civil Jurisdiction and Judgments Act 1982 (c. 27) (enforcement of UK judgments in other parts of UK) ("CJJA 1982"), but orders made and warrants issued by a judge of the Crown Court cannot. The 2003 Order sets out the procedures for enforcement of those orders and search and seizure warrants which have been obtained under Part 8 of POCA and do not fall within the scope of section 18 of the CJJA 1982.

4.2 Section 66 of the PCA 2009 was commenced in Northern Ireland on 1st March 2016 (see the Policing and Crime Act 2009 (Commencement No. 11, Transitional Provision and Savings) Order 2016, S.I. 2016/147). That provision transfers the jurisdiction in Northern Ireland for making production orders and issuing search and seizure warrants in relation to detained cash investigations from a judge of the High Court to a judge of the Crown Court. The 2003 Order is therefore amended so that it provides for enforcement of such Northern Ireland orders and warrants in England and Wales and Scotland, and for officers from those jurisdictions to enforce in Northern Ireland any orders made in their jurisdictions. There are savings in relation to the commencement of section 66 of the PCA 2009, such that applications for orders and warrants which are undetermined by 1st March 2016, and orders and warrants which are already in existence on that date, remain subject to the jurisdiction of a judge of the High Court. Therefore savings are made in this Order so that the amendments to the 2003 Order do not apply to such orders and warrants. This Order is (partially) made under the minor and consequential amendments and repeals and revocations power in section 112 of the PCA 2009.

4.3 The 2016 NI Order was made following commencement of section 66 of the Policing and Crime Act 2009. This Order applies, with modifications, certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.R. (NI) 1989 No 1341 (N.I. 12)) to search and seizure warrants 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, and to the powers of seizure under those warrants. It revokes and replaces the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003 (S.I. 2003/174)("the 2003 NI Order"), which has already been replaced in relation to England and Wales by the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015 (S.I. 2015/759).

4.4 This Order also makes amendments to the 2003 Order which are consequential on the commencement of section 55(5) of the Crime and Courts Act 2013 (see the Crime and Courts Act 2013 (Commencement No 1 and Transitional and Saving Provision) Order 2013 (S.I. 2013/1042). Section 55(5) (powers of immigration officers) makes immigration officers appropriate officers for the investigations dealt with by the 2003 Order (see section 378 of POCA). These provisions came into force in Northern Ireland on 25 June 2013. This Order is (partially) made under the consequential amendments power in the Crime and Courts Act 2013, see sections 58 and 59.

5. Extent and Territorial Application

5.1 The instrument extends to the United Kingdom.

5.2 The instrument applies to the United Kingdom.

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

What is being done and why

7.1 The Order makes necessary consequential amendments to ensure that the commencement of amendments to POCA are made fully effective. It provides that investigation orders and search and seizure warrants obtained in relation to detained cash investigations in Northern Ireland can be enforced in another part of the United Kingdom, and that orders and warrants obtained in other parts of the United Kingdom can be enforced in Northern Ireland. A detained cash investigation is an investigation for the purposes of determining whether cash seized and detained under POCA derives from, or is intended for use in, unlawful conduct and so can be forfeited before the magistrates' court.

7.2 Part 8 of POCA provides a range of powers, such as search and seizure powers and disclosure powers, relating to criminal and civil investigations. The powers are available to "appropriate officers" as defined in section 378 of POCA, and are exercisable by warrant or by order of the court. The 2003 Order provides the general framework in which investigation orders and warrants relating to certain investigations under Part 8 of POCA in one part of the United Kingdom, are recognised and enforced in another part of the United Kingdom.

7.3 The amendments that the Order makes take account of the changes made to POCA by section 66 of the PCA 2009, transferring the jurisdiction for making production orders and search and seizure warrants for the purposes of detained cash investigation from the High Court to the Crown Court. Previously, as these orders and warrants were issued by a court in the civil jurisdiction, they could be recognised and enforced across the United Kingdom by the CJJA1982. As the orders and warrants are now issued in a court in the criminal jurisdiction, explicit provision within the 2003 Order has to be made in order to allow for their enforcement across the United Kingdom.

7.4 The definition of "appropriate officers" for the purposes of a POCA investigation was expanded to include immigration officers by section 55(5) of the Crime and Courts Act 2013; see section 378 of POCA. Accordingly, this Order provides that immigration officers are included within the definition in the 2003 Order of "appropriate officers" for the purpose of detained cash investigations.

7.5 This Order also amends the definition of "the Police and Criminal Evidence Order for Northern Ireland" in article 2 of the 2003 Order to refer to the 2016 NI Order, as a result of the 2003 NI Order being revoked as set out in paragraph 4.3 above.

Consolidation

7.6 This is not a consolidation.

8. Consultation outcome

8.1 The terms of this Order have been agreed by the Department of Justice in Northern Ireland, the Office of the Advocate General and the Scottish Government.

9. Guidance

9.1 There is no guidance on this Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is neutral as warrants relating to a detained cash investigation are already issued in the High Court rather than (as will be the case) the Crown Court. All that is altering is the court that will issue these orders and warrants.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The operation of this Order will be reported to the Home Office.

13. Contact

13.1 Stephen Goadby at the Home Office can answer any queries regarding the instrument: Direct line telephone number 020 7035 1559 or email to Stephen.goadby@homeoffice.x.gsi.gov.uk.