EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2021

2021 No. 637

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 in Council amends the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425) ("the Investigations Order") in order to extend relevant provisions in the Criminal Finances Act 2017 ("the CFA") to Northern Ireland, as part of a package of secondary legislation. This Order is made under Part 11 (Co-operation) of the Proceeds of Crime Act 2002 ("POCA"), specifically section 443 together with section 459. Part 11 provides that Orders in Council may make provision for cooperation in the investigation and enforcement of court orders relating to recovering the proceeds of crime. This Order in Council will amend the Investigations Order to allow agencies in Northern Ireland to assist agencies in other parts of the United Kingdom (when investigating, freezing and recovering the proceeds of crime).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Investigations Order provides for recognition and enforcement procedures across the United Kingdom for court orders made, and search and seizure warrants issued, relating to certain investigations under Part 8 of POCA (investigations). The

Investigations Order only applies to court orders and warrants issued by the criminal courts. Court orders issued by the civil courts are recognised and enforced under the provisions of the Civil Jurisdictions and Judgments Act 1982 (see the amendments made to that Act by paragraph 3 of Schedule 5 to the CFA).

6.2 The Investigations Order is made under section 443 of POCA. It is of note for the purposes of this Order in Council that section 443 was amended by section 53 of, and paragraph 83 of Schedule 5 to, the CFA so that it would also apply to orders made under Part 7 of POCA (money laundering).

6.3 Amendments to POCA in the CFA introduced two new categories of orders in relation to money laundering and two new categories of investigation for which orders under Part 8 of POCA may be obtained, which may require enforcement in another jurisdiction of the United Kingdom.

Disclosure orders in money laundering investigations

6.4 Section 7 of the CFA amended the provisions in Part 8 of POCA relating to disclosure orders in England and Wales and Northern Ireland. The amendments allowed disclosure orders to be obtained in the context of money laundering investigations in England and Wales. Section 8 made an equivalent amendment to the disclosure order provisions in POCA for Scotland.

Moratorium extension orders

6.5 Section 10 of the CFA amended the provisions in POCA which apply where an entity in the regulated sector has reported a suspicion of money laundering, and has sought consent from a nominated officer, a constable or a customs officer to carry out a particular transaction. Where that consent is refused, the entity was previously prohibited from carrying out the transaction for a period of 31 days ("the moratorium period"). Section 10 of the CFA introduced a new power for a senior officer to apply to the court (the Crown Court in England and Wales and the Sheriff Court in Scotland) for an order extending the moratorium period. The court can order an extension of up to 31 days where it believes that it is appropriate to allow further time for the law enforcement agency to conduct the investigation. The court may allow up to six extensions, to a maximum of 186 days.

Detained property investigations and frozen funds investigations

6.6 Section 15 of the CFA made amendments which allowed law enforcement agencies in England and Wales and Scotland to seize items listed in that section where they have reasonable grounds to suspect that they are recoverable property, or are intended for use in unlawful conduct. Section 16 allows law enforcement agencies to seek the freezing and forfeiture of money held in a bank or building society account where they have reasonable grounds to suspect that the money is recoverable property or is intended for use in unlawful conduct. [1] These forfeiture powers are supported by two new categories of investigation in section 341 of POCA, namely detained property investigations and frozen funds investigations respectively ("the new investigations"). Law enforcement officers can apply to the relevant court (the Crown Court in England and Wales and the Sheriff Court in Scotland) for investigatory orders under Part 8 of POCA in the context of the new investigations.

[1] Schedule 12 to the Financial Services Act 2021 has amended Chapter 3B of Part 5 of POCA to provide for the freezing and forfeiture of money held in "relevant financial institution" accounts.

7. Policy background

What is being done and why?

7.1 The Investigations Order provides the mechanism for intra-United Kingdom investigation of the proceeds of crime. The CFA made a number of amendments to POCA, as set out above. The commencement of relevant outstanding CFA provisions in Northern Ireland requires consequential amendments to the Investigations Order so that the cooperation, enforcement and investigation regimes continue to function effectively across the UK and in relation to the new powers available in Northern Ireland.

7.2 This Order in Council will amend the Investigations Order to make provision for:

- disclosure orders obtained in money laundering investigations in Northern Ireland to be enforced in other jurisdictions within the United Kingdom, and vice versa;
- moratorium extension orders made in Northern Ireland (in the Crown Court) to be enforced in other jurisdictions within the United Kingdom, and vice versa;
- orders obtained in the course of detained property investigations and frozen funds investigations ("the new investigations") in Northern Ireland (in the Crown Court) to be enforced in other jurisdictions within the United Kingdom, and vice versa.

7.3 The amendments in this Order in Council define, for the purposes of the Investigations Order, a "Northern Ireland appropriate officer" in the context of the new investigations. The amendments made by this Order in Council will therefore allow those pursuing investigations in Northern Ireland to easily obtain information or evidence from another United Kingdom jurisdiction by means of a court order obtained in the investigator's own jurisdiction, and vice versa.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 A consolidation is not taking place.

10. Consultation outcome

10.1 As this Order in Council makes amendments to the cooperation powers which are equivalent to those made to the domestic provisions in POCA through the commencement of the CFA in Northern Ireland, they are essentially consequential and technical, no public consultation has therefore been carried out.

11. Guidance

11.1 The Codes of Practice issued under Part 8 of POCA, which provide guidance and operational requirements on the use of investigation powers (see article 33 of the Investigations Order), will apply to the use of the relevant powers under the Investigations Order, as amended by this Order in Council.

11.2 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 POCA, will provide necessary guidance as appropriate.

11.3 This Order in Council makes provision corresponding to amended provisions in Parts 7 and 8 of POCA. Investigators, prosecutors, judges and legal representatives will be familiar with the provisions, and the Home Office will issue non-statutory guidance on the use of these provisions.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument as we have considered the overall impact of commencing the CFA in Northern Ireland rather than preparing separate assessments for each statutory instrument in this package.

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

12.3 There is no, or no significant, impact on the public sector.

13. Regulating small business

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

14. Monitoring & review

14.1 In conjunction with key stakeholders, the Home Office will monitor the use of this legislative change in its early stages. The approach to monitoring of this instrument thereafter will involve consideration of the effectiveness and suitability of its provisions in the event that issues arise as a matter of their operation in practice. This instrument will not be subject to formal review as the changes it makes are essentially consequential and technical.

15. Contact

15.1 Chloe Wootton at the Home Office can be contacted with any queries regarding the instrument (email: chloe.wootton@homeoffice.gov.uk).

15.2 Maria Hannan at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Williams of Trafford at the Home Office can confirm that this Explanatory Memorandum meets the required standard.