EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2024

2024 No. 1123

1. Introduction

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

2. Declaration

2.1 Dan Jarvis, Minister for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Bell, Deputy Director for the Criminal Finances and Asset Recovery Unit at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amelia Smith at Home Office and the Criminal Finances and Asset Recovery Unit: HOConfiscationTeam@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 ("Enforcement Order") and Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 ("Investigations Order"). The Enforcement Order and Investigations Order make provision for conducting proceeds of crime investigations and proceeds of crime enforcement across the different jurisdictions of the United Kingdom under the Proceeds of Crime Act 2002 ("POCA").

4.2 The Economic Crime and Corporate Transparency Act 2023 ("ECCT Act") introduced new powers into POCA to investigate and confiscate or forfeit certain cryptoassets. A "cryptoasset" is a cryptographically secured digital form of property such as bitcoin. This Order in Council will amend the Enforcement Order and the Investigations Order to reflect the new cryptoasset powers so that cryptoasset cases can be investigated and enforced effectively in the different jurisdictions of the United Kingdom.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 POCA provides law enforcement with powers to investigate and recover the proceeds of crime. This includes powers to recover assets derived from unlawful conduct (Part 5 of POCA), criminal powers that require an individual to pay back their proceeds of crime (Parts 2 to 4 of POCA) and powers to carry out investigations (Part 8 of POCA).

5.2 A rise in the use of digital technologies and cryptoassets in conducting crime requires specific POCA powers. The ECCT Act introduces changes to better enable POCA powers to be used in cryptoassets cases. The ECCT Act:

a) Reformed the criminal confiscation powers in Parts 2 to 4 of POCA: to ensure they better cater for intangible assets and enable cryptoassets to be seized earlier in the confiscation process, so that those assets can be more easily confiscated at a later date.

b) Inserted a new non-conviction civil forfeiture scheme into Part 5 of POCA: so that cryptoassets (and related items, such as physical wallets) can be recovered swiftly in the magistrates' or sheriff court.

c) Amended the investigatory powers in Part 8 of POCA: to enable the use of existing powers in "cryptoasset investigations".

5.3 The Enforcement Order and the Investigations Order make provision for the use of POCA powers across the different jurisdictions of the United Kingdom. For instance, Part 2 of the Enforcement Order enables enforcement in England and Wales of Scottish and Northern Ireland orders and warrants. The Enforcement Order and Investigations Order must be amended to reflect amendments made to POCA. This will enable cryptoasset cases to be conducted effectively across the different jurisdictions of the United Kingdom.

What was the previous policy, how is this different?

5.4 Cryptoassets present a novel challenge to law enforcement in that they are intangible, unlike cash, making them difficult to take control of, yet retain a higher level of owner anonymity than a bank account. This has made cryptoassets cases particularly difficult to investigate and enforce using existing POCA powers.

5.5 Prior to the ECCT Act, no provisions in POCA were specifically designed for the investigation and recovery of cryptoassets. The ECCT Act amended POCA to enable law enforcement to apply POCA powers more effectively to cryptoasset cases.

5.6 The Enforcement Order and Investigations Order provide the mechanism for intra-United Kingdom investigation of the proceeds of crime and enforcement by enabling requests to use the proceeds of crime powers where a jurisdiction in the UK requests another jurisdiction in the UK use the powers or service an order. This instrument implements the cryptoasset amendments made by the ECCT Act.

6. Legislative and Legal Context

How has the law changed?

<u>Enforcement Order</u>

6.1 The Enforcement Order provides for orders made by a court in relation to confiscation proceedings in one part of the United Kingdom under Parts 2, 3, and 4 of POCA to be

enforced in another part of the United Kingdom. The Enforcement Order is made under section 443 of POCA.

Cryptoassets: confiscation

6.2 Paragraph 10 of Schedule 8 to the ECCT Act amends section 51 of POCA to expand the powers which the Crown Court may confer on enforcement receivers – persons appointed by the court to deal with assets identified as part of a confiscation order. It includes provisions for the destruction of cryptoassets which are subject to an enforcement receivership.

6.3 In Scotland, enforcement receivers are referred to as enforcement administrators. Paragraph 27 of Schedule 8 to the ECCT Act amends section 128 of POCA to make equivalent provisions in Scotland.

6.4 Paragraph 46 of Schedule 8 to the ECCT Act amends section 199 of POCA to make equivalent provisions in Northern Ireland.

Investigations Order

6.5 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 Parts 8 of POCA (investigations). The Investigations Order only applies to court orders and warrants issued by the criminal courts. The Investigations Order is made pursuant to sections 443 and 459 of POCA.

6.6 Amendments to POCA in the ECCT Act introduce new provisions for which orders made under Part 8 of POCA may be obtained, and which may require enforcement in another jurisdiction of the United Kingdom.

6.7 The ECCT Act introduced the concept of a "cryptoasset investigation" – defined in new subsection (3D) of section 341 of POCA – as the basis for making production orders (an order requiring the disclosure of information relating to an investigation); warrants to search and seize assets; and account monitoring orders.

Why was this approach taken to change the law?

6.8 This is the only possible approach that enables the Enforcement Order and Investigations Order to operate in accordance with amendments made by the ECCT Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 The amendments are consequential and technical in nature so no public consultation has therefore been carried out. This Order in Council makes no amendments to the domestic provisions of POCA itself.

8. Applicable Guidance

8.1 The Codes of Practice[1] issued by the Secretary of State and Attorney General, providing guidance and operational requirements on the use of investigation powers (see section 377, 377A and 410 of POCA (as amended)), will apply to the use of the relevant powers under the Enforcement Order and Investigations Order, as amended by this Order in Council.

[1] https://www.gov.uk/government/collections/proceeds-of-crime-act-2002-codes-of-practice

8.2 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, has established specific training modules for cryptoassets.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the ability to operate the powers across different jurisdictions of the UK was assumed in the overarching impact assessment for the cryptoassets measures in the ECCT Act.

9.2 In the overarching impact assessment for the cryptoassets measures in the ECCT Act, familiarisation and training costs to the public are estimated in a range of £1.0 to £17.1 million, with a central estimate of £6.8 million (2021/22 prices) in year 1 only. Total ongoing costs are estimated in a range of £2.4 to 221.8 million (PV), with a central estimate of £26.2 million (PV) over 10 years. Total costs are estimated in a range of £3.4 to £239.0 million (PV), with a central estimate of £32.9 million (PV) over 10 years. Law Enforcement Agencies (LEAs) will incur the majority of the costs. There is potential cost of the storage of seized illicit cryptoassets.

9.3 Total benefits are estimated in a range of £107.6 to £1,721.5 million (PV), with a central estimate of £430.4 million (PV) over 10 years. All the benefits fall to the public sector and are derived from asset recovery receipts.

9.4 See the following link for the impact assessment on the cryptoasset measures in the ECCT Act: https://bills.parliament.uk/publications/47792/documents/2815

Impact on businesses, charities and voluntary bodies

9.5 This instrument makes no, or no significant, impact on business, charities or voluntary bodies.

9.6 This instrument does not impact small or micro businesses.

9.7 This instrument makes no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument will not be subject to formal review as the changes it makes are essentially consequential and technical. The Home Office will monitor the use of amendments introduced by the ECCT Act with key stakeholders by hosting feedback sessions every three months. In line with Government requirements, the ECCT Act will be formally reviewed within five years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").