**EXPLANATORY MEMORANDUM TO**

# THE PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) (ENGLAND AND WALES AND NORTHERN IRELAND) (AMENDMENT) ORDER 2025

**2025 No. 537**

## 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 at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Amelia Smith at the Home Office (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 The Economic Crime and Corporate Transparency Act 2023 ("ECCT Act 2023") inserted a new chapter into the Proceeds of Crime Act 2002 ("POCA") providing for new powers to convert cryptoassets suspected to be unlawfully obtained into fiat (regular) currency.

4.2 This instrument amends a related order, the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales and Northern Ireland) Order 2021 ("2021 AFI Order"), which specifies who is considered an accredited financial investigator ("AFI") for the purpose of exercising functions under POCA. The 2021 AFI Order as amended will specify who is considered an accredited financial investigator ("AFI ") for the purpose of exercising the new powers in relation to cryptoassets investigations.

***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 England and Wales and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Northern Ireland.

## 5. Policy Context

***What is being done and why?***

5.1 POCA is the primary framework for recovering assets connected with criminal conduct. The ECCT Act 2023 inserted a new regime into POCA for the seizure of cryptoassets connected with criminal conduct. This included new powers for law enforcement in Chapter 3F of Part 5 of POCA to apply for the conversion of cryptoassets into fiat currency and for their further detention once converted.

5.2 Cryptoassets are volatile in nature, increasing and decreasing rapidly with market fluctuations. To protect against fluctuations and protect law enforcement and asset owners from significant losses in seized cryptoassets, applications can be made to the court to convert the cryptoassets into fiat currency and hold the funds in an interest-bearing account. This provides additional security around the assets where the cryptoassets (as a whole) are likely to suffer a significant loss in value and provides additional security advantages in preventing third party access to the cryptoassets.

5.3 The 2021 AFI Order determines the grade an appropriate officer in each public organisation granted powers under POCA is considered an AFI for the purpose of exercising POCA powers in respect of each type of investigation. For instance, to exercise confiscation investigations under POCA Section 378(2)(d), a member of staff in the Competition and Markets Authority must be at or above grade 7.

5.4 This instrument amends the 2021 AFI Order to specify which grade in each organisation is considered an AFI for the purpose of exercising the powers in Chapter 3F of Part 5 of POCA, which contains powers to apply for the conversion of cryptoassets in relation to a cryptoassets investigation.

***What was the previous policy, how is this different?***

5.5 The ECCT Act 2023 introduced new powers to search for and seize cryptoassets connected with criminal conduct. This included a power for enforcement authorities to apply to the court to make a freezing order in relation to a wallet where cryptoassets are suspected to be from unlawful conduct or used in unlawful conduct, preventing the cryptoassets from being moved.

5.6 The 2021 AFI Order specifies which grade in each organisation can exercise the powers of an AFI under POCA. Now that the relevant provisions of the ECCT Act 2023 have come into force, the 2021 AFI Order must be updated to include the new powers in Chapter 3F of Part 5 of POCA, which covers the conversion of detained cryptoassets or cryptoasset wallets into fiat currency and applications for their further detention. This statutory instrument will amend the 2021 AFI Order to which grades within each organisation can apply to the court to convert detained cryptoassets or cryptoassets wallets into fiat currency.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The ECCT Act 2023 introduced Chapter 3F: Conversion of Cryptoassets into POCA. This includes:

a) Section 303Z54 allows a person to apply to the relevant court for an order requiring all of the cryptoassets detained pursuant to the order to be converted into money. The conversion must be carried out so far as practicable in the manner best calculated to maximise the amount of money obtained for the cryptoassets. The

enforcement officer must arrange for the money to be paid into an interest-bearing account as soon as possible and held there.

b) Section 303Z55 enables enforcement agencies to apply for a court order requiring all of the cryptoassets held in a crypto wallet subject to a freezing order to be converted into money.

c) Section 303Z56 allows for the conversion of cryptoassets which have been forfeited under s303Z41 or s303Z45, before they are realised and destroyed, to be converted.

d) Section 303Z57 applies where converted cryptoassets are detained and allows for the proceeds of the conversion to be further detained.

e) Section 303Z57 applies where cryptoassets are held in a wallet subject to a freezing order and are then converted. The provision allows for the proceeds of the conversion to be further detained.

f) Section 303Z59 allows the relevant court to direct the release of the whole or part of the converted cryptoassets if there are not reasonable grounds that the cryptoassets are recoverable or intended to be used in unlawful conduct. S303Z64 establishes how owners can be compensated on release of the converted cryptoassets.

g) Section 303Z60 applies while converted cryptoassets are detained and allows for the forfeiture of cryptoassets. S303Z62 establishes how interest is dealt with when converted cryptoassets are forfeited.

h) Section 303Z61 allows appeals to be made in relation to orders under section 303Z60.

i) Section 303Z63 makes provision for victims and other owners of cryptoassets seized or the crypto wallet that has been converted to apply for some or all of the converted cryptoassets to be released to them.

6.2 Section 378 of POCA defines who an appropriate officer is in respect of each type of investigation.

6.3 The 2021 AFI Order must be amended to specify which grade equivalent in each agency can exercise powers in S303Z54 – S303Z63 above. This Order amends the 2021 AFI Order to specify who is considered an AFI for the purpose of exercising the new powers in Chapter 3F of Part 5 of POCA.

***Why was this approach taken to change the law?***

6.4 This is the only possible approach to make the necessary changes.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 This is a technical amendment, so no consultation has taken place beyond the primary legislation in the ECCT Act 2023.

## 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

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

(see section 377, 377A and 410 of POCA (as amended)), will apply to the use of the relevant powers under this Order.

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 provided the relevant training materials and guidance to exercise the powers

## Part Two: Impact and the Better Regulation Framework

### 9. Impact Assessment

9.1 An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen by this Order as it is only clarifying who is an appropriate officer considered an AFI.

a. However, an impact assessment was conducted on the ECCT Act 2023's cryptoassets measures.[2]Familiarisation and training costs to the public sector 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.

b. 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.

***Impact on businesses, charities and voluntary bodies***

9.2 This instrument makes no, or no significant, impact on business, charities or voluntary bodies as it is only clarifying who is an appropriate officer considered an AFI.

9.3 This instrument does not impact small or micro businesses as it is only clarifying who is an appropriate officer considered an AFI.

9.4 This instrument makes no, or no significant, impact on the public sector as it is only clarifying who is an appropriate officer considered an AFI.

### 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The Home Office will, together with key stakeholders, monitor the use of this legislation in its early stages. Thereafter the effectiveness and suitability of its provisions will be considered if 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.

[2] https://assets.publishing.service.gov.uk/media/63d27043e90e071baeb3a7c2/_b__Cryptoassets_IA_Jan_2023_-_signed.pdf

## 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 this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### 13. The Relevant European Union Acts

13.1 This legislation is not being made under any relevant European Union Acts and is not relevant to the UK's withdrawal of the EU.