

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT PROCEEDS OF CRIME ACT 2002  
(INVESTIGATIVE POWERS OF PROSECUTORS:  
CODE OF PRACTICE) ORDER 2021

DRAFT PROCEEDS OF CRIME ACT 2002 (SEARCH,  
SEIZURE AND DETENTION OF PROPERTY: CODE  
OF PRACTICE) (NORTHERN IRELAND)  
ORDER 2021

DRAFT PROCEEDS OF CRIME ACT 2002 (CASH  
SEARCHES: CODE OF PRACTICE) ORDER 2021

DRAFT PROCEEDS OF CRIME ACT 2002  
(INVESTIGATIONS: CODE OF PRACTICE)  
ORDER 2021

DRAFT PROCEEDS OF CRIME ACT 2002  
(RECOVERY OF LISTED ASSETS: CODE OF  
PRACTICE) ORDER 2021

*Wednesday 26 May 2021*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Sunday 30 May 2021**

© Parliamentary Copyright House of Commons 2021

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair:* †CLIVE EFFORD

Bryant, Chris ( <i>Rhondda</i> ) (Lab)	Mann, Scott ( <i>Lord Commissioner of Her Majesty's Treasury</i> )
† Caulfield, Maria ( <i>Lewes</i> ) (Con)	Morris, James ( <i>Lord Commissioner of Her Majesty's Treasury</i> )
† Elmore, Chris ( <i>Ogmore</i> ) (Lab)	† Pursglove, Tom ( <i>Corby</i> ) (Con)
† Foster, Kevin ( <i>Parliamentary Under-Secretary of State for the Home Department</i> )	Rutley, David ( <i>Lord Commissioner of Her Majesty's Treasury</i> )
Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )	Thomson, Richard ( <i>Gordon</i> ) (SNP)
Holmes, Paul ( <i>Eastleigh</i> ) (Con)	Tomlinson, Michael ( <i>Lord Commissioner of Her Majesty's Treasury</i> )
Jarvis, Dan ( <i>Barnsley Central</i> ) (Lab)	Yasin, Mohammad ( <i>Bedford</i> ) (Lab)
McCabe, Steve ( <i>Birmingham, Selly Oak</i> ) (Lab)	George Wilson, <i>Committee Clerk</i>
† McGinn, Conor ( <i>St Helens North</i> ) (Lab)	† <b>attended the Committee</b>
Mak, Alan ( <i>Lord Commissioner of Her Majesty's Treasury</i> )	

## Fourth Delegated Legislation Committee

Wednesday 26 May 2021

[CLIVE EFFORD *in the Chair*]

### Draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2021

9.25 am

**The Chair:** Before we begin, I remind Members to observe social distancing and sit in places that are clearly marked. I also remind Members that Mr Speaker has stated that masks should be worn in Committee unless Members are speaking or they are medically exempt. *Hansard* colleagues would be most grateful if Members could send their speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

**The Parliamentary Under-Secretary of State for the Home Department (Kevin Foster):** I beg to move,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2021.

**The Chair:** With this it will be convenient to consider the draft Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (Northern Ireland) Order 2021, the draft Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2021, the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2021 and the draft Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) Regulations 2021.

**Kevin Foster:** It is a pleasure, as always, to serve under your chairmanship, Mr Efford. Taking wide-ranging action to crack down on crime and make our communities safer is top of the Government's agenda. One important part of that mission is our drive to stay one step ahead of criminals seeking to move, hide or use the proceeds of their illegal activities and to frustrate attempts by law enforcement agencies to recover them.

The Criminal Finances Act 2017 was introduced to amend the Proceeds of Crime Act 2002 and to improve significantly the UK's ability to trace and recover the proceeds of crime effectively. The Criminal Finances Act has not been fully commenced, though, in Northern Ireland. Some aspects of it—the counter-terrorist financing and tax evasion provisions—were commenced, but provisions with devolved elements, primarily those pertaining to asset recovery, are still outstanding.

Members of the Committee may recall that the Northern Ireland Assembly was dissolved during the passage of the Criminal Finances Bill, meaning that it was not possible to secure a legislative consent motion in Northern Ireland. It was decided that the provisions that related to devolved matters should remain in the Bill, and at the time the Government indicated to Parliament that they

would not commence provisions on matters devolved to Northern Ireland without the appropriate consent having been obtained first.

Following the reconstitution of the Assembly, I am pleased to advise the Committee that, even in the absence of a mechanism to seek legislative consent in retrospect, Northern Ireland's Justice Minister agreed that the outstanding powers should be commenced on behalf of the all-party Executive. After engagement with the Northern Ireland Executive Committee and the Justice Committee, and advising all Northern Ireland Assembly Members, she asked the Home Secretary to commence the relevant provisions. We plan to commence the powers on 28 June 2021.

I am therefore pleased to introduce the draft instruments that we are debating today, which form part of the package of legislation required to complete commencement of the provisions in Northern Ireland. The draft instruments will each bring one of five distinct codes of practice into force. Each of the five codes of practice has been revised to reflect the extension of the Criminal Finances Act powers to Northern Ireland. Some further minor amendments, for clarity only, have also been made.

The measures before us do not alter the powers available; they only clarify the relevant codes of practice in the light of the extension of outstanding Criminal Finances Act 2017 powers to Northern Ireland, which must be done by affirmative statutory instruments in this instance. I hope that they will be uncontroversial, and commend them to the Committee.

9.29 am

**Conor McGinn** (St Helens North) (Lab): It is a pleasure to serve under your chairmanship, Mr Efford, and to speak for the official Opposition on this important set of orders, which, as we have heard, have the shared purpose of bringing into force five updated Proceeds of Crime Act 2002 codes of practice, reflecting the extension of the Criminal Finances Act 2017 provisions to Northern Ireland.

I want to make it clear from the outset, not unexpectedly, that we fully support today's orders. The wider provisions are about dealing with serious criminality, and deterring individuals from stepping into it, notably by confiscating their ill-gotten proceeds of crime, and enabling money laundering and terrorist financing to be better tackled. It is welcome that Northern Ireland is now finally able to access the full stretch of Criminal Finances Act powers that have been available to law enforcement agencies and prosecutors elsewhere in the UK for some time.

It is good to see that the provisions of the orders have gained consent from the Northern Ireland Assembly in the somewhat unusual retrospective way that we have discussed, and gained support from the Minister of Justice, Naomi Long. I understand that she initially asked for the powers to be extended back in June 2020, so could the Under-Secretary explain why there was a delay, and whether there were specific reasons for that?

The Opposition support the orders, but I am sure that the Minister will understand that I have several questions, which I hope he can address. As always, in these strange times, given the absence of officials, I am very happy for him to write to me if he cannot answer all of my questions now.

Can the Minister update the Committee on how the Criminal Finances Act 2017 is operating across the UK? Are law enforcement agencies happy with it? Are they being given the tools, resources and training needed to engage fully with it? Is the legislation meeting its full potential? Is it having an impact? I note that the Treasury's money laundering and terrorist financing risk assessment, published six months ago in December 2020, commented that such illicit activity had only increased—a worrying conclusion.

Can the Minister say how many unexplained wealth orders have been issued? My understanding is that the answer is only four, which seems at first sight relatively few. I noted in the debate on the orders in the other place that Baroness Williams was questioned on Sir Craig Mackey's independent review of serious and organised crime. Bar the executive summary that we have seen, that review remains unpublished. It includes key findings on funding for law enforcement to tackle serious and organised criminality. Disappointingly, Baroness Williams said that the full review would remain unpublished, although, apparently, relevant partners have been given full sight of it.

I say gently to the Minister, and I have raised this on the floor of the House in another debate, that it is right that the Government can expect the Opposition's support on such matters, but it is also right that the Opposition invoke what I believe is our entitlement to have the relevant information that we need from the Government. Perhaps we might be able to discuss how the Government might share with the shadow Home Secretary on Privy Council terms, or through a briefing for the wider shadow Home Office team, some of the contents of that report. In the spirit of co-operation on such important issues in the best interests of the country we should be able to share information in an environment of trust. I am sure that we can work out the specific arrangements that are required.

The Opposition fully support today's orders, and welcome the introduction of the provisions to Northern Ireland at long last. When there is a lot of political discourse around issues that some have in Northern Ireland with the protocol and the continuing threat against police officers from dissident republicans—obviously the issue with the protocol is from loyalists—it is important that we should remember that the motivation for a great number of those people is criminality and illicit activity. The Government should give no credence to paramilitaries who are masquerading as spokespersons for their community. They do not speak for their community, so let us not give them the attention that they crave and desire.

Confiscating the ill-gotten proceeds of criminality and paramilitarism and tackling money laundering and the financing of terrorism remains a key challenge and urgent priority, and we of course welcome the powers that the provisions bring to that task.

9.34 am

**Kevin Foster:** As always in such debates, I begin by thanking the Official Opposition spokesperson, the hon. Member for St. Helens North, for his constructive approach to such matters. As he says, there is certainly no division between the Opposition and Government in the drive to tackle serious criminality and ensure that those who have made ill-gotten gains from their criminal

activities, in some cases in the millions, are tracked down to recover that money. It is very welcome that the provisions of the orders are now extended to Northern Ireland.

The hon. Gentleman noted that the first request to extend those powers to Northern Ireland was made in June 2020. I hope that he accepts that the past year has been a rather unusual one in the parliamentary landscape, not least in our ability to introduce secondary legislation, as evidenced by this morning's arrangements. The capacity to consider such legislation has not been available, and available legislative time has largely had to consider the pandemic. That explains partly why it was not possible to introduce the legislation at an earlier date, but we look to bring the powers into effect next month. This morning's package of affirmative SIs will deliver that.

In terms of the legislation's impact on the rest of the UK, it is worth noting that since 2014-15, more than £1.25 billion has been taken out of the hands of criminals using Criminal Finances Act powers, including its predecessor legislation, to be fair, which was passed under the Labour Government in 2002. Since 2006, £1.126 billion has been returned to law enforcement agencies under the asset recovery incentivisation scheme. Those figures are true up to the end of the financial year 2019-20, so another year's figures will be published shortly. In 2019-20, just under £208 million pounds-worth of proceeds of crime were collected under POCA powers. That represents an 8% increase in comparison with 2014-15. We believe that those powers have a clear impact on denying criminals their ill-gotten gains, but we keep those powers under review because we recognise that patterns of crime are changing. We may need to change our approach, and if required we will bring the necessary legislation before the House, subject to available parliamentary time. If we identify such a need, I am sure that we would enjoy the broad support of the Opposition, given the comments of the hon. Member for St. Helens North.

Four unexplained wealth orders have been issued. Such is their impact that one recently related to the recovery of £10 million from one person linked to serious and organised crime. They sit alongside the suite of available powers and should not be considered in isolation; they are exercised in addition to those other powers. We will, however, monitor their use, and ensure that that power is used appropriately and effectively. If we identify a need to extend their use or to modify their application, we will of course make the necessary changes. I accept the Opposition's constructive approach to the issue and I am sure that we would enjoy their support were such a change required.

On the publication of the Mackey report, I think it would be better to respond to the hon. Gentleman in writing. I took on board his comments, particularly the possibility of meeting under Privy Council terms, but I think it would be best to reflect on that further.

I completely agree with the shadow Minister that no one should use "claimed" political affiliations or affiliations of nationality and wrap themselves in a flag to excuse themselves committing serious criminality. As we know, all too often paramilitary activity in Northern Ireland has been based on criminality in Northern Ireland—

[Kevin Foster]

extortion rackets, looking to smuggle items. Those are not the actions of those with particularly strong political views, but those of criminals who look for a cause with which to dress themselves up to avoid the liabilities they should face. I certainly reassure the hon. Gentleman that we will give whatever support we can to both the Northern Ireland Executive and the Police Service of Northern Ireland, as evidenced by the package of measures we are considering today, to tackle the scourge of criminality in Northern Ireland, thus ensuring that ill-gotten gains of criminality cannot be used to fund terrorist activity.

I commend the orders to the Committee.

*Question put and agreed to.*

**DRAFT PROCEEDS OF CRIME ACT 2002  
(SEARCH, SEIZURE AND DETENTION OF  
PROPERTY: CODE OF PRACTICE) (NORTHERN  
IRELAND) ORDER 2021**

*Resolved,*

That the Committee has considered the draft Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (Northern Ireland) Order 2021.—(Kevin Foster.)

**DRAFT PROCEEDS OF CRIME ACT 2002 (CASH  
SEARCHES: CODE OF PRACTICE) ORDER 2021**

*Resolved,*

That the Committee has considered the draft Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2021.—(Kevin Foster.)

**DRAFT PROCEEDS OF CRIME ACT 2002  
(INVESTIGATIONS: CODE OF PRACTICE)  
ORDER 2021**

*Resolved,*

That the Committee has considered the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2021.—(Kevin Foster.)

**DRAFT PROCEEDS OF CRIME ACT 2002  
(RECOVERY OF LISTED ASSETS: CODE OF  
PRACTICE) REGULATIONS 2021**

*Resolved,*

That the Committee has considered the draft Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) Regulations 2021.—(Kevin Foster.)

9.41 am

*Committee rose.*



