

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT PROCEEDS OF CRIME ACT 2002
(INVESTIGATIVE POWERS OF PROSECUTORS:
CODE OF PRACTICE) ORDER 2024

DRAFT PROCEEDS OF CRIME ACT 2002
(SEARCH, RECOVERY OF CRYPTO ASSETS AND
INVESTIGATIONS: CODES OF PRACTICE)
REGULATIONS 2024

DRAFT PROCEEDS OF CRIME ACT 2002
AND TERRORISM ACT 2000 (CERTAIN
INFORMATION ORDERS: CODE OF PRACTICE)
REGULATIONS 2024

DRAFT TERRORISM ACT 2000
(CODE OF PRACTICE FOR AUTHORISED
OFFICERS) ORDERS 2024

Tuesday 16 April 2024

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

Saturday 20 April 2024

© Parliamentary Copyright House of Commons 2024

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: DR RUPA HUQ

- | | |
|--|--|
| † Dunne, Philip (<i>Ludlow</i>) (Con) | † Nichols, Charlotte (<i>Warrington North</i>) (Lab) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Norris, Alex (<i>Nottingham North</i>) (Lab/Co-op) |
| † Fletcher, Nick (<i>Don Valley</i>) (Con) | † Owen, Sarah (<i>Luton North</i>) (Lab) |
| † Jones, Andrew (<i>Harrogate and Knaresborough</i>) (Con) | † Philp, Chris (<i>Minister for Crime, Policing and Fire</i>) |
| Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) | † Qureshi, Yasmin (<i>Bolton South East</i>) (Lab) |
| McDonnell, John (<i>Hayes and Harlington</i>) (Lab) | † Simmonds, David (<i>Ruislip, Northwood and Pinner</i>) (Con) |
| † Mahmood, Mr Khalid (<i>Birmingham, Perry Barr</i>) (Lab) | † Sunderland, James (<i>Bracknell</i>) (Con) |
| † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) | † Whittingdale, Sir John (<i>Maldon</i>) (Con) |
| † Marson, Julie (<i>Hertford and Stortford</i>) (Con) | Ian Bradshaw, <i>Committee Clerk</i> |
| | † attended the Committee |

Third Delegated Legislation Committee

Tuesday 16 April 2024

[MR SPEAKER *in the Chair*]

Draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2024

2.30 pm

The Chair: I will call the Minister to move the motion and speak to all the instruments. At the end of the debate, I will put the question on the first motion and then ask the Minister to move the remaining three motions formally.

The Minister for Crime, Policing and Fire (Chris Philp): I beg to move,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2024.

The Chair: With this it will be convenient to consider the draft Proceeds of Crime Act 2002 (Search, Recovery of Crypto Assets and Investigations: Codes of Practice) Regulations 2024, the draft Proceeds of Crime Act 2002 and Terrorism Act 2000 (Certain Information Orders: Code of Practice) Regulations 2024, and the draft Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2024.

Chris Philp: It is a pleasure to serve for the first time under your chairmanship, Dr Huq.

The Government are committed to tackling all forms of economic crime. Decisive action has been taken by expediting the passage of the Economic Crime (Transparency and Enforcement) Act 2022 through Parliament. The Home Office measures in that Act reform the unexplained wealth orders regime to improve transparency of ownership structures and allow more time for law enforcement to review material relating to unexplained wealth orders.

Building on the 2022 Act, the Economic Crime and Corporate Transparency Act 2023 contained a vast range of reforms to the Proceeds of Crime Act 2002 and terrorist financing legislation, specifically the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000. The reforms include powers to allow the effective seizure of both criminal and terrorist crypto assets, reforms to enable targeted information sharing to tackle money laundering and remove reporting burdens on businesses, new intelligence-gathering powers for law enforcement, and provisions to reform outdated criminal corporate liability laws.

The reforms to UWOs, corporate liability and targeted information sharing are, I am pleased to say, already in force. The new offence of failing to prevent fraud will be brought into force once Government guidance has been published and businesses have familiarised themselves with the guidance, which is being drafted. The majority

of the remaining Home Office measures will be commenced on 26 April 2024—in just a couple of weeks' time. Today we debate the statutory instruments that underpin the codes of practice for those measures. I do not intend to cover the content of the powers—they were debated extensively by both Houses during the passage of the 2023 Act. What we are doing here is simply legislating for the four codes of practice that are being revised and the two new ones being made.

A search, seizure and detention of property code is issued by the Home Secretary for officers in England and Wales to guide the exercise of search and seizure powers in the context of criminal confiscation investigations. There are two codes of practice to guide law enforcement in the use of search and seizure powers for both civil forfeiture and counter-terrorism investigations. One is issued under the 2002 Act and the other under the 2000 Act in relation to powers in the 2001 Act. These codes are also issued by the Home Secretary.

Charlotte Nichols (Warrington North) (Lab): The Minister refers to terrorism, but could he clarify whether that would capture state entities involved in state terror, such as the North Korean regime, which we know is involved extensively in cyber-crime?

Chris Philp: Terrorism is defined in those Acts and will be facts-specific. If an agent of a foreign Government committed certain acts on our soil and those acts fell within the definitions contained in the Terrorism Act 2000 or other terrorism legislation, the terrorism provisions would be engaged. Whether cyber-attacks conducted extraterritorially would meet those thresholds would be facts-specific; it would depend on the nature of the acts themselves. Clearly, acts by hostile states are of very significant concern and have in a number of cases been debated in Parliament. My right hon. Friend the Minister for Security and the Home Secretary are working very hard to counter those state threats, which emanate from a number of countries. The hon. Lady has mentioned one such country; others include Iran, China and Russia.

We are considering two codes to guide the exercise of powers to investigate suspected criminal property. One code is issued by the Home Secretary; the equivalent code for prosecutors is issued by the Attorney General for England and Wales and the Advocate General for Northern Ireland. The final code being introduced by these draft instruments is a new code to guide the National Crime Agency on the appropriate use of new information order powers, which is issued by the Home Secretary under both POCA 2002 and TAC 2000. The code clarifies the circumstances in which powers may be exercised to ensure that they are applied consistently, which is vital.

The Proceeds of Crime Act 2002 and the Terrorism Act 2000 mandate that the Secretary of State must publish a draft code, consider any representations made, and modify the draft in the light of such representations prior to laying revised codes. The draft codes we are debating today were subject to separate public consultations. Information on the consultations can be found in the explanatory memorandums accompanying the statutory instruments. Among other things, the codes support the recovery of crypto assets. We are concerned that criminals are increasingly using crypto assets to hide money that has arisen from criminal activities.

In conclusion—always the two most popular words I utter in a speech; I see the shadow Minister, who has suffered many such speeches, agrees enthusiastically—the four draft instruments are required to complete commencement of the Economic Crime Transparency and Enforcement Act 2022 and the Economic Crime and Corporate Transparency Act 2023. This will ensure that all necessary legislation is in place and that there is legal certainty about how cases will be dealt with.

2.36 pm

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Dr Huq. All four of the instruments before us are about ensuring that the authorities have the tools they need to combat criminals and terrorists in a digital world by giving them the powers they need to investigate, search for and seize crypto assets. As the Minister says, we know that this is a growing, fast-moving and changing area of crime and criminality, and it is vital that the relevant authorities have the powers they need to keep pace.

I will refer to each set of regulations in turn, but let me say at the outset that the Opposition do not intend to oppose them. The principles underpinning the instruments were debated during the passage of the Economic Crime (Transparency and Enforcement) Act 2022 and the Economic Crime and Corporate Transparency Act 2023, and I will not repeat arguments made then. It is important that the authorities have codes of practice in place to guide the use of the new powers, so that we can find the appropriate balance between individual liberty and collective security.

First, under the Proceeds Of Crime Act 2002, there are regulations concerning codes of practice on the investigative powers of prosecutors, the search and recovery of crypto assets, and investigations. The reforms will enable officers to seize crypto assets and other property during the course of an investigation without having first arrested someone for an offence. They will also enable officers to seize crypto asset-related items and enable the courts to better enforce unpaid confiscation orders against a defendant's crypto assets, which is really important.

Can the Minister clarify whether non-fungible content is included in the phrase crypto asset, which is a well-established term? Non-fungible tokens were not something that interested me, so my position is not a universal one, but they were of some public interest. I know that they hold some value because they are bought and sold, although not in the way they were as recently as a year ago. I am interested to see if they are covered. I think they are, and rightly so. In general, these provisions are an important clarification of authorities' powers, so that individuals who are subject to those authorities' investigative powers will have clarity about what they can and cannot do, which must be right.

Secondly, in relation to the POCA 2002 and the Terrorism Act 2000, we have regulations concerning a code of practice for information orders. The regulations deal with new information order powers to support the NCA's operational strategic analysis of information relevant to money laundering or suspected money laundering and/or terrorist financing or suspected terrorist financing. That seems clear and sensible to us. There are also regulations in relation to the Terrorism Act 2000 concerning a code of practice for authorised officers;

again, the clarity there is to be welcomed. There are reforms to the Anti-terrorism, Crime and Security Act 2001, again enabling officers to seize and detain crypto assets, so I hope that the Minister will also give clarity around the status of NFTs and non-fungible content in that context.

As we have said previously in debates on these matters, we welcome the Government bringing forward measures on crypto assets. The technology is changing and fast-paced, and so is the usage of criminals in that space. We must have a digital approach, not an analogue approach, to freezing and seizing assets, and this instrument has found the balance.

Sarah Owen (Luton North) (Lab): My hon. Friend is making an excellent speech. I want to come in on that particular point, because much attention has been given to terrorist and criminal organisations, but what about individuals? A number of individuals, including some of my constituents, have been defrauded of cryptocurrency, and I am intrigued to see what we can do to support them.

Alex Norris: My hon. Friend makes an important intervention. We know of individuals whose lives have been ruined. They may have lost their business or their house because of such transactions. Ensuring that the authorities have the relevant investigative powers to follow these new types of crime is really important. We can have a degree of confidence that these instruments move us forward in that direction.

I have a couple more questions to the Minister to get some reassurance; they follow on neatly from what my hon. Friend said. It is important that we ensure that the relevant authorities have the right powers, and the right capacity, resources, knowledge and experience. There has been a consultation on the codes of practice, but what consultation or conversations has the Minister or his right hon. Friend the Security Minister had with relevant authorities, such as the NCA, about their capacity to deal with this growing threat?

Similarly, on consultation more generally, each of the explanatory memorandums to the instruments has a section 10 on consultation. A consultation clearly has taken place, and it seems to have been a valuable one. It makes note of some of the changes that have happened as a result, which is always a positive, but was there anything in those consultations that the Government were not minded to accept? Can the Minister tell us any of those things? I will not say anything more than that, but hopefully he will be able to address those questions.

2.43 pm

Sir John Whittingdale (Maldon) (Con): I shall be extremely brief, Dr Huq. In no way do I question the purpose behind the instruments, but I am interested to hear from my hon. Friend the Minister on this question. As I understand it, one of the reasons that crypto assets are particularly attractive to those engaged in terrorist or criminal activities is that it is very difficult to discover them, and even harder then to establish who owns them. Although I do not wish the Minister to give away any confidential information, I am interested to get his assurance and whatever information he can provide on the extent to which law enforcement authorities can trace crypto assets and the people who sit behind them.

2.43 pm

Chris Philp: Non-fungible tokens, the value of which, as the shadow Minister hinted, is somewhat volatile—I am not sure that I would recommend to anyone that they invest in NFTs—are covered. In fact, it is possible for the Secretary of State, via regulation-making powers and secondary legislation, to update the provisions on digital currencies or other things in the future in case there are forms of digital assets that we do not know about today that we may want to bring into scope in the future.

Paying compensation to victims, which was raised in an intervention, happens to an extent already. In the financial year 2022-23, about £15 million that had been recovered via confiscation orders was paid out to victims, so that is happening. However, I am sure that it could happen to an even greater extent, given how significant some of the online and crypto-related fraud is.

Capacity is discussed by the Security Minister with both the NCA and the City of London police, who lead on fraud nationally, on a regular basis. They try to recruit experts, obviously, but that can be difficult, because the kind of experts who are skilled in cryptocurrency-related matters command quite a high market price externally in the private sector. None the less, a lot of work is being done to ensure that that capacity is there. When the Home Secretary, the Security Minister and I have our regular meeting with the director general of the NCA in the next week or two, I can certainly repeat that question, but I know that the Security Minister is conscious of this and has worked on it.

In relation to the question posed by my right hon. Friend the Member for Maldon regarding the tracing of assets, although it is absolutely true to say that tracing crypto assets is harder than with a regular bank account—that is of course why criminals like using them—it is by no means impossible, particularly if relevant bits of hardware or certain access codes are obtained. I am sure members of the Committee can imagine that techniques are deployed that enable that to happen, which I will not elaborate on. Although it is harder than with a regular bank account or where money flows through

the regular international payments system, it is not impossible by any means, and there are quite a few examples of where intercepts of various kinds or seizure of hardware have led to significant crypto asset recovery. In fact, a case may be coming before the courts in the not-too-distant future where an extremely large amount of crypto assets may be subject to recovery; I am sure that we will all read about that quite a bit in the coming few months. I trust that that answers the questions, and I once again commend the draft instruments to the Committee.

Question put and agreed to.

**DRAFT PROCEEDS OF CRIME ACT 2002
(SEARCH, RECOVERY OF CRYPTO ASSETS
AND INVESTIGATIONS: CODES OF
PRACTICE) REGULATIONS 2024**

Resolved,

That the Committee has considered the draft Proceeds of Crime Act 2002 (Search, Recovery of Crypto Assets and Investigations: Codes of Practice) Regulations 2024.—(*Chris Philp.*)

**DRAFT PROCEEDS OF CRIME ACT 2002
AND TERRORISM ACT 2000 (CERTAIN
INFORMATION ORDERS: CODE OF
PRACTICE) REGULATIONS 2024**

Resolved,

That the Committee has considered the draft Proceeds of Crime Act 2002 and Terrorism Act 2000 (Certain Information Orders: Code of Practice) Regulations 2024.—(*Chris Philp.*)

**DRAFT TERRORISM ACT 2000 (CODE OF
PRACTICE FOR AUTHORISED OFFICERS)
ORDER 2024**

Resolved,

That the Committee has considered the draft Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2024.—(*Chris Philp.*)

2.48 pm

Committee rose.

