

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Summary and Background

12. POCA provides for four different routes for the recovery of assets acquired as a result of criminal activity, as follows:
 - Confiscation orders – following conviction for an offence. Part 2 of POCA makes provision for confiscation in England and Wales, whilst Parts 3 and 4 make broadly analogous provisions for Scotland and Northern Ireland respectively.
 - Civil recovery - this is a form of non-conviction based asset recovery that allows for the recovery of property which is, or represents, property obtained through unlawful conduct. A civil recovery order is not a conviction or a sentence, and the action is taken against the property rather than the person. Civil recovery is used when a prosecution is not possible, for example if there is insufficient evidence to create a realistic prospect of a conviction, or there is no identifiable living suspect. Part 5 of POCA provides for a UK-wide civil recovery regime.
 - Seizure and forfeiture of cash - this is a non-conviction based procedure for recovering cash which is the proceeds of, or intended for use in, crime of sums of not less than £1,000. Chapter 3 of Part 5 of POCA provides for a UK-wide regime for the recovery of cash in summary proceedings.
 - Criminal Taxation – also a non-conviction based power, but does not result in property being recovered – instead it allows tax to be charged on a person’s income, profits or gains where there are reasonable grounds to suspect that they arise or accrue from criminal conduct on the part of that person or another. Only the National Crime Agency (“NCA”) can exercise the criminal taxation powers under Part 6 of POCA, but Her Majesty’s Revenue and Customs retains all its usual powers in respect of taxation.
13. Confiscation orders are the principal method used by law enforcement agencies for the recovery of assets. Annex B provides an overview of how the confiscation regime operates.
14. £190 million was recovered under POCA in 2013/14.
15. The Serious and Organised Crime Strategy explained that POCA is under sustained legal challenge from criminals who are constantly seeking new ways to avoid its reach and frustrate asset recovery. The Strategy sets out a number of proposals to: strengthen the legislation by, amongst other things, ensuring that criminal assets cannot be hidden with spouses, associates or other third parties; substantially strengthen the prison sentences for failing to pay confiscation orders; enable assets to be frozen more quickly and earlier in investigations; significantly reduce the time that the courts can give offenders to pay confiscation orders; and extend the investigative powers in

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

POCA so that they are available to trace assets once a confiscation order is made. The provisions in Part 1 of the Act give effect to these and other changes to POCA. In doing so, they also implement two recommendations on asset recovery made by the Joint Committee on the Draft Modern Slavery Bill in their April 2014 report on the draft Bill¹. Specifically, the Joint Committee recommended that the test for obtaining a restraint order be amended to make it less stringent and indicated that it would welcome stronger sanctions for non-payment of confiscation orders.

1 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/>