

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 1: England and Wales

Confiscation: assets held by defendant and other

Section 2: Provision of information

22. *Subsection (1)* amends section 16 of POCA, which requires the prosecutor to give the court “a statement of information” detailing the defendant’s benefit from criminal conduct. New section 16(6A) requires such statements of information to include any information available to the prosecutor that would be relevant to the court’s consideration of whether to make a determination under new section 10A and, if so, the terms of such a determination. Such information may include evidence of the defendant’s and any third parties’ interest in relevant property. New section 16(6B) empowers the court to require the prosecutor to provide further specified information relevant to the making of a determination. In order to fulfil such a requirement, it may be necessary for the prosecutor to obtain further information. Under section 17 of POCA, the court may require the defendant to respond to every allegation in the statement of information and to indicate to what extent each allegation is accepted. Where an allegation is disputed, the defendant must provide full details of any matters relied on.
23. *Subsection (2)* amends section 18 of POCA, which empowers the court to order the defendant to provide any information it needs to enable it to carry out its confiscation functions. *Subsection (2)(a)* amends section 18(2) to make it clear that the court’s confiscation functions include functions under the new section 10A. *Subsection (2)(b)* amends section 18(6) so as to provide that where the prosecution accepts any allegation contained in the information provided by the defendant, the court may treat the acceptance as conclusive for the purpose of deciding whether to make a determination under new section 10A and, if it decides to make such a determination, the form of that determination.
24. *Subsection (3)* inserts new section 18A into POCA. New section 18A empowers the court to order any third party who may have an interest in the defendant’s property to provide any information it needs to enable it to carry out its functions in connection with the making of a determination under the new section 10A of POCA. A similar power to order the defendant to provide information to the court is contained in section 18 of POCA. The court might use this power where, for example, the defendant alleges that a third party owns a part share in particular property and the court considers that it requires more information from the relevant third party to verify that claim.
25. Where the interested person fails to comply with the court’s order without reasonable excuse, new section 18A(4) allows the court to draw any inference that it believes

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

appropriate. However, new section 18A(5) provides that new section 18A(4) does not detract from any other power the court has to deal with the interested person, in particular the power to punish the interested person for contempt of court for failure to comply with the order.

26. New section 18A(9) provides that no information provided by an interested person in response to a court order is admissible in any criminal proceedings. This protects the interested person against self incrimination. However, it does not prevent an interested person being prosecuted for an offence using evidence which may come to light as a result of any information provided to the court under new section 18A.