

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 1: England and Wales

Confiscation: other amendments

Section 5: Time for payment

32. *Subsection (1)* substitutes a new section 11 of POCA, which makes provision for the court to determine how long the defendant has to pay the amount due under a confiscation order. Section 11 currently provides that the amount is to be paid immediately, unless the defendant can demonstrate to the court that he or she needs more time to pay. If the court is satisfied that time to pay is required, it may allow up to six months to pay, and up to a further six months on a later occasion if there are exceptional reasons justifying the extension. In no case, however, will more than 12 months be granted from the day on which the confiscation order is made. The prosecution has the right to make representations to the court before any order extending the time available to pay a compensation order is made. The substituted section 11 seeks to give effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by “significantly reducing the time that the courts can give offenders to pay confiscation orders”.
33. New section 11(1) expressly provides that the full amount payable under a confiscation order must be paid once the order is made (unless the court provides otherwise); the existing section 11(1) simply refers to “the amount”, albeit that the effect is that the full amount must be paid on the day the confiscation order is made.
34. New section 11(2) provides that the court may only extend the time to make full payment of the confiscation order if the court is satisfied that the defendant is unable to pay the full amount on the date the order is made. The existing section 11(2) gives the court a wider discretion to make an order providing more time to pay a confiscation order “if the defendant shows that he needs time to pay the amount ordered to be paid”. The new section 11(2) also provides that the court may require different amounts of time for payment (the “specified period”) of different parts of the amount ordered to be paid. For example, if the full amount is £1 million, the court might order £500,000 to be paid immediately (if the defendant has that amount available in cash), £200,000 within 28 days (if the defendant has shares worth that amount) and £300,000 within three months (if the defendant has property worth that amount).
35. New section 11(3) defines the specified period for the purpose of subsection (2). Whereas the existing section 11(3) sets the maximum length of the specified period at six months, the new section 11(3) reduces this to three months.

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

36. New section 11(4) enables the court, on application by the defendant, to extend, by order, the specified period (“the extended period”). At present, the court may make such an order if it “believes there are exceptional circumstances”. The new test is that the defendant is unable to pay the amount required within the specified period “despite having made all reasonable efforts”. Where the court is satisfied that this test is met, it has the discretion to specify different time periods for payment of the outstanding sums. So, for example, if the defendant had been ordered to pay £150,000 within 14 days and makes an application to the court for extending that time period, the court may order that £50,000 be paid immediately, provide a further seven days for another £50,000 to be paid over and a further 14 days for the remaining £50,000 to be paid over. Any application by the defendant must be made before the expiry of the specified period.
37. New section 11(5) defines the extended period for the purpose of subsection (4) and, by extension, the maximum duration of the specified period and the extended period when aggregated together. Whereas the existing section 11(5) sets this maximum aggregated period at 12 months, the new section 11(5) reduces this to six months. As now, it would be possible for the court to grant an extended period for payment after the expiry of the specified period, but may not do so more than six months (currently 12 months) after the confiscation order was made (new section 11(6)).
38. New section 11(7) provides that any specified period or extended period must be as short as it can be. There is currently no equivalent provision in the existing section 11.
39. New section 11(8) replicates the existing ability of the prosecution to make representations before any order under new section 11(2) or (4) is made.
40. *Subsection (2)* substitutes a new subsection (3) in section 12 of POCA. Section 12 provides that the defendant must pay interest on a confiscation order that is not paid in full by the time allowed. The rate of interest is that specified in section 17 of the Judgments Act 1838, namely 8%. Any interest due forms part of the amount payable under a confiscation order. At present, interest is not payable during any period where the defendant has made an application to the court under section 11(4) of POCA to further extend the time allowed for payment and that application has not been determined by the court (provided that 12 months has not elapsed since the making of the order). Under the substituted section 12(3), this maximum period of grace where interest is not payable pending a court’s determination of an application under section 11(4) is reduced from 12 months to six months, in line with new section 11(5). In addition, new section 12(3) makes it clear that whilst interest is not payable on the amount in relation to which the defendant has an outstanding application for an extended period, interest would still be payable on any amounts due in respect of an expired specified period, that are not part of the outstanding application for an extended period.
41. *Subsection (3)* makes a consequential amendment to section 87 of POCA which defines when confiscation orders are satisfied and when they are subject to appeal. Subsection (3) inserts a new subsection (1A) into section 87 for the purpose of defining the term “amount payable”. This term is used in a number of places in Part 2 of POCA. As section 11 of POCA is currently drafted, the scheme as set out in Part 2 assumes that the amount ordered to be paid would be paid in full at some point, rather than in instalments. Against this background, the term “amount payable” should be read as a reference to the full amount. The definition in new section 87(1A) makes it clear that this term should be read as the amount that remains payable.