

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 6: Confiscation and victim surcharge orders

42. This section amends section 13 of POCA, which makes provision in relation to the effect of a confiscation order on the court's other sentencing powers to make financial orders against the defendant. In particular, it requires a court that has made a confiscation order against a defendant to take account of that order before it imposes a fine or makes a specified financial order against the defendant. The specified financial orders are set out in section 13(3) and expressly exclude a compensation order made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (that is, an order requiring the offender to pay compensation to the victim of the crime) and an unlawful profits order under section 4 of the Prevention of Social Housing Fraud Act 2013 (that is, an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct that constituted the offence of unlawful sub-letting under section 1 or 2 of that Act).
43. Section 13(5) and (6) of POCA provide that where a defendant has either or both of a compensation order and an unlawful profit order made against him or her, in addition to a confiscation order, and the court believes the defendant will not have sufficient means to satisfy all the orders in full, the court must direct that the compensation and/or amount payable under the unlawful profit order (or both) be paid out of any sums recovered under the confiscation order, with the amount paid being the amount the court believes will not be recoverable because of the insufficiency of the defendant's means. The intention of these provisions is to ensure that, should the defendant have insufficient means to satisfy all the orders against him or her in full, any amounts owed to the victims of crime will take priority over the amounts owed to the government.
44. Section 161A of the Criminal Justice Act 2003 places an obligation on the court sentencing a defendant to order that defendant to pay a surcharge ("the victim surcharge"). The monies raised by this surcharge are used to fund victim services through the Victim and Witness General Fund. Section 161A(3) provides that where a court dealing with an offender considers it to be appropriate to make a compensation order or an unlawful profit order (or both), but is of the view that the defendant has insufficient means to pay both the victim surcharge and the amounts due under such orders, the court must reduce the surcharge accordingly (if necessary to nil). As with section 13(5) and (6) of POCA, the intention is that any amounts owed to the victims of crime will take priority over the amounts owed to the government – even if the money owed to the government is used to support victim services.

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

45. Whilst section 13(5) and (6) of POCA ensures that compensation orders and unlawful profit orders take priority over a confiscation order when the court believes the defendant will not have sufficient means to satisfy all the orders in full, the confiscation order still currently takes priority over any amounts ordered to be paid as a victim surcharge. The amendments made to section 13 of POCA provide that the victim surcharge is to be treated in the same way as compensation orders and unlawful profit orders, and is therefore to take priority over a confiscation order when the court believes the defendant will not have sufficient means to satisfy all the orders in full. *Subsections (2) to (4)* achieve this by introducing into section 13 the concept of a “priority order” and defining this term so as to include either a compensation order or the victim surcharge or an unlawful profits order.