

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 2: Scotland

Civil recovery

Section 23: Prohibitory property orders: PPO receivers

92. This section amends POCA to provide, in relation to Scotland, for a new type of management receiver (a “PPO receiver”) in civil recovery proceedings whose only function will be to manage property subject to a prohibitory property order (“PPO”). This is distinct from the role of an interim administrator (provided for in sections 256 to 265 of POCA) who has the additional roles of carrying out an investigation of the property which he or she manages and reporting findings to the enforcement authority and the court. The new PPO receiver will have no investigation function and so will have no influence on the progress or final outcome of the case. Accordingly, the role does not need to be independent and therefore can be performed by a member of staff of the enforcement authority that is pursuing the civil recovery case. The provisions in new sections 255G to 255I of POCA, inserted by *subsection (2)*, which provide for PPO receivers broadly mirror those in sections 245E to 245G of POCA (inserted by section 83 of the Serious Crime Act 2007) which make provisions for management receivers in respect of property freezing orders in England and Wales and Northern Ireland.
93. New section 255G of POCA confers on the Court of Session a discretionary power, exercisable on application by the enforcement authority (namely the Crown Office on behalf of the Scottish Ministers), to appoint a PPO receiver in respect of any property to which a PPO applies. Whilst the enforcement authority will generally give notice of an application, new section 255G(3) enables it to make an application without having to give notice in certain circumstances. Such a notice is called an *ex parte* application. An *ex parte* application may be appropriate where management powers are to be sought from the outset of the investigation, where the initial application for the PPO can be heard *ex parte* in chambers to avoid alerting potential parties who might then seek to conceal or dispose of the relevant property. The enforcement authority must nominate, in its application, a suitably qualified person for appointment as a PPO receiver (new section 255G(4)).
94. New section 255H provides for the powers of PPO receivers. Such powers will be determined by the court on a case by case basis, but will generally be any of the powers in paragraph 5 of Schedule 6 to POCA, namely:
- “(1) Power to manage any property to which the order applies.
 - (2) Managing property includes—

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

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,
- (c) incurring capital expenditure in respect of the property.

In addition, the Court of Session has the discretionary power to authorise or require a PPO receiver to take whatever other steps the court considers to be appropriate in connection with the management of the property (new section 255I(2)(b)).

- 95. New section 255I confers on the Court of Session a discretionary power to give directions as to the exercise of the functions of a PPO receiver (new section 255I(1)) having heard any representations by the persons set out in new section 255I(2). The Court of Session may also vary or recall (that is revoke) any order or directions made under new sections 255G to 255I after again having heard any representations by the persons set out in new section 255I(4).
- 96. *Subsection (3)* inserts new section 282CA into POCA which makes analogous provision for PPO receivers to that contained in section 282C of that Act. Section 282C of POCA (inserted by paragraph 6 of Schedule 18 to the Crime and Courts Act 2013) makes provision for the enforcement of property freezing orders, interim receiving orders and interim administration orders which have effect in relation to property overseas. In particular, section 282C provides that, where a property freezing order made by the High Court of England and Wales or of Northern Ireland has effect in relation to property, the appointed management receiver may send a request to the Secretary of State for assistance abroad if he or she believes that the property is in a country outside the UK.