

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 4: Investigations and co-operation etc

Section 39: External orders and investigations: meaning of “obtaining property”

118. This section amends section 447 of POCA which is the interpretation section for Part 11 of that Act; Part 11 of POCA makes provision for co-operation between jurisdictions in relation to freezing and confiscating the proceeds of crime.
119. Part 11 of POCA enables, among other things, requests and orders made by courts in other jurisdictions to be given effect in the United Kingdom. One such type of order is an “external order”, defined in section 447(2) as –
- “an order which -
- (a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
 - (b) is for the recovery of specified property or a specified sum of money.
120. In limiting the scope of an external order to the recovery of specified property or a specified sum of money, Part 11 as enacted reflected the scope of the then international agreements under which orders could be sent from a foreign court were similarly limited. For example, Article 5(1)(a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988¹ requires State parties to “adopt such measures as may be necessary to enable confiscation of... proceeds derived from [specified] offences... or property the value of which corresponds to that of such proceeds”.
121. Domestic law, by contrast, recognises that the proceeds of crime can include not just specified money or property, but also a pecuniary advantage, such as not paying tax that is lawfully due. For example, in the context of confiscation orders made under Part 2 of POCA, section 76(5) of POCA provides that, for the purpose of determining a person’s criminal benefit, a person who obtains a pecuniary advantage as a result of or in connection with criminal conduct, is to be taken as obtaining a sum of money equal to the value of the pecuniary advantage.
122. In recent years, the international law relating to the confiscation of the proceeds of crime has adopted a broader approach to what such proceeds might be. For example, the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism² defines “proceeds” as

¹ https://www.unodc.org/pdf/convention_1988_en.pdf

² <http://conventions.coe.int/Treaty/EN/Treaties/Html/198.htm>

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

any economic advantage, derived from or obtained, directly or indirectly, from criminal offences.

123. New subsection (6A) of section 447 of POCA provides that the value of any pecuniary advantage obtained as a result of criminal conduct is to be treated as if it were a sum of money to the same value. The effect is to enable external orders to be used for the recovery of a pecuniary advantage obtained by criminal conduct in the same way as such orders can currently be used to recover property or sums of money. Part 11 also provides for “external investigations”, defined in section 447(3) as –

“an investigation by an overseas authority into –

- (a) whether property has been obtained as a result of or in connection with criminal conduct,
- (aa) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or
- (b) whether a money laundering offence has been committed.

New section 447(6A) will also bite on external investigations, accordingly such an investigation could be for the purpose of ascertaining whether any pecuniary advantage has been obtained from criminal conduct and, if so, the extent of such advantage.