
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the tenth commencement order made under the Policing and Crime Act 2009 (c. 22) (“the 2009 Act”). The 2009 Act amends the Proceeds of Crime Act 2002 (c. 29) (“POCA”), and makes related consequential amendments.

Article 2 brings into force on 1st June 2015 certain provisions of the 2009 Act which make amendments to POCA and related consequential amendments.

Section 52 of the 2009 Act inserts sections 41A and 44A into Part 2 of POCA (confiscation: England and Wales), and section 53 of the 2009 Act inserts sections 120A and 122A into Part 3 of POCA (confiscation: Scotland). Sections 41A and 120A concern the ability for restraint orders made by the courts in England and Wales and in Scotland, respectively, to make provision authorising the detention of property seized under a relevant seizure power, or produced in compliance with a production order. Sections 44A and 120A permit the detention of property pending appeal against the discharge or variation of a such a restraint order in England and Wales and in Scotland, respectively.

Section 55 of the 2009 Act inserts sections 47A to 47S into Part 2 of POCA. Section 56 of the 2009 Act inserts sections 127A to 127R into Part 3 of POCA. The effect of these new provisions is to provide new powers in relation to search, seizure and detention of property in England and Wales and Scotland to prevent the dissipation of realisable property that may be used to satisfy a confiscation order made under either Part 2 or Part 3 of POCA.

Article 4 contains savings and transitional provision in relation to the commencement of sections 52, 53, 55 and 56 of the 2009 Act. The provisions of POCA which previously authorised seizure of property subject to a restraint order in England and Wales (section 45 in Part 2) and in Scotland (section 126 in Part 3), are repealed. Article 4 makes savings in relation to property which, at the time of the commencement of the Order, is subject to the directions of a court under sections 45 or 126. Transitional provision is made so that sections 45 and 126 constitute ‘relevant seizure powers’ for the purposes of sections 41A and 120A respectively. This will enable applications to be made to vary the restraint orders to permit the detention of property seized under sections 45 or 126.

Section 58 of the 2009 Act inserts sections 67A to 67D into Part 2 of POCA. Section 59 of the 2009 Act inserts sections 131A to 131D into Part 3 of POCA. These provisions provide new powers, where property has been seized by an appropriate officer under a relevant seizure power, or which has been produced to such an officer in compliance with a production order, for that property to be sold to meet a confiscation order in certain circumstances.

Section 63 of the 2009 Act amends section 289 of POCA in Chapter 3 of Part 5 of POCA (which is concerned with the recovery of cash in summary proceedings), to provide new powers to search vehicles for cash. The powers are not being commenced in relation to Northern Ireland.

Section 65 of the 2009 Act inserts sections 297A to 297G into POCA to make provision in England and Wales and Northern Ireland for administrative forfeiture of cash which is being detained subject to a detention order made by the magistrates’ court under section 295 of POCA. The provisions are only being commenced in relation to England and Wales.

Section 66 of the 2009 Act transfers the jurisdiction for applications for orders and warrants under Part 8 of POCA from the High Court to the Crown Court for England and Wales and Northern Ireland. The transfer is only being commenced in relation to England and Wales, subject to the savings in article 5 in relation to undetermined applications for orders and warrants, and for orders and warrants which are in existence on the coming into force of this Order.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Articles 2(2)(e) and 3 concern commencement of related consequential amendments made by Parts 6 to 8 of Schedule 7 to the 2009 Act. Consequential repeals are made by Parts 4 and 5 of Schedule 8 to the 2009 Act, and are commenced by article 2(2)(f) and (g).