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# THE PROCEEDS OF CRIME ACT 2002 (POCA) GUIDANCE UNDER SECTION 2A FOR RELEVANT AUTHORITIES 28 June 2021

### Introduction

1. This replaces Guidance issued in January 2018. Section 2A of the Proceeds of Crime Act 2002 provides that the Secretary of State (Home Office), the Treasury, the Attorney General and Advocate General for Northern Ireland can issue guidance on the use of the powers in POCA.
2. The guidance is issued in respect of the National Crime Agency, Serious Fraud Office, Financial Conduct Authority, Her Majesty's Revenue and Customs, the Crown Prosecution Service and Public Prosecution Service in Northern Ireland. These are referred to below as 'relevant authorities'. It is recommended that all agencies that are or could be involved in asset recovery and financial investigation under POCA are aware of this guidance.
3. This guidance is intended to support relevant authorities and other law enforcement agencies in relation to the exercise of POCA powers, and should not be regarded as a complete or authoritative statement of the law. Only the courts can give an authoritative interpretation of the legislation, and the contents of this guidance may be affected by subsequent judicial decisions and changes to the legislative provisions referred to herein.

### Background

4. A relevant authority must exercise its functions under POCA in the way which it considers is best calculated to contribute to the reduction of crime. The reduction of crime is in general best secured by means of criminal investigations and criminal proceedings (see section 2A of POCA). This includes use of the criminal asset recovery powers to seek confiscation orders, contained in Parts 2, 3 and 4 of POCA, which require a defendant to pay a sum equivalent to their proceeds of crime from any available assets.
5. Whilst in general the reduction of crime is best secured through criminal investigations and proceedings, civil powers under Parts 5 and 6 of POCA (also referred to in this Guidance as "non-conviction based asset recovery powers") also make an important contribution to the reduction of crime. As do other powers—which could include but are not limited to tax assessment, bankruptcy, insolvency and Serious Crime Prevention Orders. There is no strict hierarchy to denote the use of the powers. Nothing in this guidance should prohibit the use of non-conviction based asset recovery powers in an individual case.
6. Relevant authorities, and other law enforcement agencies (police etc.), financial investigators and prosecution agencies should consider taking asset recovery and financial investigation action, utilising both criminal and civil powers, at the outset of all investigations. This includes the ability to refer the

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asset recovery aspect of a case for civil recovery and/or taxation powers in POCA to a relevant agency that possesses the powers to take such action.

7. Relevant authorities and agencies will be aware that it is not possible to apply for civil recovery order if a confiscation order has been made (in respect of property that has been taken into account in deciding the the amount of a person's benefit from criminal conduct), therefore emphasising the need to assess the merits of asset recovery or financial investigation at the earliest opportunity.
8. In considering the application, and then exercising criminal and, or civil powers under POCA, the following principles apply:
  - The lawful recovery of proceeds of crime or assets intended for use in unlawful conduct is in the public interest, whether recovered by a criminal or civil power. In some cases non-conviction based asset recovery powers may be the only suitable means to secure a reduction in crime.
  - Non-conviction based asset recovery powers may be sought whether or not there is a criminal investigation or prosecution and regardless of what stage any criminal investigation or prosecution may be at (subject to paragraph 7).
  - Where assets can be pursued effectively by non-conviction based asset recovery, including during a criminal investigation or prosecution, this will contribute to the reduction of crime.
  - Criminal investigations should be pursued with a view to prosecutions wherever the Full Test Code or in Northern Ireland the Test for Prosecution<sup>1</sup> is met, provided that it would not be more appropriate to use civil powers (see paragraph 5).
  - In all criminal cases that are adopted by a relevant authority, asset recovery mechanisms and financial investigation should be considered. However, there is nothing to prevent non-conviction based asset recovery powers being pursued alongside criminal (subject to paragraph 7).
  - Where there is a criminal investigation or prosecution, a relevant authority may decide that non-conviction based asset recovery, in whole or in part, is a better deployment of resources to the asset recovery aspects of the case, in order to achieve a manageable and proportionate outcome.
  - Whilst a non-conviction based asset recovery does not require proof of the guilt of any individual, the existence of a civil order may be taken into account when consideration is given to whether there should be a criminal investigation or prosecution.
  - When using non conviction-based asset recovery powers, relevant authorities must have regard to and seek to minimise, any potential

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<sup>1</sup> In England and Wales see the [Code For Crown Prosecutors](#), October 2018; and in Northern Ireland see the [Code for Prosecutors](#) July 2016.

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prejudice to a parallel or potential criminal investigation or criminal proceedings (see paragraph 9 for further guidance).

- Relevant authorities should ensure they have routes of engagement with all law enforcement and prosecution agencies for the purposes of financial investigation and asset recovery. These channels should be used to provide advice and operational support in respect of individual cases. Following initial engagement relevant authorities should take steps to ensure that contact continues throughout the life of the case.

9. To minimise any potential prejudice to a parallel or potential criminal investigation or criminal proceedings when using non-conviction based asset recovery powers, so far as it is practicable to do so, a relevant authority should:

- liaise with any relevant law enforcement and/or prosecuting authorities before exercising any of its operational functions, to enquire whether doing so would prejudice a criminal investigation or criminal proceedings, and give due weight to any advice so received;
- keep under review the extent to which taking, continuing or refraining from any course of action has a potential to prejudice a criminal investigation or criminal proceedings and avoid such prejudice where possible; and
- ensure where possible that information relevant to a criminal investigation or criminal proceedings is disclosed to the relevant law enforcement or prosecution authority at the earliest practical opportunity.

10. A relevant authority may agree to accept a reduced sum in satisfaction of a civil recovery claim if satisfied that:

- the sum is reasonable, having regard to all relevant circumstances including the chances of recovering the full amount claimed and the time and public funds likely to be expended in attempting to do so; and
- accepting the reduced sum would not damage public confidence.