

Serious Crime Bill

Fact sheet: Overview of the Proceeds of Crime Act 2002

Overview

1. The Proceeds of Crime Act 2002 (“POCA”) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. Other means of recovering the proceeds of crime which do not require a conviction are provided for in the Act, namely civil recovery, cash seizure and taxation powers. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and disrupt and deter criminality. Since 2010, more than £746 million of criminal assets has been seized (to 2013/14) across all four methods of recovery – a record amount. Over the same period, assets worth more than £2.5 billion have been frozen denying criminals access to these resources and £93 million has been returned to victims.
2. The Act also provides for a number of investigative powers, such as search and seizure powers, and powers to apply for production orders and disclosure orders, and allows for the “restraint” or “freezing” of assets to prevent dissipation of assets prior to a confiscation order being made.
3. The key provisions of the Act are set out below.

Part 2: Confiscation in England and Wales

4. The Crown Court must consider making a confiscation order against a defendant under Part 2 POCA if:
 - a) the defendant is convicted of an offence or offences in the Crown Court, or has been committed to the Crown Court for sentence or to be considered for a confiscation order; and
 - b) the prosecutor requests that the court consider making a confiscation order, or the court believes that it is appropriate to consider making a confiscation order.
5. The Crown Court, when it considers making a confiscation order against a defendant, must determine whether the defendant has a ‘criminal lifestyle’. If so, the court must determine whether the defendant benefited from his ‘general criminal conduct’. General criminal conduct is conduct at any time that constitutes an offence in England and Wales (whether or not it occurred in England and Wales). The court, when determining these matters, must do so on the balance of probabilities, not to the criminal standard of proof.
6. If the court decides the defendant has a criminal lifestyle, certain assumptions may be made. In particular, the court will assume all property

received by, held by, spent or obtained after the relevant date was obtained as a result of the defendant's general criminal conduct and is liable to confiscation¹.

7. If the court determines that the defendant does not have a criminal lifestyle, it must decide whether he has benefited from his or her 'particular criminal conduct'. Particular criminal conduct means conduct which constitutes the offence or offences for which the defendant has just been convicted, or conduct which constitutes offences which the court will be taking into consideration in deciding his or her sentence for the offence or offences for which the defendant has just been convicted.
8. Where the court determines that the defendant has either benefited from his general criminal conduct, that is where the defendant has a criminal lifestyle, or has benefited from his particular criminal conduct, it must:
 - a) determine the recoverable amount of such benefit; and
 - b) make an order (a confiscation order) requiring the defendant to pay that amount.
9. A confiscation order does not provide for the confiscation of particular property, but rather orders the defendant to pay a set amount out of whatever resources are available to him or her. The defendant is given a set time to pay the order after which he or she is liable for interest and may be subject to a default sentence for failing to pay.
10. Part 2 also provides for restraint orders, which prevent a person subject to a criminal investigation or criminal proceedings dealing with any realisable property to prevent the dissipation of assets that may be subject to a confiscation order. Part 2 allows for the appointment of a receiver to manage restrained assets or to enforce a confiscation order.

Parts 3 and 4: Confiscation in Scotland and Northern Ireland

11. Parts 3 and 4 provide for confiscation and restraint in Scotland and Northern Ireland respectively.
12. Given the nature of criminal activity, it is essential to tackle the confiscation and recovery of the proceeds of crime on a coherent United Kingdom basis. Therefore, similar provisions apply to Scotland and Northern Ireland whilst fully reflecting differences in law, procedure and the institutions of justice in the respective jurisdictions.

¹ The relevant date is the first day of a period of six years prior to the start of proceedings for the offence against a defendant. If there are two or more offences and the proceedings start on different days the earliest of those days is the end date.

Part 5: Civil Recovery, including cash seizure

13. Part 5 of POCA provides a scheme to reclaim the proceeds of crime through civil proceedings. It permits the recovery of criminal assets where no conviction has been possible, for example because individuals avoided conviction by remaining remote from the commission of the crimes from which they benefited or because they have fled abroad. Civil recovery applications are made in the High Court against property that is or represents property obtained through unlawful conduct. The relevant enforcement authority (that is, the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of the National Crime Agency (NCA)) may make an application for a property freezing order to prohibit any person from dealing with the property.

Part 6: Revenue Functions

14. Part 6 provides the NCA with revenue functions, enabling them to make a tax assessment under section 29 of the Taxes Management Act 1970 where the source of income cannot be identified and are suspected to be criminal assets. The NCA utilises these powers to undertake tax investigations and raise a tax demand where there is a reasonable suspicion that an individual has accrued income or gain as a result of criminal conduct. These powers are separate from those of HM Revenue and Customs.

15. The NCA may only become involved in the following areas of tax investigations: income tax, capital gains tax, corporation tax, national insurance contributions, statutory sick pay, statutory maternity pay, statutory paternity pay, statutory adoption pay, or student loans.

Part 7: Money Laundering

16. Part 7 provides for various money laundering offences. A person commits an offence if he or she:

- conceals, disguises, converts or transfers criminal property or removes it from England and Wales or Scotland or Northern Ireland;
- enters in to or becomes concerned in an arrangement which he or she knows or suspects facilitates the acquisition, retention, use or control of criminal property;
- acquires, uses or has possession of criminal property.

17. Part 7 of POCA requires financial institutions and businesses in the regulated sector to report to the UK Financial Intelligence Unit, which is part of the NCA, any suspicions about criminal property or money laundering. Even if a person is not in the regulated sector they must report any suspicions if they come across any suspicious activity through their trade, business or profession.

Part 8: Investigations

18. Part 8 of POCA provides the definitions for confiscation, civil recovery, detained cash, money laundering and exploitation proceeds investigations. It also provides for the investigative powers to conduct these investigations, including the powers to obtain production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders. Only an appropriate officer (for example, a police officer) may make applications for these investigative tools to a court. Applications for orders in civil recovery, detained cash, and exploitation proceeds investigations must be made to the High Court. All other applications may be made to the Crown Court. Powers of entry are provided under search and seizure warrants and under production orders in limited circumstances.

Part 10: Information

19. Part 10 covers disclosing information found during an investigation and using that information by the Director General of the NCA and the Directors of the Serious Fraud Office, Public Prosecutions and Public Prosecutions for Northern Ireland. It enables the relevant Director General/Director to use information obtained in connection with any one of his or her functions to assist in exercising any of their other functions. For example, information obtained in the course of a criminal confiscation investigation may be used by the Director General of the NCA in a civil recovery investigation.

Part 11: National and international cooperation

20. Part 11 of POCA deals with:

- enforcing measures under the Act in different parts of the UK;
- implementing requests and orders from abroad; and
- enforcing foreign warrants and other measures equivalent to the powers of Part 8.

**Home Office
June 2014**

Proceeds of Crime: Case Study

A Ukrainian national ("the defendant") living illegally in the UK secured employment at a service company supplying contract cleaners to hotels, offices and restaurants in West London. She managed to manipulate the managing director of the company into placing her in a position of trust and authority as a company area manager with responsibility for recruiting staff.

Using this position and in partnership with her sons, she recruited illegal labour to work in the UK. These workers - Ukrainian, Russian and Moldovan nationals - were supplied with forged EU documentation in order to enter the UK and ostensibly obtain lawful employment with the company. The defendant then housed these individuals and manipulated their wages so that earnings paid to them by the company were diverted into accounts controlled by her or paid to her in lieu of rent and payment for bringing them to the UK. In a three year period she diverted over £600,000 into accounts controlled by her.

A restraint order was obtained restraining £380,000 that was still held in UK bank accounts. Additional evidence showed other monies had been transferred by Money Services Bureaux to East European nationals.

Following trial, the defendant was convicted of one count of facilitating of illegal immigration, two counts of money laundering and one count of possessing false identity documents. She was sentenced to a total of five years' imprisonment and recommended for deportation.

At the subsequent confiscation hearing the defendant's benefit was found to be £1,082,000. This figure comprised all cash and wages transfers passing through her multiple bank accounts during the relevant period together with uplift applied using the Retail Prices Index.

The available amount was found to be £386,037 - all in cash- and the confiscation order was made in this amount. The defendant had no UK realisable property. She had invested a further £117,000 in a property investment but this sum could not be realised as she was defrauded by a Nigerian national running a separate investment fraud. The defendant was given three months to pay or receive a 42 month default sentence. Although she failed to pay (and default sentence was activated) she subsequently paid the full amount with interest. She has since been released and deported.

An additional £2,500 was seized under POCA from her handbag on the day of arrest and was forfeited by City of London Magistrates' Court following conviction.