



# Home Office

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26<sup>u</sup> June 2014

## **Serious Crime Bill: Lords Committee stage – Government amendments to Part 1 of the Bill**

I am writing to let you have details of the amendments I have tabled today to Part 1 of the Bill (Proceeds of crime).

### **Search and seizure powers (amendment to clause 13)**

Clause 11 of the Bill amends the Proceeds of Crime Act 2002 (POCA) so as to enable assets to be restrained more quickly and earlier in investigations. It does this by lowering the test for the grant of a restraint order from the court having “reasonable cause to believe that the alleged offender has benefited from his criminal conduct” to the court having “reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct”. Sections 47A to 47S of POCA provide for search and seizure powers in England and Wales to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. The power to seize property in section 47C is subject to the same test as for the making of a restraint order, namely that there is reasonable cause to believe that the person has benefited from conduct constituting the offence. The amendment to clause 13, which in turn amends section 47B(2)(d) of POCA, brings this provision into line with the change we are making in relation to restraint orders.

### **Seized money (amendment to clause 14)**

Clauses 1 to 4 of the Bill contain provisions designed to ensure that criminal assets cannot be hidden with spouses, associates or other third parties. They enable a court to make a determination as to the extent of the defendant's interest in property. Any determination will be made by the court at a confiscation hearing. This determination may relate to money held in a bank or building society account.

Section 67 of POCA separately enables a magistrates' court to order a bank or building society to pay money held in an account by a person who is subject to a confiscation order, to a designated officer of the court, towards the satisfaction of a confiscation order.

We need to ensure that these separate provisions dovetail when the court makes a determination that the defendant has an interest in a bank account where, for example, the account is held the name of a company or other third party. The amendment to clause 14, which in turn amends section 67 of POCA, will enable a magistrates' court to order payment of funds, held in a bank account of a third party (or parties) that are subject to a determination by the court, towards the satisfaction of a confiscation order. This will enable funds held in a bank account to be confiscated rapidly where the account is not held in the name of the defendant. Any third parties affected would have the opportunity to make representations before such a determination is made.

### **Confiscation: Scotland and Northern Ireland (amendments to clauses 15, 69 and 70 and to Schedule 4 and new clauses "*Restitution order and victim surcharge*" and "*Conditions for exercise of search and seizure powers*")**

POCA has similar, but distinct confiscation regimes for England and Wales, Scotland and Northern Ireland (see Parts 2, 3 and 4 of POCA respectively). The Bill makes a number of amendments to the regime in England and Wales. The Scottish Government and Northern Ireland Department of Justice have asked that the Bill replicate a number of those provisions for Scotland and Northern Ireland respectively. It did not prove possible to include all the requested Scottish and Northern Irish provisions in the Bill on introduction; accordingly we are now bringing forward a number of new clauses to be inserted into Chapters 2 and 3 of Part 1 which make similar amendments to those made by the provisions in Chapter 1 of that Part.

In relation to Scotland the new provisions:

- Provide for the payment of the victim surcharge and the amount due under a restitution order, which are orders which are made under the Criminal Procedure (Scotland) Act 1995, to have priority call on monies paid under a confiscation order. (Restitution orders are the equivalent of compensation orders in England and Wales). New clause "*Restitution order and victim surcharge*" would replicate the provisions in clause 6.
- Make provision for a senior NCA officer to approve the exercise of search and seizure powers where it is impracticable to secure prior judicial approval. New clause "*Conditions for exercise of search and seizure powers*" replicates the provisions in clause 13, taking into account the amendment to that clause detailed above.

The Scottish Government has advised that they also wish to replicate the provisions in clauses 7, 9, 10(1) and (2), 12 and 14. We are working with the Scottish Government to prepare the necessary provisions and would aim to table further amendments at Report.

Clause 15 of the Bill provides that the serving of a default sentence in Scotland for failure to pay a confiscation order does not discharge the outstanding debt, thereby bringing the position in Scotland into line with that in England and Wales. Paragraph (b) of clause 15 amends POCA so as to modify the application of section 224 of the Criminal Procedure (Scotland) Act 1995. That section requires warrants of imprisonment for non-payment of a fine to specify the date for the discharge of the liability to pay the fine (in practice once the default sentence has been served), notwithstanding the fact that it has not been paid. The effect of paragraph (b) is that that requirement will no longer operate where an administrator is appointed in relation to the confiscation order in respect of which the default sentence was served. On further reflection, we have concluded that section 224 of the 1995 Act should be disapplied in its entirety.

In relation to Northern Ireland the new provisions:

- Make provision for a senior NCA officer to approve the exercise of search and seizure powers where it is impracticable to secure prior judicial approval. New clause "*Conditions for exercise of search and seizure powers*" replicates the provisions in clause 13, taking into account the amendment to that clause detailed above.

I am copying this to all Peers who spoke at Second Reading. I am also placing a copy in the Library of the House and on the Bill page of the Government website.

With my best wishes  
J. Taylor

**Lord Taylor of Holbeach CBE**