



Criminal Finances Bill

Proceeds of Crime Act (POCA) amendments

- The Bill contains a number of legislative changes to the Proceeds of Crime Act 2002 (POCA), which will further strengthen the operational impact of various existing powers.
- Significantly, these measures will:
 - provide HM Revenue and Customs and the Financial Conduct Authority with powers to seek the civil recovery of property before the High Court;
 - provide the ability to investigate a criminal's wealth to allow for the amount on a confiscation order to be increased to reflect the full extent of the criminal benefit;
 - ensure that all investigators operating under the Act are protected by assault/obstruction offences; and
 - extend operational powers to Serious Fraud Office officers, to bring them in line with other law enforcement agencies working on the same investigations.

Background

- The Proceeds of Crime Act already provides for various powers to investigate the financial circumstances of criminals. It also provides for the recovery of the proceeds of crime through both criminal and civil proceedings.
- Civil recovery is a process where property can be recovered in civil proceedings before the High Court. In England and Wales, these powers are currently available to the National Crime Agency, Crown Prosecution Service and the Serious Fraud Office. These powers are to be extended to HM Revenue and Customs and the Financial Conduct Authority. Both agencies investigate criminality which is both complex and lucrative.
- The amendments also ensure that officers in the Serious Fraud Office have direct access to investigation and supporting powers. The nature of their work means that their cases are always financially motivated and often have large amounts of property and other finances to investigate and recover.
- Police, HMRC officers and accredited financial investigators are covered by existing assault/obstruction offences. The Bill creates new offences to ensure that others operating under the Act, notably the Serious Fraud Office and Financial Conduct Authority, are also covered by like offences.
- When a confiscation order has been set for a lower amount than the criminal made from their crimes due to their inability to pay, it can be increased at a later date. Amendments will ensure investigation powers are available to support the 'revisiting' of orders to increase the amount to be paid by criminals.

Key facts

- In 2015-16, £255m was recovered under the Proceeds of Crime Act, of which
 - £39m in cash forfeitures
 - £208m in confiscation
 - £6m in civil recovery
 - £2m in taxation
- Between 2010-2016, assets worth more than £3.0 billion have been restrained, denying criminal access to these resources.
- £2 billion has been recovered from criminals using all powers in the Proceeds of Crime Act since its introduction in 2003. £1.5 billion of this total is due to confiscation orders.
- Over £227 million has been returned as compensation to victims. The amount paid in compensation in 2015/16 is the highest ever (over £37m) and represents an increase of over £14m (or 62%) on the previous year.
- £761 million has been returned to law enforcement agencies under the Asset Recovery Incentivisation Scheme (since 2006).



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Why is new legislation needed?

- Operational experience of the Proceeds of Crime Act has identified where the powers and law can be strengthened.
- For example, further strengthening the investigation powers will make confiscation enforcement and revisits more effective. This also supports wider work on offender management.
- Granting SFO officers direct access to the powers in POCA recognises their unique role in the investigation of complex financial crime and simplifies the process for them to apply for the various orders without the need for them to be accredited financial investigators.

What are the purposes of these amendments?

- They are largely technical, but are important in order to ensure the proper operation of the legislation and to ensure that officers have fully effective powers in recovering the proceeds of crime.
- Some, such as updating the legal definition of “bank” in POCA, are completely technical.
- Some are more substantive in relation to operational powers, but remain relatively minor. For example a civilian investigator in the police will be able to seek authorisation for their search and seizures from an inspector, rather than having to obtain authorisation from a senior civilian staff member.

Are confiscation orders ever revisited?

- Yes. The multi-agency Regional Asset Recovery Teams and the Asset Confiscation Enforcement (created in 2014) have given more impetus to this work.
- A recent case saw an increase of £157,000 in the revisit of an order first made in 2005.
- The new powers to investigate these cases will encourage further work and successes in this area.

Why are we only extending the civil recovery powers to HMRC and the FCA?

- Granting civil recovery powers to HM Revenue and Customs and the Financial Conduct Authority recognises the complexity of their financial crime cases; and the need to target property in those types of cases.

Don't the general offences of assault already apply to officers?

- They do, but as investigators are put in a position where they are at risk, it makes sense for there to be particular criminal offences.
- POCA already provides a bespoke obstruction and assault offence for police officers. It is anomalous that no such offence exists for other users of the POCA powers.
- There have been no known prosecutions for assault or obstruction relating to powers under POCA, but this is an important safeguard for officers.

Why are powers not extended to all law enforcement agencies?

- Accredited financial investigators have access to many of the powers in POCA. They are investigators who work for public bodies and agencies designated by Order and so can include any such body.
- The extension of certain powers to the FCA, HMRC and SFO reflect their expertise and work in particularly complex, financial areas of investigation.