

# **SERIOUS CRIME ACT 2015**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

#### **Part 1: Proceeds of Crime**

##### **Commentary on Sections**

##### **Chapter 1: England and Wales**

#### **Confiscation: assets held by defendant and other**

##### *Section 3: Appeals*

27. *Subsection (1)* inserts new subsections (4) to (8) into section 31 of POCA (which confers a right of appeal on prosecutors against any confiscation order made by the Crown Court). New subsections (4) to (8) enable the prosecutor, the defendant or a third party to appeal to the Court of Appeal against a determination made under new section 10A. The defendant or a third party may only appeal a determination if it appears to the court that the person is, or may be, a person holding an interest in the property affected by the determination. In the case of the defendant or a third party, the right of appeal then only arises in one of two circumstances, namely where a person with an interest in relevant property was not given a reasonable opportunity to make representations to the Crown Court before it made its determination (new section 31(6)), or where the Court of Appeal considers that the determination made under new section 10A would result in a serious risk of injustice to the appellant (new section 31(7)). This does not impact on the defendant's existing right to appeal a confiscation order to the Court of Appeal.
28. The rights of appeal conferred by new section 31(4) are negated where the conditions in new section 31(8) apply. Those conditions are where a receiver has been appointed under section 50 of POCA or where an application has been made by the prosecution for the appointment of a receiver but that application has not been determined, or where the Court of Appeal believes that such an application is to be made. No right of appeal is provided for in such circumstances given that the court appointing a receiver will be able to reconsider interests in relevant property where there would be a serious risk of injustice if the Crown Court's determination under new section 10A were to be adhered to (see section 4). Moreover, in cases where the receiver is bound by a Crown Court's determination as to the extent of a defendant's interest in particular property, any person affected by an enforcement order in relation to the property, that is an order to sell it to help satisfy the defendant's confiscation order, would be able to appeal to the Court of Appeal (under section 65 of POCA). When considering any such appeal, the Court of Appeal would not be bound by the Crown Court's determination (see new section 10A(4)(b)).
29. *Subsection (2)* inserts new subsection (2A) into section 32 of POCA, which provides that in determining an appeal under new section 31(4) the Court of Appeal may either confirm the original determination made by the Crown Court under new section 10A or make any other order it considers appropriate (including an order quashing the original determination). This affords the Court of Appeal the power to make a different

*These notes refer to the Serious Crime Act 2015 (c.9)  
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determination from that made by the Crown Court as to the extent of the defendant's interest in relevant property.

30. *Subsection (3)* amends section 33 of POCA, which provides for further appeals to the Supreme Court. *Subsection (3)(a)* enables any party to proceedings in the Court of Appeal on an appeal under new section 31(4) to appeal the outcome to the Supreme Court. *Subsection (3)(b)* inserts new subsection (3A) into section 33 which confers on the Supreme Court broad powers to confirm, quash or vary the decision made by the Court of Appeal.