

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 3: Northern Ireland

Sections 24 to 27: Confiscation: assets held by defendant and other

97. Sections 24 to 27 amend the provisions in Part 4 of POCA in respect of third party interests in assets that may be realised to discharge a confiscation order. These sections make parallel amendments to Part 4 to those made to Part 2 of POCA by sections 1 to 4 of the Act.

Section 28: Time for payment

98. Section 161 of POCA makes similar provision in relation to the time allowed to pay the amount due under a confiscation order in Northern Ireland to that contained in section 11 in relation to England and Wales. This section makes parallel amendments to section 161 of POCA to those made to section 11 by section 5 of the Act.

Section 29: Orders for securing compliance with confiscation order

99. This section inserts new sections 163A and 163B into Part 4 of POCA which make parallel provision in respect of Northern Ireland for the making of “compliance orders” by the courts for securing compliance with confiscation orders to that contained in new sections 13A and 13B, as inserted by section 7, in relation to England and Wales.

Section 30: Variation and discharge

100. This section makes broadly analogous provision in relation to Northern Ireland for the discharge of confiscation orders where the defendant has died to that contained in section 8 in respect of England and Wales. Whereas, under section 8, an application to the Crown Court for the discharge of a confiscation order is made by the designated officer for a magistrates’ court, under this section such application will be made by the prosecutor.

Section 31: Absconding defendants

101. This section amends sections 177 and 178 of POCA which make similar provision for Northern Ireland in respect of the making of confiscation orders where the defendant has absconded to that contained in sections 27 and 28 of POCA in relation to England and Wales. The amendments to section 177 and 178 mirror those made to sections 27 and 28 by section 9 of the Act.

Section 32: Default sentences

102. This section makes a parallel amendment to section 185 of POCA in relation to default sentences where a defendant fails to pay the amount due under a confiscation order to that made to the England and Wales provision in section 35 of POCA by section 10(1) and (2). There is no equivalent in this section to the provisions in subsections (3) and (4) of section 10 as such provision is unnecessary in the Northern Ireland context. In Northern Ireland section 13 of the Prison Act (Northern Ireland) 1953 enables prison rules to be made to allow for the early release of a person serving a sentence on grounds of good conduct. Rule 30 of the Prison and Young Offenders Centres Rules (Northern Ireland) 1995 then provides for early release on such grounds. The maximum remission that may be granted under Rule 30 is 50% of the actual term. The Department of Justice in Northern Ireland can exercise the rule-making power in section 13 of the Prison Act (Northern Ireland) 1953 so as to remove the eligibility for early release in cases where a person is serving a default sentence for non-payment of a confiscation order over £10 million. In this way, the same outcome can be achieved as that provided for by section 10(3) in relation to England and Wales.

Section 33: Conditions for exercise of restraint order powers

103. This section amends sections 189 and 190 of POCA which make similar provision for Northern Ireland in respect of the conditions for making restraint orders to that contained in sections 40 and 41 of POCA in relation to England and Wales. The amendments to sections 189 and 190 mirror those made to sections 40 and 41 by section 11 of the Act.

Section 34: Continuation of restraint order after quashed conviction

104. This section makes a similar amendment to section 191 of POCA to that made to section 42 of that Act by section 12 to provide for the continuation of a restraint order following the quashing of a conviction until the start of proceedings for a retrial.

Section 35: Conditions for exercise of search and seizure powers

105. This section makes similar amendments to the search and seizure powers in sections 195B and 195G of POCA to those made by section 13 to sections 47B and 47G of that Act.

Section 36: Seized money

106. This section makes parallel amendments to sections 215 and 215A of POCA to those made to sections 67 and 67A of that Act by section 14 in respect of magistrates' courts powers to order any realisable property in the form of money in a bank or building society account to be paid to the designated officer of the court in satisfaction of a confiscation order.