

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

BACKGROUND

Confiscation

3. Powers to confiscate from convicted defendants their benefit from crime were first introduced following the failure to recover funds in a drug trafficking case in 1978 known as Operation Julie. In this case, some £750,000 of drug trafficking proceeds were traced into the hands of the offenders and restrained. These funds had to be released after the House of Lords held that existing powers to forfeit items used in the commission of an offence could not be used “to strip the drug traffickers of the total profits of their unlawful enterprises.” The confiscation regime was introduced in England & Wales by the Drug Trafficking Offences Act 1986. A similar regime was introduced in Scotland by the Criminal Justice (Scotland) Act 1987. Although confiscation was initially available only in drug trafficking cases, it was extended by the Criminal Justice Act 1988 and the Criminal Justice (Scotland) Act 1995 to cover non-drug indictable offences and specified summary offences. In Northern Ireland, powers to confiscate both the proceeds of drug trafficking and other crime were introduced in the Criminal Justice (Confiscation) (Northern Ireland) Order 1990. Most of this legislation has been amended since its introduction and, while some has been consolidated (in, for example, the Drug Trafficking Act 1994, the Proceeds of Crime (Scotland) Act 1995 and the Proceeds of Crime (Northern Ireland) Order 1996), much has not.
4. Confiscation orders are available following a conviction. The purpose of confiscation proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation). Proceedings are conducted according to the civil standard of proof, i.e. on the balance of probabilities. In certain circumstances the court is empowered to assume that the defendant’s assets, and his income and expenditure during the period of six years before proceedings were brought, have been derived from criminal conduct and to calculate the confiscation order accordingly. In England, Wales and Northern Ireland the court is required to make this assumption following a conviction for drug trafficking, unless to do so would give rise to a serious risk of injustice.

Cash forfeiture

5. Part III of the Criminal Justice (International Co-operation) Act 1990 introduced a new power for police and Customs officers to seize cash discovered on import or export which is reasonably suspected of being derived from or intended for use in drug trafficking. An application may subsequently be made in a magistrates’ court for the forfeiture of the cash. No conviction is required for the forfeiture of the cash to be ordered; cash forfeiture proceedings are civil proceedings and the civil standard of proof applies. These provisions were later consolidated into Part II of the Drug Trafficking Act 1994, which applies on a UK-wide basis.

Money laundering

6. Money laundering is the process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently or recycled into further criminal enterprises. It was first criminalised in the United Kingdom in respect of the proceeds of drug trafficking, by means of an offence in the Drug Trafficking Offences Act 1986. Further drug money laundering offences were subsequently enacted, together with separate offences relating to the proceeds of other criminal conduct and terrorist funds. At the time of introduction of the Act, there are five sets of money laundering offences in force, each applying to a different range of predicate offences and/or jurisdictions.

Report by the Performance and Innovation Unit

7. In October 1998, the Prime Minister tasked the Performance & Innovation Unit (PIU) of the Cabinet Office with examining asset recovery arrangements with a view to improving the efficiency of the recovery process and increasing the amount of illegally obtained assets recovered. The PIU report was published by the government in June 2000 with a number of legislative and other proposals including:
 - the creation of a new agency with lead responsibility for asset recovery and containing a ‘centre of excellence’ for financial investigation training;
 - the consolidation of existing laws on confiscation and money laundering into a single piece of legislation;
 - the introduction of new powers to recover criminal assets through civil proceedings, without the need for a criminal conviction;
 - gateways for the exchange of information between the new agency and the other authorities;
 - enabling the new agency to carry out tax functions in relation to criminal gains; and
 - ensuring that all the agencies involved in asset recovery have sufficient trained staff to enable the system to function efficiently.

Publication of draft sections for a Proceeds of Crime Bill

8. In March 2001 the government published for consultation a Command Paper entitled “Proceeds of Crime Bill – Publication of Draft Sections” (Cm 5066). The Bill introduced in October 2001 incorporated substantial revision of some of the sections, and further provisions were added.