

UK APPROACH TO RECOVERING PROCEEDS OF CRIMINALITY

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Abstract

1. Key legislation for recovery of proceeds of crime in the UK is the Proceeds of Crime Act 2002. This statute can be downloaded from the Office of Public Sector Information website at <http://www.opsi.gov.uk>

2. The Act brought together a number of powers in previous legislation, and significantly widened these powers. Previous UK legislation had constrained confiscation of criminal proceeds to a limited number of criminal activities. It also only allowed cash seizures to take place at borders, and there were no powers for civil recovery or taxation. The coming into force of the Proceeds of Crime Act in 2003 significantly amended powers in all of these areas.

3. The Act enables action to be taken against those who have been convicted in the UK in respect of Confiscation Orders; it allows cash to be seized from any person within the United Kingdom either at the borders or within the territorial limits, and it establishes civil recovery and taxation powers which can be used against property held in the UK.

4. The Act also significantly strengthens the role of the regulated sector in reporting on suspicious activity and as a result of the recent changes to the structure of law enforcement in the United Kingdom gives the Serious Organised Crime Agency powers to use and share data across sectors.

5. This paper looks in brief at the powers, and goes on to consider how they might best be used in conjunction with international activities.

Cash Seizure

6. The legislation now provides that if any police officer or Customs officer has reason to suspect that an individual may be holding cash in excess of £1,000 that individual may be stopped. If they have no legitimate explanation as to where the money they are carrying has come from, the cash may be immediately detained by the law enforcement officer. They will then be subject to a civil procedure in the Magistrates' Courts and if no appropriate explanation as to the provenance of the money can be found, it will be forfeited and remitted to the Home Office.

7. This power has been much used continually at borders and points of entry, but is also being used inland. Since the inception of the power at the beginning of 2003, approximately £1m per month has been taken off the streets.

Criminal Confiscation

8. Criminal confiscation powers now apply to a much wider range of criminality. The principle of the criminal confiscation legislation is that if a conviction has been achieved, the Judge may order a financial investigation into the benefit acquired by the individual, and the assets which the individual may hold as a result of that property. Having completed the analysis of the benefit of the criminality, the Judge will then make an order of either the benefit figure, or the amount of realisable assets. Criminal confiscation forms a debt. If it is not paid by the allocated time, a default prison sentence may be imposed, and at the end of that sentence, the debt remains. It therefore represents a significant way in which to keep pressure on those who have been convicted, and with the establishment of financial monitoring orders, available since the Serious Organised Crime Act 2005, it represents a new approach by the United Kingdom to continue to monitor the activities of those who have been involved in unlawful conduct.

9. Since 2003 the United Kingdom have had powers where criminal conviction and confiscation has not been possible, to move to of civil recovery. These powers are currently exclusively held by the Assets Recovery Agency, but subject to legislation currently being considered by Parliament, they will be made available to the Serious Organised Crime Agency and to all prosecutors.

10. Civil recovery is a procedure which takes place in the civil courts, and where ARA seeks to prove two things. Firstly, that there has been unlawful conduct and secondly, that there is property which results from that unlawful conduct.

11. The Act contains significant human rights safeguards, including a 12 year limitation period, a right to avoiding self incrimination, and rights for compensation if the Agency's action is proved to be ill-founded.

12. These powers can be used against property which may be held by those who have died, those who have fled the jurisdiction, those who have not been convicted, or those who have been convicted, but where no confiscation order was made. It can also be used against property held by people against who no prosecution has been attempted if this is based, for instance, on intelligence which might cause risk to life and safety of witnesses were a prosecution to be attempted.

13. Finally, the Agency also has taxation powers. If there are reasonable grounds to suspect that individuals have income which would have been subject to taxation which appears to have come from unlawful conduct then the Agency may take over the conduct of that person's tax affairs from Her Majesty's Revenue and Customs.

14. Most of those powers are used internally in relation to drug dealing, money laundering and the like. However, they do also offer the opportunity to deal with cases referred by international law enforcement agencies in respect of corruption and the activities of politically exposed persons if these are found to be unlawful.

15. The information which flows from the regulated sector through SOCA through the Suspicious Activity Regime is key in this regard. The Agency and all other forms of law enforcement use the resulting intelligence to support and develop investigations.

16. In terms of international cooperation, Part II of the Proceeds of Crime Act Part 11 is the key power. The cooperation on international work on criminal confiscation is handled by the Criminal Confiscation Branch of the CPS. In terms of support for civil recovery action where other jurisdictions have these powers, the first port of call is the Assets Recovery Agency.

17. The UK's experience has been significant in seeing the impact of powers such as these against organised criminals and those who wish to make money from fraud and corruption. The Agency is keen to play its part, as is the rest of the UK law enforcement community, in supporting other countries, both through support on individual cases where this is appropriate and possible, and through the provision of training to help financial investigators develop their skills, as well as providing advice where we are able to on our experience of the emerging legislation.

Biography of Presenter

Not Received