

Title: Confiscation Under Part 2 of the Proceeds of Crime Act 2002 IA No: LAWCOM0067 RPC Reference No: Lead department or agency: Law Commission Other departments or agencies: Home Office	Impact Assessment (IA)			
	Date: 17 September 2020			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: confiscation1@lawcommission.gov.uk			
Summary: Intervention and Options				RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
£72.96 m	£m	£m	

What is the problem under consideration? Why is government action or intervention necessary?

Part Two of the Proceeds of Crime Act is a quasi-civil legal process designed to deprive criminals of the benefit of their criminal acts. As at 31 March 2019, the value of outstanding confiscation orders was just over £2 billion. Confiscation orders are usually made by criminal judges in the Crown Court at the conclusion of criminal proceedings. The orders are made in relation to the purported benefit from criminal activity and the value of the defendant's assets at the time of the order. There is currently no standardised formula for calculating criminal benefit. When the enforcement order is then remitted to the Magistrates Court, very little information is passed on about the criminal matter or the basis for the confiscation order. The lack of efficient mechanisms for calculation and enforcement is a constraint to the smooth and effective operation of the confiscation system. Government intervention is required to identify and legislate for an improved procedure.

What are the policy objectives of the action or intervention and the intended effects?

- To improve the efficiency of the process by which confiscation orders are made;
- To ensure the fairness of the confiscation regime and a more realistic assessment of a defendant's benefit from crime;
- To optimise the enforcement mechanisms for confiscation orders to improve the recovery rate;
- To highlight victim compensation as one of the explicit objectives of the regime;
- To simplify the regime so that it is more accessible and comprehensible.

We ultimately aim to reform the system such that the law is simplified, clarified and modernised.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do Nothing

Option 1: Overhaul of existing regime to deliver more efficient, realistic and fair enforcement of confiscation orders.

The preferred Option 1 provides a proportionate and cost effective approach to the problem

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year				
Does implementation go beyond minimum EU requirements?			Yes / No / N/A	
Is this measure likely to impact on international trade and investment?			Yes / No	
Are any of these organisations in scope?		Micro Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Overhaul of existing regime to deliver more efficient, realistic and fair enforcement of confiscation orders

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £24.32	High: £121.47	Best Estimate: £72.96

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N Q	£0.02	£0.13
High	N Q	£0.09	£0.78
Best Estimate	N Q	£0.05	£0.39

Description and scale of key monetised costs by 'main affected groups'

On-going costs¹: Lengthier Crown Court proceedings as hearings include third party interests earlier rather than later in proceedings, Annual cost £30,400 [HMCTS]; Enforcement of complex cases previously heard in the Magistrates to remain in the Crown Court, Annual cost £16,400 [HMCTS].

Other key non-monetised costs by 'main affected groups'

Transitional costs: New standardised forms and guidance expected to be negligible as most available on-line and design of such assumed to be part of existing duties; Enhanced training for judges – variable costs depending on whether a fee-paid or a salaried judge; Establishment of new industry Board to manage seized assets; As informal procedures such as pre-case negotiation are formalised there will be requisite administrative support.

On-going costs: New virtual hearings [HMCTS]; Judicial training for larger cohort; Increased prison term as part of existing offenders' sentence [HMCTS]; Addition of expert adviser on some cases.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	£2.94	£24.45
High	0	£14.70	£122.25
Best Estimate	0	£8.82	£73.35

Description and scale of key monetised benefits by 'main affected groups'

Transitional benefits: None identified.

On-going benefits²: Increased recoverable debt, Annual savings £8.82 million; Asset Management Board, £; Reduced number of Magistrate Court hearings; Reduced number of Crown Court hearings; Reduced recourse to the public purse through legal aid; Efficiency savings from placing orders in abeyance.

Other key non-monetised benefits by 'main affected groups'

Improved asset management; Increased victim compensation; Enhanced court reputation for the retrieval of criminal benefit; Increased access to criminal assets as a result of virtual hearings; Improved enforcement of confiscation orders when cases are moved to the Crown Court, Reduced number of Crown Court hearings; Reduced recourse to legal aid funds; Efficiency savings from placing orders in abeyance

¹ Annual cost reference to central estimates.

² Annual savings based on central estimates.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<p>Assumptions: 1) The introduction of Early Resolution of Confiscation Hearings will reduce the number of Crown Court Hearings and reduce the length of Crown Court hearings which do proceed; 2) That the orders for £50K+ are complex cases; 3) That uplift applications will be made with regard to compensation orders so that the amount of compensation received by victims is increased.</p> <p>Risks:</p> <p>1) The EROC hearings do not facilitate the resolution of proceedings or narrow the issues. This risk is extremely low because we know anecdotally that these discussions are already taking place and settlements are being reached in an informal setting. We are seeking to formalise an existing process to limit the need to schedule hearings.</p> <p>2) That there are some orders for less than £50K that are complex because they involve multiple defendants or third party interests, for example, which would take longer to resolve and render our figures inaccurate. There is, of course, a margin for error here, but this is a limited risk because it is logical to assume that orders made for significant amounts of money will generally take longer for the court to resolve.</p> <p>That despite having the power to do so, no uplift applications will be made in relation to compensation orders because ARIS incentivises prosecution authorities to prioritise confiscation uplifts. This is a risk, but it is not significant in relation to our calculations because while we have suggested that victims are likely to receive more compensation under our system, we have not sought to predict how much.</p>		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

Introduction

Background

- 1.1 Part 2 of POCA 2002 was brought into force on 24 March 2003. It sets out the regime under which a “confiscation order” can be made. Following a defendant’s conviction, the Crown Court can determine the defendant’s benefit from crime and make an order against the defendant that he or she repays a sum of money up to the value of that benefit from crime.
- 1.2 The “confiscation order” is an order made personally against a defendant to pay a sum of money *equivalent to* his or her benefit from crime. The defendant is not obliged to realise any particular asset to satisfy the order, as long as the sum of money is paid.
- 1.3 The legal power to deprive an offender of their ill-gotten gains from criminality is of both practical importance and symbolic significance.
- 1.4 However, academics, practitioners, financial investigators and many other groups of stakeholders have questioned whether the current strategy meets its stated objectives. As Bullock and Lister note,

*confiscation engenders a powerful rhetoric of control over acquisitive crime and, in symbolically embodying and reinforcing the assertion that ‘crime should not pay,’ injects a moral authority into the state’s response to crime and criminality. Post-conviction confiscation as a strategy of crime control has also been rationalised and defended on the grounds of introducing greater efficiency and effectiveness into the criminal justice system.*¹
- 1.5 The ineffectiveness of the current confiscation regime in practice is well documented, including, notably, in highly critical reports published by the National Audit Office (“NAO”) in 2013 and the House of Commons Home Affairs Committee in 2016. As at 31 March 2019, the value of outstanding confiscation debt was £2,065.3 million.
- 1.6 It is for these reasons that the Home Office has asked the Law Commission to review the confiscation regime in Part 2 of the Proceeds of Crime Act 2002 (“POCA”).
- 1.7 In reviewing Part 2 of POCA, the Law Commission has been asked to consider both potential amendments to the current legislative regime and recommendations for the creation of a new confiscation regime through legislation.

Problem under consideration

- 1.8 These problems include:

- Challenges in effectively preventing the dissipation of criminal assets;

A confiscation order can only be realistic and enforceable if an offender has assets left to confiscate. Once an offender knows that they are under investigation they have every incentive to put their assets beyond the reach of the authorities. However, judges report that, in many cases, applications for restraint are never made. During pre consultation we heard from prosecution

¹ K Bullock & S Lister in C King & C Walker (Eds), *Post-conviction confiscation of assets in England and Wales: Rhetoric and Reality in dirty assets: new issues in the regulation of criminal and terrorism assets* (2014).

authorities that there is a reluctance to pursue restraint applications prior to conviction because of the potential for adverse costs in the event of an acquittal or discharge of a restraint order.

- Irregular compensation of victims in confiscation proceedings;

Whether a victim is ultimately compensated for their loss may depend upon whether the proceeds of crime are recovered from the offender who inflicted that loss. Our review considers whether the current statutory provisions give sufficient weight to the need to compensate victims. For example, under section 22 of the Proceeds of Crime Act 2002 the court has a power to uplift the amount payable pursuant to a confiscation order. However, the section does not make any provision for revisiting compensation orders to permit an uplift to compensation. This means that if, at the time of making the original order, the defendant has insufficient resources to fully compensate any victims, there is no opportunity to revisit this later, even if the defendant is later found to have been concealing assets.

- Frequent imposition of unrealistic confiscation orders; and

The ineffectiveness of the confiscation regime in practice is well documented, including, notably, in highly critical reports published by the National Audit Office (“NAO”) in 2013 and the House of Commons Home Affairs Committee in 2016. As at 31 March 2019, the value of outstanding confiscation orders was at £2,065,303,000. There is no doubt that recovery rates could be improved and that the existing law contributes to unrealistic expectations regarding recovery.

Our review considers the current process for calculating confiscation orders and the “benefit” amount. It also considers the current enforcement mechanisms and how these could be bolstered.

- Ineffective incentives and sanctions of the confiscation regime.

The imposition of interest and default sentences are the major levers available to incentivise the satisfaction of confiscation orders. An interest rate of 8% applies to unsatisfied confiscation orders and offenders who default after the court ordered time to pay are liable to serve a period of imprisonment in addition to any sentence (custodial or otherwise) imposed for their substantive offending. Our review considers the effectiveness of these incentives and sanctions and whether there are alternatives that could be implemented.

Rationale for intervention

- 1.9 The conventional economic approach to Government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are failures in existing Government interventions (e.g. waste generated by misdirected rules). In both cases the proposed intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more deprived groups in society).
- 1.10 Asymmetric information is evident as the offender has knowledge of the extent of gain from crime but the courts lack this information. The estimated ‘benefit’ amount is the first stage in an attempt at gauging a recovery value. The Courts are also unaware of where assets might be hidden as the offender seeks to prevent access. This further limits the ability of the authorities to recover the proceeds from crime once an order has been made.
- 1.11 The estimated benefit from crime contributes to the scale of outstanding confiscation orders. The large size of outstanding orders has the undesirable consequence of signalling the inadequacy of

enforcement bodies. At worst this perception constrains the full potential of the deterrent effect of confiscation orders which are intended to disrupt criminal activities.

- 1.12 As the above discussion demonstrates, by making the proposed changes to Part 2 of the Proceeds of Crime Act 2002, there is scope for a significant increase in the amount that may be yielded from confiscation orders. By reforming the process by which orders are calculated and the mechanisms relating to restraint and realisation of assets, there will be a reduced reliance on defendants in relation to compliance. Put simply, the state will have the capacity to take assets in order to fulfil confiscation orders which will limit defendants' ability to frustrate the enforcement process. This means that the yield from these orders will be greater. Furthermore, by implementing a process which enables the realisation of assets, orders are likely to be satisfied earlier which supports the long-term rehabilitation of defendants.

Policy objectives

1. To improve the efficiency of the process by which confiscation orders are made;
2. To ensure the fairness of the confiscation regime (including by ensuring that confiscation orders are realistic);
3. To optimise the enforcement of confiscation orders to improve the recovery rate;
4. To prioritise the compensation of victims
5. To simplify the regime so that it is more accessible and comprehensible.

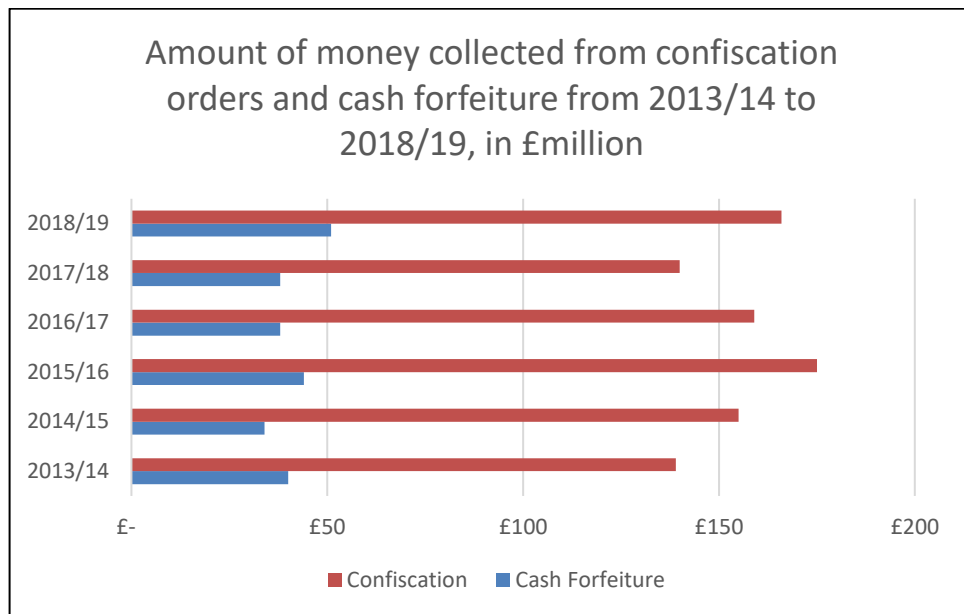
We ultimately aim to reform the system such that that the law is simplified, clarified and modernised

Scale and Scope

- 1.13 Confiscation orders facilitate asset recovery and play a key role contributing to the reduction in crime through:
- Disrupting criminal networks and the further funding of crime;
 - Depriving people of the proceeds of crime;
 - Removing criminal role models in society; and
 - Deterring people from becoming involved in crime.
- 1.14 Data on asset recovery performance under the Proceeds of Crime Act [POCA] 2002 is published annually by the Home Office. The Joint Asset Recovery Database² [JARD] provides asset recovery intelligence. For the 6 year period ending 31/03/2019 the average annual sum collected from confiscation orders and cash forfeiture was £156m and £41m respectively.³ See Chart 1 below.

² Database went live in 2004.

³ Source: Asset recovery statistical bulletin, 2012/13 – 2017/18, Criminal Finances Team, Home Office.



Source: JARD data collected 27/06/2019⁴

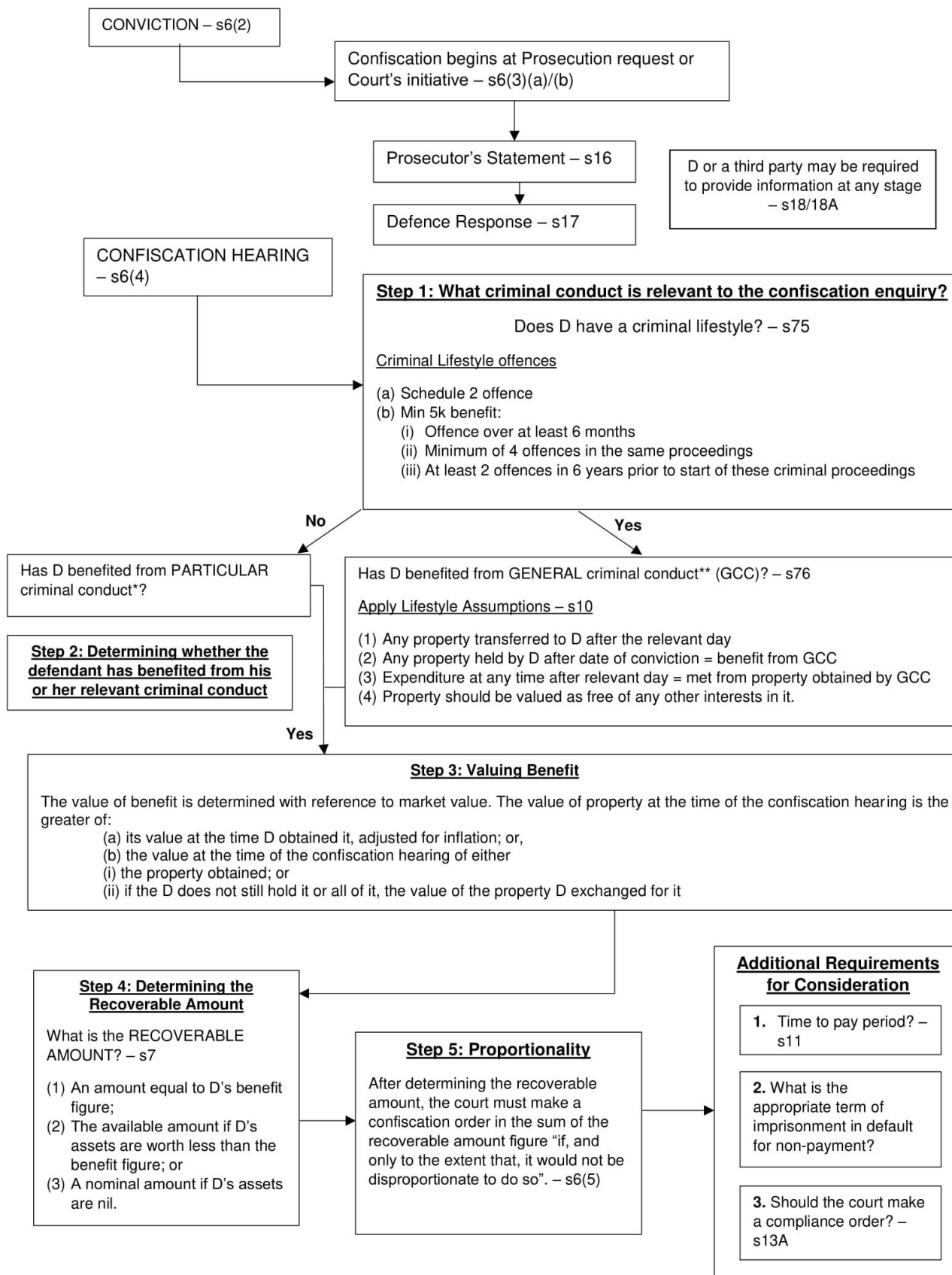
- 1.15 Criminal confiscation refers to the seizure of the proceeds of crime following a criminal conviction whereas cash forfeiture does not require a conviction and instead relies upon civil proceedings.

The Procedure for Issuing Confiscation Orders

- 1.16 When calculating a defendant's benefit from crime, the Crown Court must first determine whether the offender has a 'criminal lifestyle'. This is determined with reference to section 75 POCA 2002. If the person does not have a criminal lifestyle, the court will determine the offender's benefit from crime by examining only the benefit from the offence(s) for which he or she was convicted ('particular criminal conduct'). If the person does have a criminal lifestyle, the court will examine not only the 'particular criminal conduct', but apply statutory assumptions to every transaction undertaken by the offender and every asset held by him or her over a 6-year period. It is assumed that every asset held by an offender during that period is the proceeds of crime, unless he or she can show otherwise.
- 1.17 Having calculated the benefit from crime, the court will then determine what is actually recoverable from the defendant. The confiscation order is then made in the recoverable amount which may be the same or less than the benefit figure. It will be less than the benefit figure if the offender can satisfy the court that they have insufficient assets to repay the benefit in full.
- 1.18 Having made the confiscation order the court must set a time period within which the order must be satisfied. The maximum total period permissible for satisfaction of a confiscation order is 6 months. Upon expiry of the 'time to pay' period, the offender is liable to imprisonment in default in the event of non-payment. The judge must therefore also set the period for the default sentence at the time of confiscation. Finally, the judge must consider making a 'compliance order'. This can be any order that the court thinks is necessary to make enforcement of the confiscation order effective. In considering whether to make a compliance order, the court must always consider whether a travel ban is required.
- 1.19 Upon expiry of the time to pay period, in addition to the risk of imprisonment for non-payment, interest accrues on any unpaid amount. The interest rate is the Judgments Act rate (8% p.a.). See Chart 2.

⁴ See Home Office Asset Recovery Bulletin at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831394/asset-recovery-financial-years-2014-to-2019-hosb2019.pdf (last visited 26th May 2020).

CONFISCATION UNDER POCA 2002



1.20 Live data entries on confiscation orders are provided by:

- The police;
- Criminal Prosecution Service [CPS];
- Serious Fraud Operation [SFO]; and
- Local Authorities.

1.21 However, the problem with such data is that a single reference point to locate all relevant statistics does not exist. Enforcement data lacks the granular detail on how the law was applied to produce the outcome. This is problematic as cases are time sensitive. Six years is thought to be the maximum time period for which germane details of a confiscation order can be expected to remain intact. Beyond this time period it is difficult to enforce the order as the courts will often not have all the papers.

1.22 This Law Commission project seeks to improve the efficacy of the regime recovering the proceeds of crime from convicted offenders. As part of that process evidence is required to inform policy recommendations. The rest of this section describes the evidence gathering process and is structured as follows:

- Section 2 identifies the national profile on key confiscation characteristics;
- Section 3 describes the evidence gathering exercise and presents findings; and
- Section 4, the summary, provides the sense-check for sample reliability.

The section concludes with Home Office data on compensation allocated to victims from confiscation orders and an overview of the cost of crime.

2. National profile of confiscation orders

1.23 Data on outstanding confiscation orders is published annually by HMCTS as part of their trust statement. According to the latest available data the gross value of confiscation order debt as at 31 March 2019 is £2,065 million.⁵ See table 1 below

Table 1: Confiscation Orders: Interest, Assets & Debt, 2018-19 to 2016-17 [in £'000]

	2018-19	2017-18	2016-17
Interest [historically challenging to enforce]	748,882	657,595	568,067
Assets assessed as hidden with no other assets against which enforcement action can be taken	493,830	432,800	359,078
Offenders deceased, deported or cannot be located	151,183	167,982	169,122
Orders subject to appeal and cannot be enforced	11,895	16,129	12,661
Assets overseas	9,646	10,596	7,766
Sub-Total	1,415,436	1,285,102	1,116,694
Remaining confiscation order balance	649,867	676,176	698,124
Total outstanding debt	2,065,303	1,961,278	1,814,818

Source: Various HMCTS Trust Statements, 2017-18 and 2018-19

⁵ The gross value of confiscation order debt as at 31 March 2019 has been impaired for accounting purposes to a net present value of £161 million which is the estimate of the amount that is ultimately collectable.

Confiscation orders amounting to £179.6 million were issued in 2018-19 of which £13.1 million [7.3 percent] were for less than £25,000. Within this cohort 70 percent was collected [£9.1 million]. For higher value orders a considerable proportion is either held overseas and difficult to access or is hidden.

- 1.24 Whilst confiscation debt is £2.065 billion the impaired value for accounting purposes was a net present value of £161 million for 2018/19. This is the amount expected to be recovered over a period of 15 years. Confiscation orders are renowned for taking a lengthy time to complete. The probability of recovery in the short to medium term is low. The assets are likely to be hidden or moved overseas out of court reach. Some orders may never be fully collected. The majority of orders are expected to be completed within 1 15 year time frame. The average impaired value over the three-year period, 2016/17 to 2018/19, is £147 million. The outstanding debt remains payable and can only be cancelled by a court using a judicial cancellation but accrues interest at a rate of 8 percent which increases the debt balance daily.⁶
- 1.25 JARD data on orders made from 2004 onwards, including any pre-2004 orders outstanding when the system went live, provides some insight into the value range of orders most likely to be completed or to have an outstanding balance. In general order amounts less than £10k had the highest completion rates between 98-94%. As the range increased the percentage completed decreases, see table 2 below.

Table 2: Breakdown of confiscation orders by value,⁷ 2004 to 2018

	Imposed	Completed	Outstanding	Percentage completed
£0 to £1k	21,769	21,264	505	98%
>£1k to £10k	21,939	20,637	1,302	94%
>£10k to £50k	13,650	12,091	1,559	89%
>£50k to £100k	3,937	3,183	754	81%
>£100k to £500k	4,200	2,957	1,243	70%
>£500k to £1m	565	290	275	51%
>£1m to £10m	403	149	254	37%
>£10m	26	6	20	23%

Source: National Compliance and Enforcement Service

3. The Law Commission's data gathering exercise

- 1.26 In order to gain greater insight on trends in confiscation orders the Law Commission embarked on a data gathering exercise using a version of cluster sampling based on data from the Liverpool Crown Court [CC].
- 1.27 We are grateful to Liverpool CC for access to confiscation orders for September 2015 to August 2016 inclusive. The time period satisfies two requirements:
- post-Serious Crime Act which came into effect in early 2015; and
 - allows follow through from the hand-down of a confiscation order to cover maximum time extensions and default sentences where relevant.
- 1.28 Liverpool Crown Court was selected as the most representative CC because it covers the full spectrum of cases in general. Specifically in relation to cases to do with confiscation orders it does not have a record of specialisation in complex cases. During the 35 month period ending February

⁶ The impaired value is an accounting estimate of the amount that HMCTS believe can be recovered, it is based on individual assessments of accounts over £1m in value but for all other accounts it is based on using historical receipts as an indicator for future cash collections.

⁷ Excludes nominal orders. Reference to 'value' in e-mail correspondence – assumed to be equivalent to original order amount.

2018 Liverpool CC consistently featured within the top three rankings of Crown Courts with respect to:

- the volume of POCA hearings;
- the duration of hearings; and
- the number of sitting days.

See Table 3 below.

Table 3: Crown Court POCA Hearings and the Sitting Days, January 2015 – February 2018⁸

Crown Court	No. of Hearings	Duration of Hearings [mins]	Sitting Days
Liverpool	1,056	15,443	60
Nottingham	655	n/a	n/a
Birmingham	599	24,041	93
Southwark	n/a	29,396	114

Source: Data provided by HMCTS

- 1.29 Based on average data we identified the average case hearing time and the number of hearings per sitting day as about 30 mins and 10 hearings respectively.
- 1.30 Our interest is in collecting data across a range of variables and to extrapolate findings from our sample to confiscation orders in general. In some cases the proportion of the population [post-2015 confiscation orders] is known to have particular characteristics. For example data reveals the proportion of UTP-nominal orders [as a percentage of all confiscation orders].
- 1.31 But there is less certainty on the proportion of orders requiring a time extension in order to complete payment. However, even for those variables with which we are less certain we benefit from stakeholder insights and anecdotal evidence. On this basis we identified a minimum sample size.

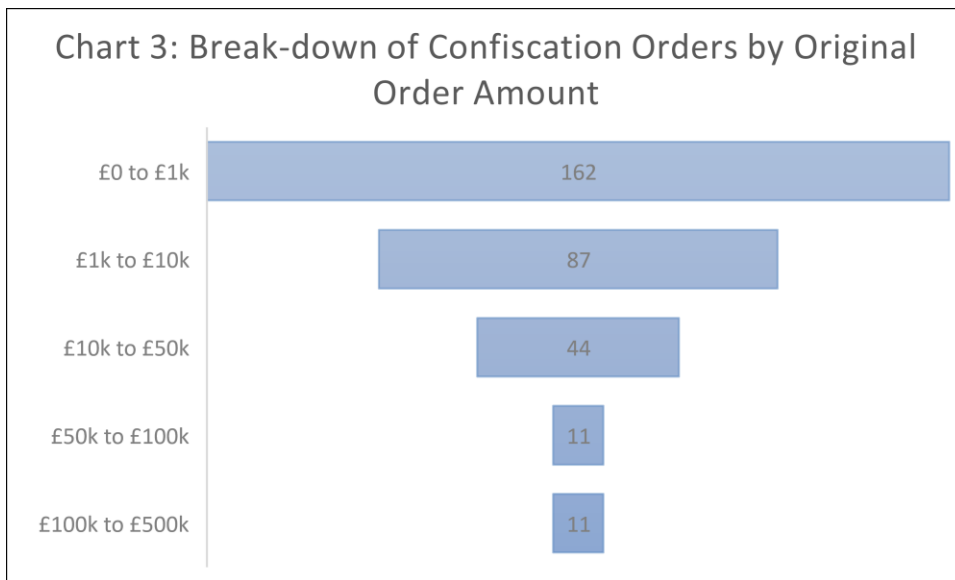
Liverpool Crown Court data

- 1.32 During 03/09/2015 to 29/08/2016 Liverpool CC issued 315 confiscation orders.⁹ The majority [75%] of orders issued were valued at less than £10k and a minority [8%] were valued above £50k.¹⁰ See chart 3 below.

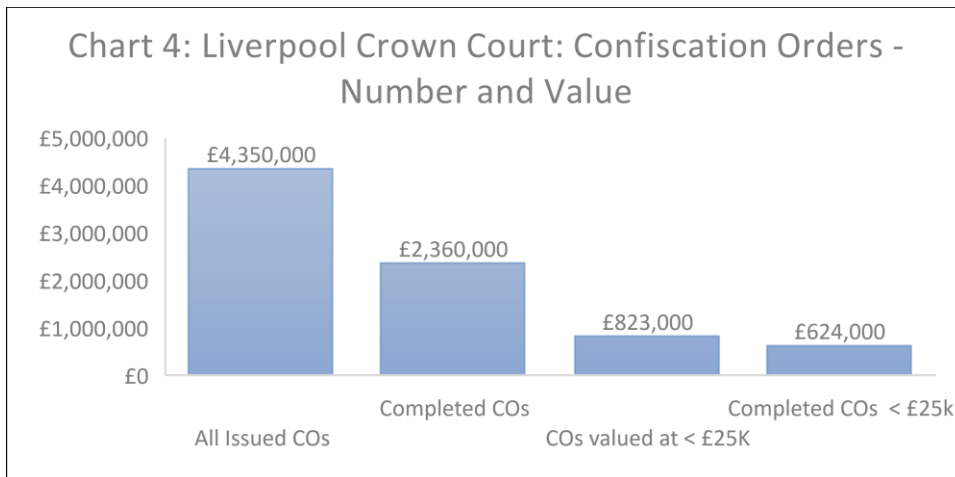
⁸ Restricted to the top three ranking Crown Courts in each category. n/a means the Crown Court did not fall within one of the top three rankings.

⁹ Including UTPs.

¹⁰ Excluding nominal orders [50].



1.33 The total value¹¹ of all confiscation orders issued was £4.35 million. Completed payments accounted for about £2.36 million¹² [54%] of this amount. About 85% of all orders¹³ had an original order amount of less than £25,000 and a total value of £823k. Just under 55%¹⁴ of orders [with an original order amount less than £25k] were completed in full. See chart 4 below.



1.34 The chart above indicates that a higher proportion of lower value confiscation orders are collected [76%] but such orders account for a lower proportion of total payments [35%] than do higher value confiscation orders.

1.35 Table 4 below provides headline details from Liverpool Crown Court data.

¹¹ Original order amount.

¹² Refers to confiscation orders with zero balance outstanding but may have cumulative interest payments. 146 confiscation orders completed.

¹³ Excludes UTP-Nominal Orders.

¹⁴ 125 of 226 confiscation orders.

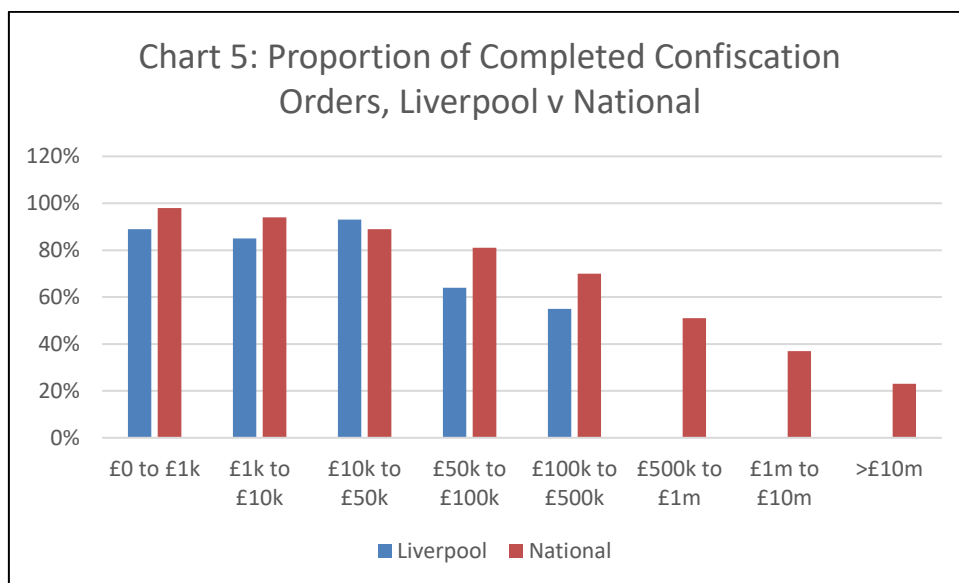
Table 4: Assets and Benefits, 2015-2016, [in £ million]

	In £ million
Total benefit assessed	£76.63
Original order amount	£4.35
Current order amount	£4.24
Total payments	£3.76
Total asset value applied for	£9.64
Asset value assessed	£9.52
Asset value realised	£1.29
Total payments / total benefits assessed	5%
Asset value realised / asset value assessed	13%

- 1.36 There is quite a wide divergence [£2.47m] between total payments made and asset value realised. This is likely due to payments being made from sources other than the assets identified as belonging to the defendant at the time of confiscation. There is no obligation on a defendant to realise their identified assets to pay a confiscation order because the orders are made against the person and not against the assets.

Overview of Liverpool Crown Court v National data trends

- 1.37 There is compelling evidence that Liverpool CC data displays similar trends to the national picture. For example chart 5 below shows the proportion of confiscations orders completed across different value ranges in the case of all national confiscation orders and Liverpool CC data.



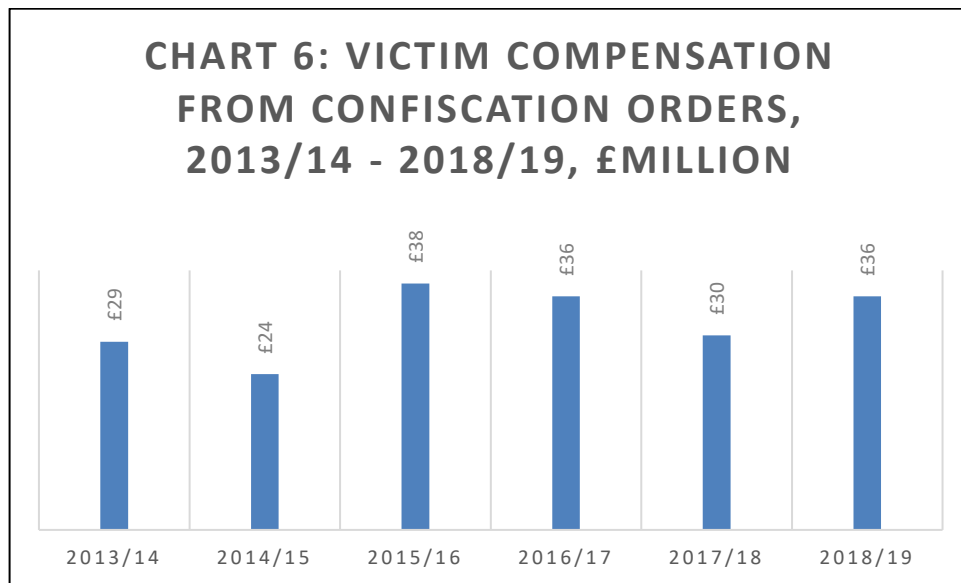
- 1.38 For confiscation orders with original order amounts less than £50k divergence between national and sample statistics is less than 10 percentage points ranging from -4% to 9%. One explanation for greater divergence in evidence beyond £50k is the limited sample size of just 22 confiscation orders which increases the ability of a few large orders to bias results.
- 1.39 A consistency check using the £25,000 threshold value adopted in the HMCTS Trust report produced a similar trend between Liverpool CC and the national picture. For both the sample and the national a higher proportion of lower value confiscation orders were completed [70% at the national level and 76% with respect to Liverpool CC.]
- 1.40 Further similarity between national and Liverpool data arises in relation to the proportion of nominal orders to total orders, 16% with respect to the national case and 14% with respect to Liverpool.

- 1.41 On the basis of the above there is some evidence that the characteristics observed in the sample will likewise represent the characteristics of the total population.
- 1.42 Sample data identifies *Buildings/Land* as the most influential asset type accounting for the greatest estimated asset value [65% of total asset value], the greatest proportion of overseas assets [89%] and the highest proportion of unrealised assets [70%]. The asset is the most illiquid and this impacts directly on payment period end dates.
- 1.43 Inferences that may be extrapolated from the sample to the national are as follows:
- (1) Overseas assets: Largely consist of *Buildings/Land* and account for a relatively small proportion of total asset value, less than 4%. On the national scale overseas assets were also of comparatively low value in relation to other national statistics, albeit significantly lower than our sample proportions;
 - (2) Statutory Assumptions applied: Confiscation orders with a BAA greater than £50k are most likely to have had statutory assumptions applied. Sample data identifies 85% of confiscation orders with an original order amount of less than £50k. On this basis the number of applications is likely to be low.
 - (3) Third party interests: Unsurprisingly *Buildings/Land* had the greatest identifiable instance of third party interests [9]. But this is likely to be an under-estimation potentially being as high as 50% of the asset category. Given the significant asset valuation of this category the impact could be significant;
 - (4) Time to pay: In the 30 cases given time extensions, 23 confiscation orders were satisfied, 8 of which were in *Buildings/Land*, i.e. 35% of the total satisfied during the extended payment period - more than one-third; and.
 - (5) Hidden assets: Only 4 of the 15 orders had an asset value greater than £50k [of which 3 were over £100k]. This is somewhat at odds with the national picture of significant hidden assets. Small sample size may have contributed as only a few large orders are required to inflate the value.

4. Victim Compensation

- 1.44 A court may order the offender to pay compensation to the victim of the crime. If both a compensation order and confiscation order are in place against the subject and they are unable to pay both – victim compensation will take priority.
- 1.45 In 2018-19 just over £36 million¹⁵ was paid in compensation to victims from the proceeds of confiscation. See chart 6 below.

¹⁵ See Home Office Asset Recovery Bulletin at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831394/asset-recovery-financial-years-2014-to-2019-hosb2019.pdf (last visited 26th May 2020).



On average, over six years, victims received £32 million in compensation amounting to just over 20 percent of the average recovered.

Cost of Crime

1.46 The Home Office provides estimates of the economic and social cost of crime¹⁶ under the following three cost categories:

1. Costs in anticipation of crime;
2. Costs as a consequence of crime; and
3. Costs in response of crime.

1.47 Non-violent crimes are likely to dominate. For this reason we use the proxy of the average costs in response to all non-violent crimes. The costs in response to crime include police costs in dealing and investigating crime and the costs to the criminal justice system [CJS] covering 10 areas¹⁷ [excluding the police]. The average across non-violent crime is indicated in table 5 below.

Table 5: Average unit cost of police resources and to the criminal justice system as a result of non-violent crimes.¹⁸

Response to crime	Non-violent average unit cost
Police costs	£410
Criminal Justice system costs	£590

Confiscation order appeals

1.48 Appeals against the confiscation order can be made by the defence or the prosecution. Additionally, within the prosecution. The number of confiscation order appeals is indicated in table 6 below.

¹⁶ All costs in 2025/26 prices.

¹⁷ The ten areas cover Prosecution [CPS], Magistrates Court, Crown Court, Jury service, Legal aid, Non-legal defence, Probation Service, Prison Service, National Offender Management Service and the Youth Justice Board.

¹⁸ In 2015/16 prices rounded to the nearest £10.

Table 6: Annual number of Confiscation order appeals, June 2017 – June 2020

	Confiscation Order - Defence	Confiscation Order - Prosecution		Confiscation Order – Prosecution Total	Grand Total
Received		Third Party	Prosecution		
Jul 17 - Jun 18	77	4	5	9	86
Jul 18 - Jun 19	86	3	3	6	92
Jul 19 - Jun 20	51	2	2	4	55
Grand Total	214	9	10	19	233

Source: Data provided by Criminal Appeals Office

Crown Court and Magistrates Courts costs

1.49 Both the Crown Court and Magistrates have 5 hour long sitting days where the average cost of judicial and staff salaries is indicated in table 7 below.¹⁹

Table 7: Average staff and judicial cost per sitting day [5 hours], 2013/14

	Crown Court	Magistrates
Judicial	£981	£130
Staff	£541	£981
Total	£1,522	£1,111
Uprated 2019/20 prices		
	£1,688	£1,232
Hourly cost²⁰	£340	£250

¹⁹ [Her Majesty's Courts and Tribunal Services Annual Report and Accounts 2013-14 (24 June 2014) page 7].

²⁰ Rounded to nearest £10.

Main Stakeholders

- Police
- HMCTS
- Legal practitioners – solicitors and the private Bar
- The Judiciary
- Magistrates
- The CPS
- Law academics
- The Home Office/government broadly
- Defendants
- Victims of crime
- Financial Investigators
- Private Receivers

Description of options considered

1.50 This impact assessment compares Options 1 against the do nothing [option 0]:

- (1) Option 0 – Do nothing
- (2) Option 1 – Overhaul existing confiscation order regime.

Option 0 – Do nothing

1.51 This option would be to retain existing arrangements. The Law Commission has rejected this option as it is clear from our discussions with stakeholders that the existing regime simply does not work. It is inefficient in terms of the process and inefficient in terms of the yield from confiscation orders. The key features and associated problems of the current law are summarised in table 8 below.

Table 8: Option 0: Key features and associated problems

Key features	Associated problems
The current system makes orders in person which relies on the defendants to arrange payment.	<ul style="list-style-type: none"> - Often defendants resist payment and prefer to serve terms of imprisonment in default in order to hold onto their ill-gotten assets. While some assets may be confiscated and vested, this is not automatic and defendants may divest their assets/hide them in order to prevent them from being confiscated.
The confiscation orders are made in the crown court but enforced in the magistrates' court	<ul style="list-style-type: none"> - The magistrates court often does not receive adequate information about the associated criminal matter and basis of the order. - Defendants are able to frustrate the system by refusing to pay. Once a sentence of imprisonment in default has been served there is no scope for further enforcement.
Confiscation orders are often negotiated prior to the confiscation hearing. Benefit figures are not always subject to rigorous scrutiny because the focus in the agreed order is often on the amount to be paid, rather than the benefit. The defendant may be unaware of the potential liability to repay the difference between the benefit figure and the sum ordered to be paid at a later date.	<ul style="list-style-type: none"> - These figures remain as outstanding sums and contribute to the £2 billion in outstanding orders. - Defendants are never able to fully rehabilitate because these orders expose them to subsequent applications to take any newly accumulated assets in satisfaction of the order.
Confiscation orders are able to be increased using s22 POCA 2002 but compensation orders are not.	<ul style="list-style-type: none"> - Compensation of victims is not prioritised and victims may be left out of pocket because all recoverable monies is distributed according to ARIS.
The process for determining the extent of a defendant's interest in an asset is not used consistently.	<ul style="list-style-type: none"> - Confiscation proceedings are often significantly delayed because of the need to determine third party interests in property/assets. - Judges who practice in criminal law are often hesitant to make determinations which may affect concurrent family law proceedings.

Option 1 – Overhaul of existing regime [preferred option]

The focus here is only on those proposals likely to have significant costs or savings or which are in the public interest. Eight policy areas are indicated as follows:

1. Objectives of the act

- a) There should be clearly articulated aims of the regime contained in the statute.
- b) The principal objective should be supplemented by secondary objectives, namely deterrence and disruption of crime, and ensuring the compensation of victims, when such compensation is to be paid from confiscated funds.

By identifying the explicit aims of the statute, there will be clarity with regards to the calculation of benefit. Furthermore if compensation is identified as a priority in the statute there may be implications for the government's Asset Recovery Incentivisation Scheme yield.

2. Preparing for the Confiscation Hearing

- a) We propose a new process underpinned by the Criminal Procedure Rules to ensure that timetables are appropriate, material is served, appropriate sanctions for non-compliance exist. This will have some flow-on administrative costs.
- b) We propose a new hearing (Early Resolution of Confiscation), to take place after the exchange of information and before a confiscation hearing is listed, to facilitate the early resolution of the confiscation proceedings. While this is likely to have administrative costs, it should save significant court costs later because it will facilitate the resolution of proceedings in lieu of a lengthy court hearing.
- c) A system of "ticketing" judges re confiscation expertise. This has potential costs which are discussed below.
- d) To resolve a complex issue the court should have the discretion to draw on the expertise of an assessor. This has potential costs which are discussed below.
- e) We propose that the Crown court should be permitted to refer an issue in confiscation proceedings to the High Court for a binding determination. While this may have some costs implications, they are likely to be limited.

3. Defining and valuing benefit

- a) We propose changing the definition of benefit to ensure that orders are more realistic.
- b) We propose that the course of criminal activity trigger should be that a person has been dealt with by the court for a minimum number of offences, whether those offences comprise convictions or offences taken into consideration. This will mean that more proceedings are covered by the assumptions and thus the benefit recoverable may be higher.
- c) When the court considers each offence relevant to the trigger the court should consider both offences from which there was benefit and offences for which there was an attempt to benefit. This will mean that more proceedings are covered by the assumptions and thus the benefit recoverable may be higher.
- d) Where there are multiple convictions on the same occasion and convictions on multiple occasions, we propose that the number of offences required to trigger the assumptions be harmonised.
- e) When the court considers each offence relevant to the trigger the court should consider both offences from which there was benefit and offences for which there was an attempt to benefit. This will mean that more proceedings are covered by the assumptions and thus the benefit recoverable may be higher.
- f) The financial threshold for triggering the lifestyle assumptions be raised from £5,000.
- g) We propose that where there are multiple defendants, the judge be required to indicate how the benefit is to be apportioned and why.

4. Enforcement

- a) We propose giving the Crown Court the power to make automatic vesting orders. This will make enforcement significantly easier because it will enable the court to realise assets in the event of non-payment.
- b) We propose that the Crown Court should also have the power to make contingent enforcement orders which take effect only where a defendant fails to satisfy a confiscation order. This will make enforcement significantly easier because it will enable the court to realise assets in the event of non-payment.
- c) A defendant who has served a term of imprisonment in default will no longer be released unconditionally but will remain on licence and may be returned to custody in the event of further default. If defendants are returned to prison, this will have significant cost implications.
- d) If the Crown Court is satisfied that a defendant is unable to satisfy an order, and all methods of enforcement have been exhausted, it may direct that further enforcement be put into abeyance pending further order of the court. This will serve to prevent a debt from accumulating at the rate it currently is with regard to the (approximately) £2 billion outstanding.
- e) Where the supervising enforcement court is satisfied there are sufficient grounds to do so, the court may pause interest to incentivise continued compliance. This will also serve to prevent the debt increasing and will encourage payment of the orders.

5. Compensation

- a) A power for the court to direct that the sums due under a compensation order, be paid out of funds collected under a confiscation order. This will reduce the money recoverable under ARIS.
- b) That adjustments to confiscation orders pursuant to s 22 of POCA 2002 should permit adjustments to the compensation element of an order. This could limit ARIS recovery if money is uplifted for compensation orders rather than confiscation orders.

6. Reconsideration

- a) We propose that, to assist the court in determining a “just” uplift of a confiscation order, the court should be invited to weigh factors including undue hardship, disruption of criminality, deterrence, diligence of the prosecution. This will make it harder for prosecution agencies to pursue “low-hanging fruit” and assist in protecting efforts towards rehabilitation. It may therefore reduce some yield, but there should be less need for applications under s22 under the new proposed system of contingent orders.

7. Restraint

- a) We provisionally propose that the legal aid exception to restraint orders should be altered to permit the payment of lawyers in confiscation proceedings and related criminal proceedings. This will reduce reliance on legal aid but could reduce the ultimate yield from confiscation orders if funds are dissipated on legal expenses.
- b) We ultimately propose that the ability of the court to make a conclusive determination on third-party interests be extended not just to restraint but to any stage of the confiscation process. This will save court time and expense post-confiscation order.
- c) We provisionally propose that applications for without notice restraint orders should be made to a duty judge, the application should be dealt with by the judge on the papers where possible, that judge should be permitted to hold a hearing remotely, the hearing should be listed at a court centre local to the parties. This will save the costs of court facilities for what may be short administrative determination.

8. Effective asset management

- a) We provisionally propose that where assets are seized because of a risk of dissipation, an application may be made to appoint a management receiver over the seized assets. A management receiver's remuneration and expenses are paid from the assets over which he or she is appointed. This may reduce the amount recoverable under a confiscation order.
- b) We provisionally propose that the National Police Chiefs' Council gives renewed consideration to the training needs of all police officers in connection with POCA 2002. This may require additional funding.
- c) Creating a Criminal Asset Recovery Board ("CARB") with responsibility for developing a national strategy for asset management and realisation. This may have some low administrative costs but we envisage it will be a voluntary professional body such as the Financial Investigators' working group where participation is unpaid.

Monetised and non-monetised costs and benefits of each option

This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the "do nothing" option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or produces changes in equity and fairness, either positive or negative.

When calculating the net present social value ("NPSV") for the impact assessment we have used a time frame of ten years, with the present being year 0. We have assumed that the transitional costs and benefits occur in year 0, the current year, unless otherwise indicated. Ongoing costs and benefits accrue in years 1 to 10. We have used a discount rate of 3.5%, in accordance with HM Treasury guidance. Unless stated all figures are in 2019/20 prices, and have been uprated using the GDP deflator to adjust for inflation.

Option 0: Do nothing [base case]

Because the "do nothing" option is compared against itself its costs and benefits are necessarily zero, as is its NPSV.²¹

Option 1:

Costs

Transitional Costs

1. New forms and guidance

New standardised forms will be required across a number of policy areas. For example pre-order case management is likely to require separate court dates/listings for half-day hearings. New compliance orders, as part of the enforcement process, will also require new forms. Most, if not all new forms will be on-line, as will guidance. The cost will be in terms of time taken to draft new guidance and to the extent it fits within the remit of existing staff duties we anticipate negligible cost impact.

There will be some familiarisation costs but this is expected to be negligible. Additional guidance is expected to be between 20 to 30 pages. We estimate 6 – 13 minutes additional

²¹ The NPSV shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPSV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

reading time with the central estimate being 9 minutes based on average words per page of between 200 – 300 words and an above average reading and comprehension level.²² Of the 600 Crown Court judges, we estimate that between 20 to 30 percent are affected, with a central estimate of 25 percent.²³ Additionally we provisionally propose that expert assessors be available to assist Crown Court judges presiding over complex confiscation matters. However, we anticipate that this will be a rare occurrence and the consequent cost implications very low.

2. Enhanced training for judges

Confiscation cases draw upon both civil and criminal law and require specialist training. Crown Court judges can opt to undertake training on confiscation as part of an annual two-day residential course. We provisionally propose that all judges who sit in the Crown Court should receive training on confiscation. It is important to note that the costs for delivery of training vary depending on whether the training is delivered to salaried judges or daily fee-paid judges. It is cheaper to deliver training to salaried judges because the cost is built into their salary and not an additional expense, whereas fee-paid judges would have to be paid for the time. The judicial college has indicated that the cost for a fee-paid judge to attend one day of training is approximately £1,000.

The judicial college also indicated that there is scope for training to be delivered either online or in person, but there are advantages and disadvantages (and costs) associated with each of these options. Whilst facilitating training virtual will save the cost of venue hire, transport and catering, training is less efficient in this format. Training undertaken virtually make ultimately take significantly longer than training which is undertaken in person and this should be considered.

The key factor in determining the way in which any confiscation training would be implemented is the Judicial College budget. The Judicial College training budget comes out of the MoJ budget and is currently tied to existing training projects. If the Judicial College received further funding, they would be able to expand their confiscation training options.

3. Establishment of Confiscation Asset Recovery Board

This proposal entails the establishment of an industry body which would set policy and procedure for the standardised management of restrained and/or seized assets. The board structure would comprise law enforcement and professionals who work in the field of asset recovery. It is envisaged that the board would operate on a voluntary basis in the same way that professional groups such as the Financial Investigators' Working Group do. We envisage a structure whereby the board would meet sporadically and the members would likely rotate over time. Therefore, there should not be costs associated with the establishment of this body.

4. New procedures requiring administrative support

As informal procedures are formalised administrative support is likely to be required. The extent to which this can be incorporated within existing duties and responsibilities largely depends on the scope and scale.

5. Drafting

A number of our proposals require drafting new legislation to simplify and replace or codify existing law. The resourcing for this piece of work is not included within the scope of this review, so it will be an additional cost borne by the Home Office. This represents an opportunity as resources that may have been diverted elsewhere will be required for drafting.

²² See reading tables at readingsoft.com.

²³ Magistrates / Crown Court judges' salaries uplifted by 18 percent to account for non-wage labour costs [based on Eurostat estimate of non-wage labour costs for the UK]. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836747/judicial-fee-schedule-october-2019.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836749/judicial-salary-schedule-oct-2019.pdf (last visited 7th September 2020).

To the extent that staff are already operating at optimal capacity this may have wider implications.

6. Virtual hearings

As part of increasing the yield from criminal activity it is important that related assets are identified and frozen. Virtual hearings allow for timely decision-making to deal with such matters. Virtual hearings will not replace confiscation order hearings but are intended to be used only for appropriate without notice applications for a restraint order. The impact of COVID on court system²⁴ and increased uptake of virtual hearings may mean costs incurred may be lower, although admin support would still be required in facilitating hearings.

On-going Costs

7. Increased prison time

As a result of including offences which have been “taken into account” in the assessment of benefit, the potential term of imprisonment in default may be greater. This may then have implications for probation terms. Our proposal also involves giving the Crown Court new powers to recall to prison those who have been released from custody after serving the non-parole period but continue to fail to comply with enforcement terms.

8. Lengthier Crown Court proceedings

Crown Court hearings in connection with confiscation orders will often include third party interests. It is proposed that the determination of such interests (including appeals) should occur early in the process. Effectively front-loading the system will mean longer hearings but with better recovery. Due to our proposals in relation to Early Resolution of Confiscation hearings, we anticipate there will be fewer Crown Court Hearings overall. (See paragraph entitled “Reduced number of Crown Court hearings” below)

See table 9 below.

Table 9: Increased Court cost for longer hearings (Volume, £)

	Low estimate	Central estimate	High estimate
Average No. of outstanding confiscation orders valued >£50k	180	180	180
Percentage No. of increased hearings	15%	25%	35%
Average hourly Crown Court sitting cost ²⁵	£340	£340	£340
Additional No of hearings @ 1 hour each	1	2	3
Total cost²⁶	£9,100	£30,400	£63,800

Assumptions:

- High value confiscation orders [£50k or more] most likely to be complex;

²⁴ See <https://www.gov.uk/government/news/more-face-to-face-hearings-as-courts-reopen>, last visited 14th September 2020.

²⁵ Rounded to nearest £10 for presentation.

²⁶ Rounded to nearest £100.

- Average number of hearings based on average number of outstanding confiscation orders valued more than £50k. Of this number [about 180] between 15 - 35 percent assumed to require additional hearings;
- additional one-hour long hearings required: 1 hearing²⁷ [low estimate] - 2 [central estimate] 3 [high estimate]; and
- In the absence of a detailed order breakdown we apply proportions indicated in table 2 using a simple average.

Estimated annual cost = £30,400 [central estimate]

Present value over 10 years = £0.25 million [central estimate]

9. Judicial training on confiscation

Proposals for enhanced training on confiscation have additional cost implications for the existing cohort and potentially for future cohorts if the time allocation also increases.

10. Crown Court to maintain jurisdiction over enforcement

Currently, enforcement of confiscation orders occurs within the Magistrates' Court. The proposal calls for more complex cases including those involving third party interests to remain within the Crown Court. More Crown Court resources will be required to facilitate these hearings. See table 10 below

Table 10: Increased number of Crown Court cases (Volume, £)

	Low estimate	Central estimate	High estimate
Average No. of hearings	180	180	180
Percentage with longer hearings	40%	50%	60%
Average hourly Crown Court sitting cost	£340	£340	£ 340
Average hourly Magistrates cost	£250	£250	£250
Additional No of hearings @ 1 hour	1	2	3
Total cost²⁸	£6,600	£16,400	£29,500

Assumptions:

- High value confiscation order [£50k or more] most likely to be complex;
- Average number of hearings based on average number of outstanding confiscation orders valued more than £50k
- Additional one hour long hearings required: 1 hearing²⁹ [low estimate] - 2 [central estimate] 3 [high estimate]
- In the absence of a detailed order breakdown we apply proportions indicated in table 2 using a simple average such that

²⁷ Drawing on a comprehensive breakdown provided by table 2 sets the percentage completion at much higher 90+%.

²⁸ Rounded to nearest £100.

²⁹ Drawing on a comprehensive breakdown provided by table 2 sets the percentage completion at much higher 90+%.

Estimated annual cost = £0.02 million [central estimate]

Present value over 10 years = £0.14 million [central estimate]

11. Crown Court cases now to include an expert assessor

Currently, unlike in the High Court, the Crown Court is not entitled to make use of an expert assessor. Our proposal would enable the Crown Court to call upon an expert assessor (such as a forensic accountant) to provide advice and assistance in complex confiscation matters.

Benefits

Transitional benefits

None identified

On-going benefits

1. Increased recoverable debt

There are a number of policy proposals that we think facilitate the increase in the recoverable debt. The most significant contributing proposal is the increased number of restraint orders granted early in the process. Additionally, enhanced asset management is anticipated to maximise returns over time. Other policy proposals such as those aimed at enforcement maintaining license terms subject to co-operation on payment plans impose an incentive towards regularised payments; the Court requirement for defendants to provide a full statement of their financial circumstances provides fuller information on which the Judge can base an order; and finally changes in lifestyle assumptions will pull more people into the net and increase the potential asset pool.

In attempting to monetise the potential for an increased recoverable yield we rely on the average recoverable value over a three-year period and assume a percentage uplift. See table 11 below.

Table 11: Increased recoverable amount, (£, volume)

	Low estimate	Central estimate	High estimate
Average recoverable debt	£147 million	£147 million	£147 million
Percentage uplift	2%	6%	10%
Annual recovered debt	£2.94 million	£8.82 million	£14.70 million

Assumptions:

- Annual average recoverable debt based on most recently available three-year average: £147 million;
- Uplift range of 2% [low], 6% [central], 10% [high]. The applied range is based on forensic identification and discussion of all policy proposals likely to impact on recoverable debt and an assessment of the likely scale of impact.

Estimated annual cost = £8.82 million [central estimate]

Present value over 10 years = £73.35 million [central estimate]

2. Improved asset management

The establishment of a Confiscation Asset Recovery Board allows for more robust asset management and with it the potential for a greater yield over time. Currently the realisation of assets is undertaken in an incoherent and inconsistent way. Different regional law enforcement agencies have individual relationships with management receivers (auction houses) without any oversight. As a result assets can be poorly looked after and then sold for too much or too little. The costs of this service are also determined on an ad hoc basis. A Criminal Asset Recovery Board would comprise industry professionals who could develop streamlined policies to govern the consistent and appropriate management and realisation of assets.

3. Increased victim compensation

One of our proposals in relation to compensation would enable an uplift of compensation orders in the same vein as uplifts orders under section 22. This would mean that if the defendant accumulated assets after the original compensation order was made and there were still victims who had not been fully compensated, an application could be made to increase the compensation order to encompass the new assets. Furthermore, we make a proposal that the court should have the power to direct that the sums due under any compensation order or like order, be paid out of the funds collected by way of the confiscation order. This means that all of our measures to increase confiscation yield (better restraint and asset management measures, contingent orders etc) would also increase the amount able to be obtained under compensation orders.

4. Reduced number of Magistrate court hearings

As the Crown Court takes on enforcement responsibilities there will be parallel savings for the Magistrates from not having to supply this function.

5. Reduced number of Crown Court hearings

The introduction of an Early Resolution of Confiscation Hearing will reduce the number of crown court hearings by providing a forum in which the parties may negotiate an early settlement. By mandating early discussions, we hope that even where hearings cannot be avoided, the issues will be able to be narrowed such that the length of hearings will be significantly reduced.

6. Reduced recourse to the legal aid purse

The proposal to allow for the release of reasonable legal expenses from restrained funds provides savings for legal aid which would otherwise have financed the defence. This is a saving for legal aid budget as funds can be re-directed to other areas.

7. Enhanced court reputation to retrieve ill-gotten gains

The more realistic benefit calculation provides for a far greater prospect for asset recovery as a proportion of outstanding claims. Current estimates are based on an assumed criminal

lifestyle. They have the unintended consequence of inflating the benefit sum significantly beyond that likely to be retrieved and policy becomes anchored to that inflated figure.

8. Increased access to criminal assets from virtual hearings

Initiatives to recover criminal assets often occur too late in the process, virtual hearings provide for more timely action and provide for the realistic chance of asset recovery before assets are no longer available having been hidden or otherwise disposed.

9. Improved enforcement when cases moved to Crown Court

The retention of cases within the Crown Court also safeguards case evidence. This, in turn, provides for a more realistic chance of enforcement because currently when matters transfer to the magistrates' court for enforcement the magistrates are reliant on piecemeal information in relation to the defendant's assets. Defendant's will attempt to frustrate proceedings by providing inadequate supporting material or will make efforts to delay enforcement. If matters remain in the Crown Court, the judge will have a comprehensive understanding of the defendant's financial position from the evidence at trial and will be able to ensure that payment of the order occurs promptly.

10. Efficiency savings from placing orders in abeyance

By placing orders into abeyance (but with a mechanism to enable review periodically if need be), repetitive enforcement hearings are avoided in circumstances where the defendant's financial position and inability to pay is unchanged.

Wider impacts

- Equality impact assessment

Our proposals seek to overhaul the existing system

We believe the proposals set out in Option 1 will have no adverse impact in terms of the protected characteristics. On this basis we are not required to complete a full equality impact assessment.

- Justice impact assessment.

The impact on the justice system of our proposals is considered throughout this impact assessment. In summary, as we detail above, we expect there to be some moderate savings

- Health impact assessment

Our proposals are expected to have a positive impact on health and well-being.

Firstly, in relation to defendants, our proposals seek to front-load the system so that issues which may have previously caused matters to be significantly delayed (such as the determination of third party interests in property) occur earlier in the process. This means that matters are finalised sooner and defendants have certainty of outcomes and can move on with their lives. Having a clear outcome will lessen the anxiety which may otherwise be caused by the delays in the confiscation process.

A further way in which our proposals will contribute to the health and well-being of the community is through the prioritisation of compensation as an objective of Part 2, POCA 2002. The more regular and consistent compensation of victims will increase public confidence in the confiscation process.