

Reforming POCA: The Law Commission publishes a report recommending reforming Part 2 of the Proceeds of Crime Act 2002

By Tim Green KC & Douglas Maxwell

Update

On 9 November 2022, the Law Commission published *Confiscation of the proceeds of crime after conviction: a final report (Law Com No.410, 2022)*. The report proposes far-reaching reforms to the Proceeds of Crime Act 2002 (“POCA”) and is essential reading for all regulatory and business crime practitioners.

The reasons for change

For those who practice in this area, the complexities and inefficiencies of the current regime as well known, with a spectre of a human rights challenge under [Article I of Protocol No.1](#) remaining ever-present in the shadows. The Commission identified difficulties with enforcement as well as delays and inefficiencies in the confiscation process as the key drivers of reform. In particular, the Law Commission reports that in March 2021, outstanding debts from unrecovered confiscation orders amounted to more than £2 billion

The recommendations

As one would expect, the Law Commission’s Final Report is a comprehensive document running to 640 pages with 119 recommendations and includes the case for reforming Part 2 of POCA. These key recommendations are summarised as follows:

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- **Accelerating confiscation proceedings** by establishing strict timetables for hearings, which would take effect immediately after the defendant has been sentenced for their crime.
 - **Giving courts the power to impose “contingent enforcement orders”** at the time that a confiscation order is made. In practice, this would mean that if a defendant did not pay back the proceeds of a crime within a set time, assets – including property or funds in a bank account – could instead be taken to recover the proceeds of crime.
 - **Strengthening “restraint orders”**, that can be imposed by a court to stop a defendant from protecting funds or assets that might later be involved in confiscation proceedings—notably, placing the “risk of dissipation” test – the test currently used by courts to judge whether to use this order – on a statutory footing, and clarifying what could trigger the use of these orders.
 - **Strengthening law enforcement agencies’ responses**, through better police training and a national asset management strategy.
 - **Updating the provisions that factor in a defendant’s “criminal lifestyle”**, when assessing their benefit from crime. The recommendation is that confiscation from defendants deemed to have a criminal lifestyle would include gains from their wider criminal conduct. The Law Commission has recommended that a defendant would have to commit fewer offences to be deemed to have a criminal lifestyle.
 - **Giving greater consideration to the defendant’s ability to pay**, so that enforcement can be more effective. Defendants would be obligated to provide clearer and more detailed evidence of their financial position if they claim to be unable to pay their order.
 - **Creating more flexible tools to ensure better enforcement**. This would include Giving judges the power to adjust the funds that must be paid back by a defendant, depending on their personal circumstances. The rationale for this recommendation is that it would avoid situations where there is no realistic prospect of recovering the full amount of the confiscation order.
 - **The setting out of a clear statutory objective to govern the new confiscation regime** – namely, to deprive defendants of their benefit from criminal

conduct. The focus on this recommendation is on providing clarity on the purpose of the regime and moving away from any prior emphasis on “punishment”.

The Law Commission has produced a flowchart on page 21 of the [Report Summary](#), which offers a helpful visual guide to how the proposed reforms would work in practice.

Importance for practitioners

For practitioners operating in this area, there are two important points to emphasise:

1. Change is coming. Practitioners should remain vigilant as a Bill could be introduced relatively soon. The Law Commission has stated that it is currently working with Parliamentary Counsel to produce a draft bill which they aim to publish in 2023.
2. Balancing the public interest in confiscating the proceeds of crime in a timely and efficient way, and protecting a defendants’ right to property, looks like being tilted towards more robust enforcement. How this plays out in Parliament and the Crown Court remains to be seen.

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