

ASSET RECOVERY AGENCY: PROCEEDS OF CRIME

SUMMARY OF KEY POINTS

- The Proceeds of Crime Act 2002 contains UK wide measures in relation to confiscation of the proceeds of crime.
- Any sums received by the Secretary of State in consequence of the Proceeds of Crime Act 2002 are to be paid into the consolidated fund
- In Scotland, Scotland Ministers are the enforcement authority
- Cashback for Communities programme was launched by, and is the responsibility of, the Justice Minister and the related Government Department in Scotland; money must be invested in projects that alleviate the effects of crime
- Arts and Culture strand of Cashback for Communities is administered by Arts and Business Scotland.
- If more than £17 million is recovered in any financial year in Scotland the balance is sent back to the UK Treasury
- The Asset Recovery Agency (ARA) in Northern Ireland was created in February 2003 and existed until April 2008
- The ARA collected £23 million while it was in operation
- ARA merged with the Serious Organised Crime Agency in 2008 – forming an organisation with a UK wide remit.
- Policing and Criminal law are devolved in Scotland but are not devolved in Northern Ireland.

PROCEEDS OF CRIME ACT (UK) 2002¹

The Proceed of Crime Act 2002 contains a package of measures relating to confiscation of the proceeds of crime. This Act applies across the UK.

Scotland: Proceeds of Crime Act

In Scotland, the Proceeds of Crime Act 2002 builds upon the criminal confiscation scheme which was set out in the Proceeds of Crime (Scotland) Act 1995, and consolidates and strengthens money laundering offences.

The 2002 Act includes provisions which:

- (1) enhance previous powers of criminal confiscation following conviction by aligning the previous separate schemes for drug trafficking and for other

¹ SPICe: The information centre

- crimes onto an all crimes basis, and by strengthening the investigation and enforcement powers
- (2) introduce new powers of civil recovery allowing the state to claim the proceeds of criminal activity in cases where it is not possible to prosecute or secure a conviction

Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service (COPFS) was established in January 2003 in Scotland and has two units;

- (1) Criminal Confiscation Unit; and
- (2) Civil Recovery Unit

The Scottish Ministers institute civil recovery proceedings and the Civil Recovery Unit is responsible for the implementation of civil recovery.

The Crown Office and Procurator Fiscal Service (COPFS) state that the following in relation to money recovered in 2007/08²;

- (1) Money recovered under the Proceeds of Crime Act, up to a maximum of £17 million a year;
- (2) Money is invested by Scottish Ministers in community projects aimed at alleviating the effects of crime; and
- (3) If more than £17 million is recovered in any financial year the balance is sent to the UK Treasury.

Criminal Confiscation

Part 3 of the 2002 Act sets out provisions for Scotland on criminal confiscation. Crimes in Scotland are prosecuted by the COPFS. A confiscation order is an order requiring a person convicted of a criminal offence to pay a sum of money representing his (or her) benefit from crime.

The provisions apply where a criminal court convicts a person of an offence and the prosecutor asks the court to act under the confiscation procedures. The court considers whether or not the offender has benefited from crime. If it is decided that the individual has, the court goes on to determine the amount which should be recovered and to make a confiscation order requiring the offender to pay that amount.

Civil Recovery

Part 5 of the 2002 Act sets out new UK provisions providing for civil recovery. In relation to Scotland, these enable the Scottish Ministers to be the enforcement authority and bring civil proceedings in the Court of Session to recover property that is or represents property obtained through unlawful conduct.

Civil recovery proceedings may be brought whether or not proceedings have been brought for a criminal offence in connection with the property. The Explanatory Note published with the 2002 Act (paragraph 290) states:

“Cases where criminal proceedings have not been brought would include cases where there are insufficient grounds for prosecution, or where the person suspected of the offence is outside the jurisdiction or has died. Cases where criminal

² COPFS <http://www.copfs.gov.uk/News/Releases/2008/04/28152330>

proceedings have been brought may include cases where a defendant has been acquitted or where a conviction did not result in a confiscation order”

If the court finds that any property is recoverable, it grants a recovery order. Unless provided otherwise in the 2002 Act, Court of Session proceedings are governed by existing rules applying to petitions. Any appeal against the decision of the court to grant a recovery order would be under the normal rules applying to appeals. Thus appeal would be to the Inner House of the Court of Session.

CASHBACK FOR COMMUNITIES

‘Cashback for Communities’ programme was launched in January 2008 by The Scottish Government’s Justice Minister. The initiative has so far supported more than 260 youth organisations with funding from assets seized from Proceeds of Crime Act 2002³.

The Arts and Culture strand of ‘Cashback for Communities’ was announced on 15th May 2008 with £600,000 being placed into a fund for youth dance, music, drama and other arts projects. This fund, which will be administered by Arts and Business Scotland, will encourage Scottish businesses to match every £1 of government investment. This will effectively double the money and release a minimum of £1,200,000 over the next two years⁴.

Prior to the launch of ‘CashBack for Communities’ money recovered under proceeds of crime legislation was used to fund a number of various projects. The Scottish Executive stated that this funding was used to support local projects aimed at reducing crime, improving people’s quality of life and visibly repairing the harm caused to communities through the impact of serious violent crime⁵.

THE ASSETS RECOVERY AGENCY: BACKGROUND⁶

The Asset Recovery Agency (ARA) was created in February 2003 under the Proceeds of Crime Act 2002 to “take the profit out of crime”⁷. It sought to disrupt crime in cases where assets could be linked to crime, using its powers of criminal confiscation, taxation or, uniquely, civil recovery⁸.

The Agency had a statutory duty to promote the use of financial investigation to recover assets. The Agency worked with police forces, HM Revenue and Customs and other law enforcement and prosecuting authorities.

Following the establishment of the Agency, it did meet its targets for training Financial Investigators and for disrupting criminality. However, the Agency failed to

³ Cashback for Communities – <http://www.cashbackscotland.com/index.php?page=1.2>

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⁵ <http://www.scotland.gov.uk/News/Releases/2006/03/14093909>

⁶ National Audit Office, The Asset Recovery Agency, http://www.nao.org.uk/publications/0607/the_assets_recovery_agency.aspx

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⁸ Criminal confiscation can be used to recover assets from a convicted criminal, up to the value of the benefit of the crime. Civil recovery allows the recovery of specific assets that are, or represent, the proceeds of crime, if crime can be shown to have occurred on the balance of probabilities. Criminal income, gain or profit can be taxed if it cannot be shown to have come from legitimate sources.

meet its targets for the recovery of assets, including the target of becoming self-financing by 2005-06.

In respect of the recovery of assets, the Agency had collected £23 million against cumulative cost of £65 million⁹.

SERIOUS ORGANISED CRIME AGENCY (SOCA)

The Serious Organised Crime Agency (SOCA) was created on the 1st April 2006, as a result of the Serious Organised Crime and Police Act 2005 (SOCPA). The functions of the UK Financial Intelligence Unit (UKFIU) are now placed within the Proceeds of Crime Department in SOCA¹⁰.

ASSET RECOVERY AGENCY AND SOCA

On 1st April 2008 the Asset Recovery Agency in Northern Ireland was merged with SOCA under the Serious Crime Act 2007. This brings together some of the legal powers of both organisations in order to improve the performance on asset recovery.

Civil Recovery¹¹

The Serious Crime Act 2007 extends the Civil Recovery and Taxation powers of the Assets Recovery Agency to SOCA and, also, the Civil Recovery powers to the major prosecuting bodies. The Act also provided for the merger of ARA and SOCA, with effect from 1st April 2008¹².

Civil Recovery and Taxation (through the Proceeds of Crime Act) in Northern Ireland will be undertaken by SOCA; it will retain the capacity to provide support to partners in Northern Ireland to support the Ministerial assurances that there will be no reduction in the resource available for asset recovery in Northern Ireland. In Scotland, Civil Recovery powers will still be exercised by the Civil Recovery Unit of the COPFS.

SOCA exercise of functions in Northern Ireland 2009- 2010

SOCA has a UK-wide remit and states that they will engage closely with both Scotland and Northern Ireland. However, areas of Government that are central to SOCA's business are devolved in Scotland, namely Policing and Criminal law; these powers are not devolved in Northern Ireland.

SOCA supports activity in Northern Ireland through the Organised Crime Task Force. This support is in respect to the key threats identifies by the Task Force which include;

- Robbery;
- Oil fraud;
- Intellectual property crime;
- Organised immigration crime;
- Criminal finance and;

⁹ National Audit Office, The Asset Recovery Agency,
http://www.nao.org.uk/publications/0607/the_assets_recovery_agency.aspx

¹⁰ Serious Organised Crime Agency, <http://www.soca.gov.uk/financialIntel/index.html>

¹¹ Serious Organised Crime Agency, <http://www.soca.gov.uk/financialIntel/assetsRecovery.html>

¹² Serious Organised Crime Agency, <http://www.soca.gov.uk/financialIntel/assetsRecovery.html>

- Potential exploitation of the land boarder with the Republic of Ireland by organised criminals.

SOCA states it will work closely with local partners to share information and intelligence on these issues and to take referrals for possible civil recovery action under Proceeds of Crime legislation.

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