Recovering the Proceeds of Crime
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BY THE PRIME MINISTER

This Government is determined to create a fair and just society in which crime does not pay. That is why I asked the PIU to carry out a study into how we could attack crime through its financial lifeblood. For too long, we paid insufficient attention to the financial aspects of crime. We must remember that many criminals are motivated by money and profit.

Leaving illegal assets in the hands of criminals damages society. First, these assets can be used to fund further criminal activity, leading to a cycle of crime that plagues communities. Second, arrest and conviction alone are not enough to clamp down on crime; they leave criminals free to return to their illegal enterprises, or even to continue their ‘businesses’ from prison. And third, it simply is not right in modern Britain that millions of law-abiding people work hard to earn a living, whilst a few live handsomely off the profits of crime. The undeserved trappings of success enjoyed by criminals are an affront to the hard-working majority. And it is, of course, often the underprivileged in society who suffer most from crime.

The criminal justice system is not designed to take away from criminals the gains they have made from crime. Typically, a court order is made to recover assets following under 1 per cent of convictions. And the amounts recovered fall far short of those sought by the courts.

Some criminals have grown very wealthy. They use a variety of tactics including intimidation and complex money laundering ploys to protect themselves from the force of the law. Such criminals provide bad role models for young people.

The police and Customs are working with professionalism and determination to make an impact on crime. But criminals are becoming more and more adept at concealing their illegal gains. It is vital that we enable law enforcement to be every bit as adept at uncovering them.
The conclusions of this report represent agreed Government policy. Through implementing the recommendations in this report, we shall help turn the tide against criminals. We will deter people from crime by ensuring that criminals do not hang on to their unlawful gains. We will enhance confidence in the law by demonstrating that nobody is beyond its reach. We will make it easier for courts to recover the proceeds of crime from convicted criminals. And we will return to society the assets that have been unlawfully taken. All this will need to be achieved in a way that respects civil liberties; we will ensure that is the case.

Tony Blair
1. EXECUTIVE SUMMARY

1.1 This report is the product of a nine-month study by the Cabinet Office's Performance and Innovation Unit (PIU) into:

- the effectiveness of pursuing and removing criminal assets as part of the fight against crime, and particularly against serious and organised crime; and
- how to maximise the effective use of these techniques.

1.2 Although the report focuses on the situation in England and Wales, the Scottish Executive and Northern Ireland Office will want to consider whether and how best to adopt the conclusions as appropriate.

Key messages

1.3 Most crime is motivated by profit. The pursuit and recovery of the proceeds of crime can impact on many law enforcement objectives and make a significant contribution to crime reduction and to the creation of a safe and just society. It can:

- send out the message that crime does not pay;
- prevent criminals from funding further criminality;
- remove negative role models in communities; and
- decrease the risk of instability in financial markets.

1.4 There is also much to be gained from an approach to law enforcement that focuses on treating criminal organisations as profit-making businesses. And removing assets from those living off the proceeds of crime is a valuable end in itself in a just society.

1.5 Since 1986, the UK has had extensive powers to confiscate criminal assets. The aims of the laws are clear and wide-ranging: to deprive offenders of the proceeds of their crimes. Yet there are anomalies in the legal regime, which has developed in a piecemeal fashion. And there are significant deficiencies in the use of legislative provisions.

1.6 In the last five years, confiscation orders have been raised in an average of only 20 per cent of drugs cases in which they were available, and in a mere 0.3 per cent of other crime cases. The collection rate is running at an average of 40 per cent or less of the amounts ordered by the courts to be seized. Specially tasked law enforcement officers struggle to investigate the financial aspects of crime to support this effort, but their effectiveness is limited by their numbers and modest training.

1.7 Pursuit and recovery of criminal assets in the UK is failing to deliver the intended attack on the proceeds of crime. Improvements in the pipeline go some way to addressing the problem, but more needs to be done.

1.8 The Government should take urgent steps to maximise the benefits that the pursuit and recovery of the proceeds of crime can offer. To achieve this, there will need to be:

- a more strategic approach, with joined-up action from all relevant parts of the criminal justice system;
better trained and supported law enforcement officers able to pursue complex financial investigations;

- a simpler and more robust legal regime, including extended civil forfeiture powers;

- greater efforts to stem the laundering of criminal assets;

- full use of the existing taxation powers;

- a higher international standard, set by the UK; and

- new structures and incentive mechanisms to underpin these changes.

1.9 The new structures needed include the creation of a National Confiscation Agency (NCA) with a Board and senior Director reporting to the Home Secretary. The Director will have a cross-cutting responsibility for achieving criminal confiscation and civil forfeiture results both in the NCA and through the agencies of the criminal justice system. The Director will also establish within the NCA a Centre of Excellence to drive up standards of financial investigation amongst law enforcement. Until such time as this Director and Board can be appointed, a senior official Head of Asset Confiscation and an interdepartmental/agency committee should be tasked by the Home Office with establishing the embryonic NCA and with carrying out its functions, as appropriate.

**Asset removal is important in the fight against crime...**

1.10 Most crime is committed for profit – about 70 per cent of recorded crime is acquisitive. Asset deprivation attacks criminality through this profit motive. In the same way that starving a thriving small business of capital hampers its growth, removing assets from criminal enterprises can also disrupt their activities. Removing unlawful assets also:

- underpins confidence in a fair and effective criminal justice system and shows that nobody is above the law;

- removes the influence of negative role models from communities;

- deters people from crime by reducing the anticipated returns;

- improves crime detection rates generally; and

- assists in the fight against money laundering.

1.11 Used in a targeted way to undermine criminal market facilitators and to remove negative role models from deprived communities, asset removal will also make an important contribution to efforts to reduce volume crime.

1.12 With effective criminal and civil asset confiscation regimes in place, the UK will be a significantly less attractive environment for criminals. For those determined to carry on criminal businesses despite the new approach, law enforcement will have the skills and the systems in place to tackle them effectively.

1.13 Asset removal also has the potential to be a cost-effective law enforcement intervention. A number of overseas jurisdictions, such as the USA, the Republic of Ireland and New South Wales in Australia, already employ the technique more fully. Their experience shows that asset confiscation policies can generate significant revenue flows that reduce the net costs to the criminal justice system.

**... and so is the ability to follow criminal money trails**

1.14 For assets to be removed, they must first be located. An asset removal programme will only work if accompanied by an
enhanced law enforcement capability to follow complicated money trails. The pursuit of assets, involving better financial investigation and the mapping of criminal money flows by law enforcement, will also build a deeper understanding of criminal networks, improve detection rates generally and help link individuals apparently unconnected with crime to offences.

The pursuit and removal of criminal assets are currently underused tools

1.15 The UK has extensive powers to deprive offenders of the proceeds of their crimes, but these powers have developed in a piecemeal fashion, are not well understood, and are spread across a range of statutes with differences in the treatment of the proceeds of drugs and non-drugs crime. There are also deficiencies in the application of these powers by law enforcement and prosecution authorities. And the court system is complex with the High Court, Crown Court and Magistrates’ Court all having a role to play.

1.16 Forfeiture powers are also available to detain cash found at borders which is believed to represent the proceeds of drug trafficking or to be intended for use in drug trafficking. But these powers are unduly restricted to drugs crime, so that cash gained from other unlawful activities such as prostitution, human trafficking and fraud is free to leave the country. The sums of drugs cash recovered are very small at around £4 million in 1999/2000, whereas the sum of cash estimated to have left the country to pay for illegal drugs supply in, for example, 1994 was £970 million.

1.17 Specially tasked law enforcement officers struggle to investigate the financial aspects of crime to support this effort, but their effectiveness is limited by their number and modest training.

1.18 There are improvements in the pipeline that go some way to addressing the problems. For instance, Home Office proposals for extending the civil forfeiture regime will have an important role, enabling the State to recover unlawful gains currently beyond the reach of the law as they are held by individuals who protect themselves from prosecution through complex money laundering schemes, bribery and intimidation. It will demonstrate that no one has the right to enjoy the proceeds of crime. Such measures will require proper protections for civil liberties, not least to ensure compliance with the European Convention on Human Rights. Civil forfeiture and the role of the NCA is explored in depth in Chapter 5.

1.19 Other enhancements in the fight against crime include a new financial intelligence database under construction at the National Criminal Intelligence Service. The Financial Services and Markets Bill currently going through Parliament will also place on the Financial Services Authority a statutory objective to reduce financial crime. But more needs to be done.

Conclusions

1.20 Conclusions in this report fall into the seven areas of activity set out below. A table listing all the conclusions with lead responsibilities and a timetable for delivery is at Chapter 12.

I. A more joined-up strategic approach (Chapter 6)

1.21 There is a valuable opportunity to ratchet up the performance of the UK’s system for identifying and recovering criminal assets by introducing a coherent cross-governmental national Asset Confiscation Strategy to co-ordinate the various arms of the criminal justice system involved.
1.22 The strategy should:

- ensure the conclusions in this report are implemented;
- raise the priority given to asset confiscation;
- set demanding targets;
- align incentives and promote co-operation between law enforcement bodies;
- devise and oversee a programme of financial investigation training;
- maximise effective use of resources outside the public sector;
- define the indicators that need to be tracked to measure progress; and
- change the culture in the criminal justice system so that it is understood that the law has not been satisfied until criminals have been deprived of their unlawful gains.

1.23 This strategy, agreed by Ministers, should be driven forward by the Director of the new NCA, assisted by a Board comprising senior representatives of law enforcement, prosecution and other relevant agencies. The Board of the NCA would also oversee the allocation of a new pooled Recovered Asset Fund to be used in support of the strategy, with the agreement of Ministers.

1.24 The Director would be accountable to the Home Secretary and ensure that the Asset Confiscation Strategy fed into and supported the aims of the cross-cutting public service agreement for the criminal justice system. The Director would also be responsible for overseeing the implementation of all the conclusions of this study.

1.25 To be used to best effect, the Asset Confiscation Strategy will need to be informed by a comprehensive picture of the criminal economies it is intended to damage, as part of the Government strategy on serious and organised crime. A better understanding of these economies is needed.

1.26 Whilst the Asset Confiscation Strategy is likely to apply formally only to England and Wales, it is essential that a common minimum standard applies across all jurisdictions of the UK (i.e. including Scotland and Northern Ireland) to prevent any part of the UK becoming more attractive to criminals. This will require careful and ongoing co-ordination of the strategy with the Minister for Justice in the Scottish Executive and with the Secretary of State for Northern Ireland.

II. Focusing on financial investigation (Chapter 7)

1.27 Financial investigation is an important tool in the fight against crime. It is the gateway to effective asset identification and removal, and it can provide valuable new avenues for traditional law enforcement investigations.

1.28 Surveys carried out by the PIU show that financial investigation is underused, undervalued and underresourced in the UK. For example, the proportion of law enforcement budgets devoted to financial investigation varies greatly. Only one third of the police forces responding to a survey conducted by the PIU had a specific budget for financial investigation, and the sums set aside were very small, ranging from 0.05 per cent to 0.30 per cent of total budget.

1.29 Police only used financial investigators in between 0.05 per cent and 5.6 per cent of investigations, and even where financial investigators were involved, in many cases this was not until relatively late in the investigation – sometimes after charge. This reduced the chance of having a restraint order in place early enough to preserve assets for confiscation.
1.30 This chapter concludes that action is necessary under three headings:

- steps to make financial investigation central to UK law enforcement;
- the creation of a Centre of Excellence in financial investigation to select, train and accredit financial investigators working in local law enforcement agencies, and to promote sharing of international best practice; and
- the widening of financial investigation powers.

### III. A new legislative attack (Chapter 8)

1.31 Confiscation of unlawful assets should become the norm in criminal proceedings, with proportionate steps taken to remove assets wherever proceeds have been derived from crime. Only through the rigorous application of asset removal can the benefits of the pursuit and removal of criminal assets be achieved.

1.32 A number of steps to improve the legislative regime and its application are proposed:

- extending the drug trafficking confiscation laws so that they apply to all types of offence. This reflects the practice of drugs criminals to diversify into non-drugs crime. It will enable assumptions to be made about the origins of defendants’ assets in all cases, and not just drugs ones. It will remove the ability of defendants to plead guilty to non-drugs offences in order to avoid the harsher provisions of drugs laws and thereby preserve their assets;
- encouraging dedicated training for lawyers and Crown Court judges in confiscation matters;
- formalising the right of prosecutors to appeal confiscation decisions where they consider the value of orders to be too low; and
- extending the time limit for making confiscation orders beyond the existing six-month limit to cover cases where a detailed investigation of the offender’s assets is time consuming.

1.33 Collection rates are very low, as shown in Chapter 4. This is in part because defendants set out to obstruct and overturn the effect of restraint and confiscation orders. This chapter concludes that a number of legislative steps to improve collection rates are needed, including:

- allowing courts to transfer ownership of restrained assets to the State to contribute towards payment of a confiscation order debt. At present, ownership of the assets remains with the defendant on conviction from which the individual is required to pay the confiscation order;
- allowing management receivers to deal with replaceable assets under their control as necessary to maximise the amount available to satisfy a confiscation order;
- seeking increased use of sanctions to enforce orders; and
- preventing reckless dissipation of restrained assets in legal fees by limiting the use of restrained assets to pay fees to legal aid rates (with an appropriate uplift in complex cases).

### IV. Tightening the money laundering regime (Chapter 9)

1.34 In the last 15 years, attacking money laundering has been recognised internationally as key to undermining criminal activity. Many criminal businesses are most vulnerable when trying to launder their funds into the legitimate economy.
1.35 The benefits of strong anti-money laundering measures are to:

- make UK financial services less accessible to criminal capital, thereby protecting the financial sector from operational and reputational risks; and
- give law enforcement considerable opportunities to gather and use intelligence for the pursuit of criminal assets.

1.36 The UK’s anti-money laundering disclosure regime, under which financial institutions and others are required to disclose details of all suspicious transactions, generates an average of 15,000 disclosures each year, a small figure given the size of the UK’s financial markets. And they are not received in equal measure from all types of institution required to disclose. There have been very few money laundering prosecutions and convictions. In 1995, there were 29 prosecutions for money laundering in the UK, compared with 538 in Italy and 2,034 in the USA.

1.37 This chapter concludes that measures should be taken:

- to improve the use of disclosures in helping law enforcement to attack criminal profits and markets;
- to increase the quality and quantity of disclosures across all institutions where money launderers do business, including bureaux de change and money transmission agents; and
- to remove barriers to prosecution and conviction of money launderers, so that the full force of the legislation is brought to bear in attacking criminal operations.

V. Taxing unlawful gains (Chapter 10)

1.38 Many criminal organisations generate substantial revenues that go untaxed. The organisations involved in drugs, prostitution, selling stolen goods and illegal gambling in the UK are estimated to have generated between £6.5 billion and £11.1 billion in 1996. The powers of the Inland Revenue to raise assessments and enforce removal of assets against those shown to have undeclared income and wealth are considerable. Inland Revenue can consider income over an extended period in raising a tax assessment, and it is able to impose additional fines. This means that much, and in some cases all, of a criminal’s illegally gained wealth can be removed by taxation. But the powers are generally little used against individuals suspected of benefiting from crime, despite the fact that they may be openly living beyond their means.

1.39 Overseas experience shows the value of using taxation to remove assets from criminals; taxation powers have been a major source of recovered funds from suspected criminals in both Ireland and Australia. And in the UK, where law enforcement and the Inland Revenue have worked hand in hand to target criminal assets, there have already been modest successes.

1.40 The conclusions of this chapter are that there should be:

- increased proactive investigation and removal of criminal assets by the Inland Revenue and tax inspectors located in the new NCA;
- the facilitation of greater exchanges of information on criminality between Inland Revenue and law enforcement, including new statutory gateways; and
• the correction of tax law anomalies to enable the Inland Revenue to tax income, even where a source (such as crime) cannot be identified.

VI. Setting a higher international standard (Chapter 11)

1.41 Much of the profit from major organised crime is moved overseas. It is typically invested in bank accounts, properties and luxury vehicles. Similarly, of course, the proceeds of crime committed overseas are invested in the UK. Criminal assets can move faster than law enforcement and judicial efforts to trace and recover them. This problem is already acute and is getting worse, as the increase in global transactions in the legitimate economy is mirrored in the economy of criminal assets. The flight of criminal assets abroad and the delays experienced in tracing them are a cause of deep frustration to the UK’s financial investigators.

1.42 International co-operation in tracing and recovering criminal assets is managed through a series of agreements and working groups. The UK is acting with international partners on all these fronts to attack the international financial aspects of crime and to drive up standards of money laundering regulation, including through:

• the Financial Action Task Force on Money Laundering (FATF);
• the European Union;
• the G8 Group; and
• the United Nations.

1.43 But further action is needed at international level to ensure there are no safe places for criminals to hide their funds.

1.44 This chapter acknowledges the extensive international initiatives already under way to tackle the movement and recovery of criminal assets and notes some further areas for consideration under the headings of:

• setting a higher international standard of dealing with criminal assets and money laundering;
• encouraging other nations to increase their attack on criminal assets; and
• actively fostering greater international co-operation in investigating and seizing criminal assets.

VII. Implementation, monitoring and evaluation (Chapter 12)

1.45 An action plan for the implementation of the conclusions in this report is at Chapter 12. Some of the changes proposed have been set in train during the course of this study, others are expected to be implemented in the coming months. The PIU envisages that a Bill will need to be introduced as soon as possible to enact many of the legislative proposals. The Director of the NCA (and before that appointment, the interim Head of Asset Confiscation) should be responsible for co-ordinating the implementation of the conclusions of this report. A broad timetable for delivery is set out overleaf.
Box 1.1: Timetable for Key Events

**Summer 2000**
- Further consultation by Home Office and HM Treasury on implementation issues.

**September 2000**
- Appointment of senior official interim Head of Asset Confiscation reporting to the Home Secretary.
- Appointment of cross-departmental/agency committee to support the Head of Asset Confiscation.

**December 2000**
- Cross-departmental/agency committee develops and presents Asset Confiscation Strategy to Ministers.
- Cross-departmental/agency committee publishes draft memoranda of understanding between NCA and other operational agencies in support of the strategy.
- Centre of Excellence in financial investigation established.
- Draft proposals for a light touch regime for selected financial sectors outside the current regulatory regime - including bureaux de change.
- Completion of a regulatory impact assessment into the registration of beneficial owners of companies.

**March 2001**
- Centre of Excellence begins to provide training in financial investigation.

**December 2001**
- Home Secretary’s first annual report on the progress of the confiscation strategy to the CJS Ministerial Steering Group.

**2003+**
- Review of the Recovered Assets Fund after three years of operation.
2. INTRODUCTION

Summary

2.1 The purpose of this project was to consider the role that following the money trail and recovering criminal assets might play in the fight against crime in the UK, and to prepare steps to ensure that full, effective use is made of these tools.

2.2 The study concluded that the pursuit and removal of criminal assets are underexploited law enforcement tools. They ought to be given a higher priority, reflecting the contribution they can make to the Government's efforts to reduce crime and to create a safe and just society. The report sets out the steps necessary to achieve these aims.

2.3 This chapter describes:
- the policy background; and
- the project and its methodology.

Policy context

2.4 The project had its origins in a developing consensus that the techniques available to law enforcement to follow the criminal money trail were falling behind the resources available to criminals to help them conceal their illegal gains. It was thought that failing to remove criminal gains from offenders left individuals in a position to fund a life of crime after punishment, or even to continue to control criminal enterprises from inside prison. In the creation of a safe and just society it could not be tolerated that criminals should continue to benefit from the proceeds of their crimes, thereby showing contempt for the rule of law. It was also considered important to understand the money flows in criminal economies, in order to identify and build evidence against those who sit at the top of criminal organisations, but who remain far removed from the criminal acts carried out at their instruction.

2.5 This search for new and more sophisticated approaches to tackling crime through its financial flows is set in the context of a long-term increase in recorded crime. Since the end of the First World War, recorded crime has increased by an average of 5.5 per cent per year (though between 1992 and 1998 there was a drop in annual recorded crime, and the rise since then has been less than would have been expected given demographics and the condition of the economy1). Over the last 15 years,

Box 2.1

“We want to ensure that crime doesn't pay. Seizing criminal assets deprives criminals and criminal organisations of their financial lifeblood. The challenge for law enforcement will become even greater as new technologies hide the money trail more effectively. We must ensure that law enforcement is ready to meet the challenges.”

The Rt. Hon. Tony Blair MP, announcing the PIU project on 3 September 1999

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public expenditure on law and order has risen more than twice as fast as public spending as a whole. And acquisitive crime continues to stand at around 70 per cent of recorded crime.

2.6 Successive administrations have introduced initiatives to tackle rising crime. Most recently these include the Drugs Strategy, the Crime and Disorder Act 1998 and the new emphasis on evidence-based crime reduction strategies. But these were not fully focused on the financial aspects of crime. Some important work in this area is already under way. For example, the Home Office has proposed extending the civil forfeiture regime to enable law enforcement to tackle those individuals who are currently beyond the reach of the criminal law, yet who are patently living on the proceeds of crime. The aim of the Performance and Innovation Unit (PIU) project in this area was to explore the further potential of this financial focus, building on the existing work, and to recommend how it might be more fully deployed in the fight against crime.

The PIU project

2.7 The various issues within the scope of this project concern a number of different Government departments and other bodies. These include the Home Office, HM Treasury, the Department of Trade and Industry, the Financial Services Authority, the Department of Social Security, the Attorney General’s Departments and the Lord Chancellor’s Department as well as various arms of law enforcement and the security and intelligence agencies. The Prime Minister asked the PIU based in the Cabinet Office to conduct the review, as the PIU provides a project-based capacity to work on such

Box 2.2: Crime and its costs

Accurate calculations of the total cost of crime to the UK are difficult to obtain due to the often hidden nature of the underlying activity. However, one estimate is around £50 billion per annum, including £12 billion expended on the criminal justice system, £28 billion for pain and suffering, and £2 billion on insurance premiums.

A Home Office working party is due to report in the summer of 2000 with a revised estimate of the economic costs of crime in the UK. The average cost of some major categories of crime has already been estimated: in 1997, commercial burglaries were estimated to have been worth £1.2 billion, residential burglaries £3.8 billion and vehicle thefts £3.8 billion.

The cost of crime estimates above do not include tax evasion and benefit fraud. Estimates of the size of the UK black economy tend to cluster around 10 per cent of GDP. A 1998 estimate concluded that it was between 7 and 13 per cent of GDP. Lord Grabiner’s recent report on the Informal Economy does not try to arrive at a precise estimate, but describes as reasonable the assumption that billions of pounds are involved. It also refers to research suggesting that the usual estimating methods based on high level economic aggregates tend to exaggeration.

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cross-cutting issues. More information on the PIU and its projects and copies of its reports can be found on the Unit’s website at www.cabinet-office.gov.uk/innovation

2.8 The project, which began in September 1999, was carried out by a multi-disciplinary team, drawn from the public and private sectors. The team was led by Stuart Shilson (on leave from McKinsey & Company) and comprised Gavin Coles (on secondment from the National Criminal Intelligence Service), Jane Halestrap (from the Cabinet Office), Jeremy Outen (on secondment from KPMG Forensic Accounting), Sharima Rasanayagam and Darren Welch (both from the Cabinet Office). The team was assisted by Rachel Phillipson (from the Government Economic Service).

**Methodology and analysis**

2.9 The project scope and methodology were agreed after wide consultation with interested parties. In carrying out its research and analysis, the project team:

- held numerous meetings and workshops with individuals from the public, private and voluntary sectors including policymakers, law enforcement officials, judges, lawyers, accountants, bankers, regulators, receivers and academics;
- investigated emerging best practice overseas to learn how other jurisdictions are tackling crime through asset removal, including the USA, Republic of Ireland, France and Australia;
- compared experience between the three jurisdictions which make up the UK; and
- carried out comprehensive surveys of individual law enforcement officers, and of the management units involved in financial investigation.

2.10 Throughout this process the PIU project benefited from the support of an Advisory Group of experts, led by the Rt. Hon. Ian McCartney MP, Minister of State at the Cabinet Office.

2.11 The above activity, plus a review of academic literature, has formed the backbone of the project team’s data gathering and analysis. The levels of data already available, both in the UK and overseas, have been disappointing. For example, none of those overseas jurisdictions more rigorously employing asset confiscation have analysed the effect of the technique on overall crime levels. (For many, it is sufficient justification to be removing the proceeds of crime from criminals in a self-funding way, and to be able to point to successes against specific organisations.) Nor has there been significant data to draw on in the fields of criminal business analysis or investigations resulting from suspicious transaction reports. In reaching its conclusions, the PIU has therefore had largely to rely on some primary research, the counsel of experts and a theoretical approach, drawing on emerging international best practice. Importantly, some of the conclusions in this report are targeted at improving the collection of data necessary to allow detailed performance management and evaluation of the techniques in the UK for the future.
3. WHY TRACK DOWN AND RECOVER THE PROCEEDS OF CRIME?

Summary

3.1 The removal of assets from those living off crime is a valuable end in itself in a just society. A greater emphasis on asset recovery will also open up an underused avenue of attack on crime, with an accompanying early and significant impact. In failing to take full account of the profit motive, the UK criminal justice system is at present overlooking a powerful lever in the fight against crime.

3.2 A number of overseas jurisdictions already employ the technique more fully. While directly attributable quantifiable effects are hard to demonstrate, it is clear that financial investigation and asset recovery will:

- show that crime will not pay and underpin confidence in a fair and effective criminal justice system;
- remove negative role models from communities;
- disrupt criminal networks and markets with an impact on volume crime;
- deter people from crime by reducing the returns that can be anticipated;
- improve crime detection rates generally by providing a deeper understanding of criminal markets; and
- assist in the fight against money laundering and the harm that it causes.

3.3 With effective asset recovery in place, the UK will be a significantly less attractive environment for criminals and their unlawful businesses. For those determined to carry on criminal businesses despite the new approach, law enforcement will have better skills and systems in place to tackle them effectively.

3.4 The conclusions in this report also have the potential to be relatively cost-effective; international experience (particularly in Ireland and the USA) shows that asset confiscation policies can generate significant revenue flows that reduce the net costs to the criminal justice system, especially where civil forfeiture is used.

Showing that crime will not pay

3.5 The removal of assets from those living off the proceeds of crime is, of course, a valuable end in itself in a just society. Successful criminals acquire significant

Box 3.1: Criminal revenues and profits

The Office for National Statistics (ONS) recently estimated that the value added of illegal drugs transactions in the UK could be as much as 1 per cent of GDP, up to £8.5 billion per year. Fraud also generates substantial revenues. An accurate assessment of the overall financial impact of fraud is probably impossible, but estimates of the cost of fraud vary between £5 billion and £16 billion per year.

1 Website at www.ons.gov.uk
3 Serious Fraud Office (SFO) Annual Report 1997/98.
4 Association of British Insurers Press Release 13/5/99 (cost to UK economy); The Investigation, Prosecution and Trial of Serious Fraud (Royal Commission on Criminal Justice, Paper 14, 1993) estimated losses in respect of frauds investigated by the Crown Prosecution Service (CPS) and the SFO of £8 billion.
fortunes and act as bad role models for others, by demonstrating that crime can pay. Home Office estimates, based on data supplied by law enforcement bodies, suggest there are some £440 million of criminal assets that could be targeted by civil forfeiture across 400 individual cases. Even where criminals are convicted and imprisoned, some continue to use their wealth to exert a negative influence on communities.

3.6 Weeding out long-standing local criminals can often be the start needed by law enforcement agencies to win the confidence and co-operation of deprived communities. These local criminals are dangerous in many ways. For example:

- with criminal assets intact, they are able to return to their criminal enterprises after release from prison (or even whilst in prison), picking up from where they left off;
- in the absence of better alternatives, they act as the role models for local young people and define youth attitudes to crime; and
- they offer opportunities and enticements to crime, perhaps acting as the local fence or drug dealer, or both.

3.7 By taking from these criminals the profits they make from crime, the basis of their lifestyle is removed. In this way, a comprehensive, effective and routine application of asset removal will reinforce messages from sentencing policy that crime does not pay. It will also remove the demotivation of law enforcement officers that comes from seeing the criminals they have worked hard to convict continuing to benefit from their crimes.

3.8 Such a policy could contribute to both aims of the criminal justice system:

- to reduce crime and the fear of crime and their social and economic costs; and
- to dispense justice fairly and efficiently and to promote confidence in the rule of law.

Box 3.2: Asset confiscation in France

France has also taken recent steps to boost the use made of asset confiscation by law enforcement. In June 1999, the Minister for Justice wrote to all prosecutors, magistrates and judges describing the French system for tackling drug traffickers and drawing to their attention in particular:

"the importance of having recourse more systematically to the legislation intended to attack the assets of traffickers and thus deprive them of what in fact constitutes the prime reason for the traffic's existence - their profits."

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5 Many police forces find a crackdown on key individuals a necessary precursor to a programme of community based policing in deprived areas. In the USA and France whole estates have become no-go areas run by powerful criminals and their gangs because they have been allowed to become entrenched and unassailable.


7 Circular CRIM-99.7/G1 170699.
Using asset removal to disrupt and deter criminal businesses and markets

Disrupting criminal businesses

3.9 Information provided by law enforcement, and the experience of other countries, shows that asset removal can have an important disrupting effect on criminal activity, through both individual criminal organisations and through wider criminal networks and markets.

3.10 Removing assets from criminals can disrupt criminal organisations in much the same way that excessive taxation undermines legitimate business, by cutting into profits, reducing the availability of working capital for existing enterprises and removing reserves for start-up of new criminal enterprises. Countries where asset confiscation has been effectively enforced provide evidence of valuable disruptions of criminal organisations. Asset removal has been shown to help curtail the growth of criminal organisations, restricting their opportunities to become well established and entrenched in communities. The more reliant the criminal enterprise on financial support, the more susceptible it is to disruption through asset deprivation.

Box 3.3: Two asset removal successes in Ireland

The Republic of Ireland has introduced an asset confiscation system based on civil forfeiture and administered by the Criminal Assets Bureau (CAB). It has had a number of successes and attracted wide public support.

An early target of the CAB was the head of a heroin importation gang. He had been a target of Irish law enforcement for some years, but by distancing himself from criminal activity had managed to amass substantial assets without being prosecuted. The heroin trafficking group that he controlled had an estimated annual turnover of £8 million during the period 1992–1996. The CAB quickly identified two valuable properties, registered in his father’s name. He managed to sell one and fled the country with the proceeds, but he left the other to be seized. His drugs trafficking organisation has been severely disrupted and is still without effective management.

Another CAB case involves an international athlete who was a senior player in a drugs trafficking organisation. He used his strong reputation and role model status to influence others to use drugs. He also used international travel and transport of sports equipment as cover for drugs importation. The organisation had an annual turnover of some £2 million. Following the athlete’s arrest in another jurisdiction (which did not lead to a prosecution), the CAB was able to demonstrate his involvement in drug trafficking to a civil standard, and restrained his assets. The athlete fled from Ireland and the drugs trafficking organisation for which he worked was disrupted as a result.

* Including conclusions of the PIU seminar of 8 December 1999 on the effectiveness of asset seizure.
* Much research work remains to be done to determine the extent to which criminal organisations do in fact resemble legitimate enterprises, and the role of capital in their activities. Such work should be co-ordinated by Home Office Research and Statistics Directorate. It may be that in many cases criminal organisations are not long-standing, managed, widely influential ‘firms’ but are more likely to be complex networks or even fully fledged competitive markets, where the capital is as much human as financial and is highly dispersed. But this is also true of a number of legitimate business areas which have been analysed in depth.
3.11 Attacking money trails can also be an effective complementary technique in tackling drugs crime. Removing drugs from criminal organisations deprives them of the commodity that can often most readily be replaced, and at a low cost. The seizure of the drugs also often occurs before the risk and expenditure of the distribution system have been incurred, for example on import. But a loss of money, particularly at a later stage in the business chain, represents a loss of the full ultimate value of the product.

3.12 Although much property crime is ad hoc and disorganised, with the value of stolen goods realised through local barter and exchange with friends and associates, there is substantial evidence of more organised gangs and individuals who occupy key nodes of activity - fences, major drugs suppliers, criminal financiers - and who facilitate the wider (and often more disorganised) criminal markets and networks. It is against these criminal market facilitators that asset removal is likely to contribute most by way of disruption because, typically:

- the facilitators are financially motivated;
- they depend on wealth accumulation to finance further criminal activity;
- they exert influence in their communities and often encourage others into crime;
- as successful criminal entrepreneurs, they are likely to take a more rational approach to the disincentives to crime; and

Box 3.4: The finances of illegal immigration rackets

Illegal immigrants pay organised criminal gangs to assist them to enter the UK illegally. The immigrants pay thousands of pounds for the service (sometimes as much as £30,000), and the money is used to set up safe houses, safe transport routes, corrupt officialdom throughout transit routes, and pay protection monies to criminal groups in transit countries.

Removal of assets from these criminal gangs could disrupt the immigration chain, both increasing the likelihood of detection and lessening the reputation of the importer to other potential illegal immigrants.

Box 3.5: Example of a local criminal market facilitator

In Avon and Somerset a 54-year-old (Mr A) was involved in drug trafficking on the inner city council estate where he lived. Police surveillance showed that many individuals relied on Mr A for drugs. Financial investigation provided information on cheques paid through Mr A’s accounts and his expenditure.

In November 1995, Mr A’s flat was raided. Inside the flat, police found drugs, cash, jewellery and large quantities of stolen tools, CDs, videos and computer games. It turned out that one individual had paid for the drugs with stolen goods which he then supplied to younger boys in return for sexual favours. Another person had bought drugs from Mr A to supply to a small section of the estate, and had funded his supply by dealing in stolen credit cards and jewellery. Disruption of Mr A’s business has meant disruption of the entire local chain of criminal activity, a success which has led to improved relations between the community and police.

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10 But more regularly £5,000–6,000.
11 Source: Immigration Service.
disruption of key facilitators can disrupt the wider markets and networks.

3.13 Asset confiscation will, therefore, help to tackle some of the more sophisticated networks that drive and enable small-time crime which is often concentrated in deprived communities. For example, although the majority of burglaries are committed by offenders with few assets, they dispose of the stolen property through a limited number of often wealthy individuals. Targeting these receivers of stolen goods using financial investigation could reduce burglaries by restricting the ease with which profits can be realised, providing intelligence to assist the detection of burglaries, disrupting the criminal cycle and providing a case for confiscation proceedings.

A deterrent to crime

3.14 Two thirds of recorded crimes in England and Wales are theft, fraud and burglary, i.e. crimes motivated by financial gain. There are, of course, many other non-financial reasons why crimes are committed, such as hatred and passion, a desire for sexual gratification, excitement or rebellion. But for the vast majority of crimes, the decision to commit them involves the expectation of some kind of financial benefit.

3.15 The decision to commit crime also involves an expectation of incurring:

- the cost of perpetrating the crime; and
- the risks of detection, conviction and of serving a penalty.

3.16 Although criminals do not always make decisions in a fully rational way, many financially-motivated crimes result from a relatively rational risk/reward analysis. In these circumstances, crimes are committed when there is a combination of opportunity and the motivation that results from concluding that the expected overall benefit from the crime is higher than the perceived total risks and costs. The costs of securing the desired benefit from crime must also appear lower than those involved in acquiring the benefit through legitimate means.

3.17 There are, therefore, several different variables in the criminal decision making process that society can act on to deter an individual from crime.

3.18 Potential criminals can be deterred from crime by:

- **raising the cost** of committing the crime, for example, by implementing preventive measures such as physical barriers, alarms, CCTV and other forms of ‘target hardening’;

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Box 3.6: Econometric studies

“As a whole, studies clearly indicate a negative association between crime and the probability and severity of punishment. The result may be regarded as a rather firm corroboration of the deterrence explanation obtained from the theory of rational behaviour: an increase in the probability or severity of punishment will decrease the expected utility of criminal acts and thereby the level of crime.”

Erling Eide, 1997

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13 Risk of burglary, vehicle-related theft and violence – and of repeat victimisation from these crimes – rises where the household is in an inner city area, in an area of more physical disorder, on a main or a side road or in the north of the country and where the head of the household is single, young or unemployed (The 1998 British Crime Survey: England and Wales).


increasing the probability of detection and conviction for the crime, e.g. by increasing the size and effectiveness of the police force, streamlining the conviction process or encouraging Neighbourhood Watch schemes;

- increasing the penalties for having committed the crime which, through tougher sentencing, works to deter others from crime as well as punishing the defendant; and

- reducing the financial benefit from crime by removing criminals’ wealth. It is in influencing this last factor that asset seizure can be most useful as a criminal deterrent, though criminals seeking to avoid asset seizure despite the enhancements concluded in this report will also face increased costs.

3.19 Of course, no single crime reduction initiative will control crime on its own; multiple interventions are generally demonstrated to be more effective than initiatives with a single focus.\textsuperscript{17} And some offenders are simply insensitive to the proven high costs of committing crime and the high risks of detection and punishment. Poverty, addiction, multiple deprivation and family situation are among the root causes for persistent criminals that must be dealt with by a combination of measures. The Government is already giving a high priority to addressing social exclusion issues.

The benefits of financial investigation

3.20 The pursuit of assets through financial investigation will also bring substantial benefits to crime detection more generally.

Better criminal intelligence

3.21 Effective asset recovery cannot work without effective financial investigation. Results from the UK police forces that have given greater priority to financial investigation show that following the money trail has in many instances yielded evidence relating to other crimes and individuals and contributed significantly to police understanding of the operation of local criminal markets.

3.22 Given the vast number of financial transactions entered into and the detailed records kept of those transactions, financial investigation can be used in a wide variety of cases to place individuals at particular times and to provide useful evidential leads. If better financial investigation by law enforcement agencies can be demonstrated to contribute to their detection rates more widely, this could be an important contribution to crime deterrence since empirical evidence\textsuperscript{18} suggests that increasing the probability of detection is more effective than increasing the severity of the punishment.

Box 3.7: Use of intelligence-led policing

A number of police forces (such as Kent, and Avon and Somerset) are moving towards a more proactive system of policing where criminal organisations and networks are mapped, risks and damage to the community assessed, and strategic decisions made about resource allocation based upon the perceived risks and ongoing damage. Financial investigation techniques are central to this form of mapping, and can tie in criminal individuals who are indirectly connected to, but benefit from, the criminal actions of others.


\textsuperscript{18} Economics of Criminal Behaviour, Ehrling Eide, 1996.
Increasing the attack on tax evasion and benefit fraud

3.23 Some financial investigations that do not lead to prosecution for the main criminal offence still generate sufficient evidence of profit-making to enable the Inland Revenue to raise a tax assessment. This opens up a new route to recovering previously unreachable assets. Tax evasion is estimated at £10 billion a year, with excise duty lost on smuggled tobacco alone accounting for £2.5 billion. Benefits fraud has been estimated at £1.5 billion per year. Combined with better links between law enforcement, intelligence, tax and benefits agencies, financial investigation could help to make substantial contributions in these fiscal areas.

Reducing money laundering damage

3.24 Effective financial investigation and asset recovery will also help check the damage caused by money laundering – the process by which criminals bring their illegal gains into the legitimate financial system in order to hide their origins and protect them from confiscation. Money laundering has been estimated by the International Monetary Fund to account for between 2 and 5 per cent of the world’s GDP. Efforts to recover the proceeds of crime will only be effective if they are coupled with a shoring up of defences against money laundering. Access to money laundering intelligence also provides a valuable insight into the workings of criminal businesses.

More stable financial markets

3.25 In the same way that powerful local criminals are able to corrupt local societies, international evidence suggests that there is a threat to political and financial stability when organised crime is permitted to become entrenched, and that this entrenchment is strongly connected to the wealth of the criminal organisations involved.20

3.26 The accumulation of criminal economic power may also have negative impacts for financial systems. The accumulation of criminal assets in a country’s financial system may influence decisions about national banking policies or about co-operation in international transparency and accountability rules. It may create risks around specific institutions, which through international linkages could have knock-on effects through the financial system. At a minimum, the unquantifiable, though probable, presence of criminal assets in financial systems and associated risks will raise costs, including insurance costs.

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Box 3.8: Using financial investigation to find people

A series of rapes occurred in London and the home counties in the early 1980s. A man was arrested, charged and convicted. It was thought at the time that two people were involved but there was insufficient evidence to secure a conviction against the second suspect. The case was reopened in 1998 as evidence using new DNA techniques became available to secure a conviction against the second man. However, the testimony of the victims of the original rapes was needed. Many had moved on and had to be traced. An officer spent five days trying to find just one of these victims. He asked the Financial Investigation Unit to assist and a financial investigator located the woman in Lancashire in about two hours simply by reviewing credit card statements and using credit reference agencies.

3.27 The good reputation of the UK as an international financial centre means that once accepted into UK financial institutions, funds are generally perceived as clean. It is therefore an attractive target for money launderers. More effective asset pursuit and recovery processes will discourage criminals from seeing the UK as attractive and thus reduce risk to UK financial markets of market distortion and instability (see below on the collapse of BCCI in 1991). However, the international nature of financial systems now means that unilateral action on this front can only provide limited protection. Chapter 11 explores international co-operation to prevent money laundering.

**Removing unfair competition**

3.28 Criminal proceeds are often laundered through otherwise legitimate businesses which, in effect, they subsidise to the disadvantage of competitors.

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**Box 3.9: Bank of New York, 2000**

On 16 February 2000 in a Manhattan Federal Court, Peter Berlin and Lucy Edwards pleaded guilty to charges including conspiracy to commit money laundering and operating an unlawful banking and money transmission business.

Between 1995 and 1999, some $7 billion was transmitted via an illegal banking network through accounts at the Bank of New York, most of the funds having come from Russia thereby defrauding the Russian state out of customs duties and tax revenues. Large sums were transferred each day using hundreds of wire transfers out of Bank of New York accounts to third parties world-wide. More than 160,000 wire transfers were made in the period February 1996 - August 1999. Berlin and Edwards admitted receiving around $1.8 million in commission for involvement in the laundering process. Substantial funds were laundered while Berlin and Edwards were resident in London, and the UK’s National Crime Squad helped the US authorities to investigate the offences.

The monies and services provided in the Bank of New York laundering scheme allegedly included a payment to kidnappers. Currency controls were ignored and large amounts of taxes owed legitimately to the Russian Government were avoided by the scheme’s users. Edwards also helped hundreds of Russian nationals to enter the USA and the UK illegally.21

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**Cost effectiveness of asset recovery**

3.29 In addition to the benefits already outlined, financial investigation and asset removal have the potential to be cost effective. Other countries’ experience of pursuing asset recovery more rigorously, including the establishment of a dedicated agency for that purpose, suggests that such initiatives rapidly cover their costs and begin generating an operating surplus, typically within three to five years of start-up. For example, the US Asset Forfeiture Reinvigoration Programme has returned a surplus of up to £100 million annually. However, there will be costs and pressures created elsewhere in the criminal justice system, particularly in the early years when new legislation is proved through test cases.

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Box 3.10: BCCI – Market instability due to criminal impact

Established in the 1970s, the Bank of Credit and Commerce International (BCCI) emerged in the 1980s as one of the world’s largest privately owned financial institutions, with operations in over 70 countries. During the years of its operations, BCCI employees were found to have engaged in a number of illicit activities, including money laundering.22

On 18 December 1991, in an agreement with the Justice Department and New York District Attorney, BCCI pleaded guilty to having engaged in a criminal conspiracy through financial fraud, and thereby constituting a Racketeering Influenced and Corrupt Organisation (RICO), whose entire assets, legitimate and illegitimate, were subject to confiscation by the government. Specific offences admitted to by BCCI included:23

- seeking deposits of drug proceeds and laundering drug money;
- seeking deposits from persons attempting to evade US income taxes;
- using ‘straws’ and nominees to acquire control of US financial institutions;
- lying to regulators and falsifying regulatory documents; and
- creating false bank records and engaging in sham transactions to deceive regulators.

The collapse of BCCI and the consequential shock to the global banking system underlined the importance of a strong regulatory and investigative structure to tackle money laundering and criminal involvement in the banking sector. As well as losses to individual investors, private, corporate and public, the resulting ‘flight to quality’ made it harder for smaller financial institutions in the UK to attract deposits.

Box 3.11: Breaking Mafia grip on the New York construction industry

During the 1980s, the Federal Government, working with the New York Police Department and the Department of Investigation, made a concerted effort to attack the Mafia as a criminal enterprise.

New tools such as the anti-racketeering (or RICO) statute and criminal forfeiture proceedings were used along with a new strategy of attacking the entire organised crime enterprise rather than merely investigating its members for disparate crimes. Investigation revealed that the Mafia controlled a number of the City’s principal industries and that criminal prosecutions had done little to force those industries from the Mafia’s grip.

In the 1990s a new strategy was implemented using the support and co-operation of every level of government – including review and analysis of the public and private construction process and systematic attack against the Mafia’s corrupt control of unions, construction firms, suppliers and vendors through corruption monitors and financial investigators.

The strategy had the effect of liberating legitimate businesses. For example, the annual waste collection bill of the New York Postal Service was reduced from $2.5 million to $200,000 by removing Mafia influence from that sector of the market.
3.30 These costs include those incurred by law enforcement agencies, the court system and the Crown Prosecution Service (CPS) as a result of:

- a much more routine use of financial investigation;
- more frequent confiscation hearings;
- more complex, though more efficiently executed, prosecutions;
- more comprehensive enforcement of asset freezing and recovery; and
- appeals.

3.31 All these costs need to be appraised since they may add significant pressures to the criminal justice system. Possible legal aid and compensation costs need also to be taken into account. To the extent that they are necessary elements of the confiscation process, so are the private sector costs of complying with anti-money laundering measures. The different cost implications of civil asset recovery also need to be identified.

3.32 Chapter 12 looks at the expected costs of implementing the conclusions in this report. Taking account of the budgets of the existing confiscation units in the CPS, Customs, the Inland Revenue, and of the Home Office estimates for the proposed new National Confiscation Agency, plus estimates of the costs of the proposed Centre of Excellence (see Chapter 7), annual costs of around £20 million have been identified. This is equivalent to 0.25 per cent of the current criminal justice system budget of £12 billion, and just 0.06 per cent of the total estimated cost of crime of £50 billion.24

3.33 The benefits of asset confiscation are clearly hard to quantify, especially those relating to increased justice and fairness and improved confidence in the rule of law. And crime reduction policies generally are also particularly difficult to submit to a cost-benefit analysis since their individual impacts are difficult to isolate and attribute, occur over different time-scales and may be co-dependent.

3.34 The overall effect of a policy of asset confiscation will also depend on the extent to which it is publicised, as criminals and criminal organisations made aware of the Government’s new attack on unlawful assets, they will respond in a number of different ways. Some will simply take steps to conceal better the origins of their unlawful gains. This may result, in the short term, in the moving of assets overseas and in a proliferation of more complex money laundering schemes, a trend which may persist. As the criminals become more sophisticated in covering their financial tracks, they become harder to investigate and bring to court, but the increased money laundering cost will raise the overall costs of committing the crime and this will have a long-term deterrent effect. In other cases, individuals contemplating crime for profit will be deterred by the increased risk of detection. On balance therefore, the greatest benefits are likely to be obtained as the policy becomes more widely known about.

3.35 In view of the relatively small net increase in budgetary costs anticipated, and the potential benefits in terms of contributing to increased fairness and confidence in the rule of law, increased efficiency of policing and reduced overall long-term growth in acquisitive crime, the conclusions in this report are likely to be cost effective.

24 See Chapter 2.
Summary

4.1 Despite the existence of extensive legal powers since the mid-1980s to confiscate criminal assets, there are significant deficiencies in the way these powers have been used. They have also developed in a piecemeal fashion, resulting in legislative anomalies.

4.2 This chapter deals with three different types of asset recovery available under legislation in England and Wales:

- forfeiture of property;
- forfeiture of cash at borders under the Drug Trafficking Act of 1994 (without the need for criminal conviction); and
- confiscation following criminal conviction.

4.3 These powers are available in Scotland and in Northern Ireland under parallel statutory frameworks.

The statutory framework

Forfeiture

4.4 Forfeiture is an age-old legal concept, but the UK’s current criminal confiscation regime can be said to have its origins in the 1950s when forfeiture powers were introduced for dealing with illicit articles such as pornography. These early powers of forfeiture were intended to remove items which it was an offence to possess, or to enforce fiscal policy.

4.5 Powers of forfeiture survive today in numerous statutes, including the Misuse of Drugs Act 1971 (MDA), the Powers of Criminal Courts Act 1973 (PCCA), the Customs and Excise Management Act 1979 and the Immigration and Asylum Act 1999 (dealing with restraint and forfeiture of transport involved in illegal immigration). Under the relevant provisions, the police and Customs can ask the courts to forfeit certain assets. Forfeiture powers are also available on application of a Customs officer under Section 42 of the 1994 Drug Trafficking Act to recover cash at borders that represents the proceeds of drugs trafficking, or is intended for use in drugs trafficking.

4.6 Amounts recovered under most forfeiture orders can be awarded by the courts to the law enforcement agency that investigated the offence. This prospect of direct gain risks skewing of police activity away from the far more powerful provisions of the confiscation law.

Confiscation

4.7 The limited forfeiture powers were enhanced to cover the removal of the proceeds of crime (i.e. confiscation) 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 forfeiture powers could not be used “to strip the drug traffickers of the total profits of their unlawful enterprises”.

1 House of Lords judgment in R v Cuthbertson 1981, AC 470.
4.8 The confiscation regime was enacted in the UK in 1986. Initially, it applied to drug trafficking offences only, but was extended by the 1988 Criminal Justice Act to cover all non-drug indictable offences and specified summary offences.2

4.9 The following table sets out the statutes that introduced and amended confiscation powers. It shows the complexity of the system.

4.10 A key feature of the UK confiscation system is that it is conviction-led: confiscation provisions only apply when an offence has been proved to a criminal standard (i.e. beyond reasonable doubt). The amount confiscated is then determined according to the calculated benefit of the crime to a civil standard (i.e. on the balance of probabilities). In drug trafficking cases, there is a statutory assumption that all assets acquired and all transfers and expenditure made in the six years prior to the institution of proceedings, and all property currently held are the proceeds of drug trafficking, unless the defendant can demonstrate otherwise. The courts have the discretion not to apply these statutory assumptions if they would lead to a serious risk of injustice.

Table 4.1: Confiscation legislation

<table>
<thead>
<tr>
<th>Year</th>
<th>Statute</th>
<th>Provisions</th>
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</thead>
<tbody>
<tr>
<td>1986</td>
<td>Drug Trafficking Offences Act (DTOA)</td>
<td>Confiscation provisions for drug trafficking offences and first drug money laundering offence</td>
</tr>
<tr>
<td>1987</td>
<td>Criminal Justice (Scotland) Act</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>Criminal Justice (International Co-operation) Act</td>
<td>Mutual legal assistance, further drug money laundering offences and drug cash seizure on import or export</td>
</tr>
<tr>
<td>1993</td>
<td>Criminal Justice Act (CJA 1993)</td>
<td>(Other forms of) money laundering offences and enhancements to all crime confiscation provisions</td>
</tr>
<tr>
<td>1994</td>
<td>Drug Trafficking Act (DTA)</td>
<td>Consolidating the drug provisions and removing mandatory confiscation</td>
</tr>
<tr>
<td>1994</td>
<td>Criminal Justice and Public Order Act</td>
<td>Bringing forward the date from which CJA 1993 confiscation provisions apply</td>
</tr>
<tr>
<td>1995</td>
<td>Proceeds of Crime Act (PCA)</td>
<td>Further alignment of all crime confiscation provisions with DTA 1994; notably use of assumptions (see 4.10) in crime lifestyle cases</td>
</tr>
<tr>
<td>1995</td>
<td>Proceeds of Crime (Scotland) Act</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>Proceeds of Crime (NI) Order</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>Crime and Disorder Act</td>
<td>Amendment to CJA for confiscation orders on committal for sentence</td>
</tr>
</tbody>
</table>

2 i.e. a limited number of specified acquisitive offences dealt with by the Magistrates’ Court. Indictable offences are offences which are or can be heard by the Crown Court.
4.11 The other main aspects of the criminal confiscation regime are as follows:

- the regime is intended to be reparative, not retributive, i.e. it only seeks to recover from offenders the benefit of their unlawful activities; and
- there are differences between powers of confiscation and forfeiture, and with what happens to the proceeds recovered.

4.12 Amounts recovered from CJA 1988 confiscation orders are returned to the Government and are paid into the Treasury’s Consolidated Fund. In drug trafficking cases, the amounts recovered are allocated to a Confiscated Assets Fund, set up in May 1999 and administered by the Home Office on behalf of the UK’s Anti-Drugs Co-ordination Unit in the Cabinet Office. This fund is intended for use in anti-drug activity and for sharing with other governments where successful cases involve international co-operation.

**Applying the legislation**

**Prosecution authorities**

4.13 The majority of crime is investigated by the police and prosecuted by the Crown Prosecution Service (CPS). Confiscation proceedings in these cases are the responsibility of the Central Confiscation Branch (CCB) located within the CPS. As at March 2000, the CCB had 10 members of staff who were mainly lawyers; some also have accountancy qualifications. Its budget for 1999/2000 was £1.2 million including £0.9 million of staff costs.

4.14 Customs also plays a key role in confiscating criminal assets through investigating and prosecuting offences relating to excise, VAT and importation/exportation of drugs. Confiscation in cases brought by Customs in England and Wales is the responsibility of its Asset Forfeiture Unit (AFU), made up of 13 staff in London including 6 lawyers. Its budget for 1999/2000 was £1 million including £0.6 million of staff costs.

4.15 The main units responsible for asset confiscation proceedings therefore comprise 38 staff and a combined budget of £2.2 million. Even if all this resource was entirely devoted to pursuing assets in the CPS cases, it would amount to less than one member of staff for each of the police forces in England and Wales and less than 0.02 per cent of the total CJS budget.

4.16 There are a number of other investigating and prosecuting authorities with specific investigative responsibilities, such as the Department of Social Security (DSS), Immigration Service, Inland Revenue and Serious Fraud Office. Responsibilities for financial investigation are dealt with in detail in Chapter 7.

**The courts**

4.17 Court responsibilities in confiscation matters are divided between criminal and civil courts as follows. Each confiscation-related court decision is made on balance of probabilities:

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1. Welch v UK (1/1994/448/527) 9 February 1995, the European Court of Human Rights held that in this case (which involved retrospection) the criminal confiscation order was punitive in character, rather than reparative as had been argued.

2. In Scotland, all prosecution is the responsibility of the Procurator Fiscal. In Northern Ireland, prosecution lies with the Director of Public Prosecutions.


4. Source: HM Customs & Excise, Asset Forfeiture Unit.
What is the system delivering?

Confiscation

4.18 Data on the level of confiscation and enforcement is not collected in any systematic way. What little data exists shows that, despite legislation that provides for confiscation upon conviction for all crimes, the UK’s confiscation track record is poor. Very little is ordered to be confiscated, even less is collected.

4.19 For example, Table 4.3 below summarises the number of confiscation orders relative to drug trafficking convictions. It shows that in 1998 only 17.8 per cent of Crown Court drug trafficking convictions led to confiscation orders being made.

4.20 Drug trafficking offences relate to the business end of the drugs market. It can therefore reasonably be expected that those convicted have enjoyed benefit from their crimes. Despite this, the proportion of drug trafficking convictions which lead to confiscation orders is low and appears to

Table 4.2: Confiscation and the court system

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Venue</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production order or search warrant</td>
<td>Crown Court</td>
<td>On application by a constable without notice to the respondent</td>
</tr>
<tr>
<td>Restraint order</td>
<td>High Court</td>
<td>On application by the prosecutor, without notice to the respondent, at about the time of charge</td>
</tr>
<tr>
<td>Confiscation order</td>
<td>High Court</td>
<td>In drug trafficking cases, in respect of persons who have died post conviction, and of those against whom proceedings have been instigated but who have absconded pre-conviction</td>
</tr>
<tr>
<td>Crown Court</td>
<td></td>
<td>Follows conviction or up to six months later. An order can be re-assessed within six years of the date of conviction</td>
</tr>
<tr>
<td>Magistrates’ Court</td>
<td></td>
<td>For offences which are specified in Schedule 4 to the CJA 1988</td>
</tr>
<tr>
<td>Enforcement</td>
<td>High Court</td>
<td>Decision on appointment of receiver and consideration of third party interests in confiscation orders</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Magistrates’ Court</td>
<td>Enforcement and collection of confiscation orders; can appoint bailiffs</td>
</tr>
</tbody>
</table>

Where are we starting from?

Instrument Venue Notes

Production order or search warrant Crown Court On application by a constable without notice to the respondent
Restraint order High Court On application by the prosecutor, without notice to the respondent, at about the time of charge
Confiscation order High Court In drug trafficking cases, in respect of persons who have died post conviction, and of those against whom proceedings have been instigated but who have absconded pre-conviction
Crown Court Follows conviction or up to six months later. An order can be re-assessed within six years of the date of conviction
Magistrates’ Court For offences which are specified in Schedule 4 to the CJA 1988

Enforcement High Court Decision on appointment of receiver and consideration of third party interests in confiscation orders
Enforcement Magistrates’ Court Enforcement and collection of confiscation orders; can appoint bailiffs

Table 4.3: Numbers of drug trafficking confiscation orders

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<tbody>
<tr>
<td>Crown Court drug trafficking convictions</td>
<td>4,835</td>
<td>6,199</td>
<td>7,373</td>
<td>8,370</td>
<td>6,998</td>
</tr>
<tr>
<td>Confiscation orders made</td>
<td>1,248</td>
<td>1,562</td>
<td>1,557</td>
<td>1,466</td>
<td>1,243</td>
</tr>
<tr>
<td>Percentage where order made</td>
<td>25.8%</td>
<td>25.2%</td>
<td>21.1%</td>
<td>17.5%</td>
<td>17.8%</td>
</tr>
</tbody>
</table>

be declining. An analysis of the reasons for this is set out in Chapter 8.

4.21 The all-crimes provisions of the 1988 CJA are used to a lesser extent still which is partly explained by CPS budget restrictions on confiscation work. The crimes covered by the CJA include a multitude of both acquisitive and non-acquisitive offences, though it should be remembered that about two thirds of all crimes are acquisitive.8 In some cases, there will be a victim involved and a compensation order will be more appropriate than a confiscation order. In addition, little is known of the spending and saving habits of offenders, and there may be a significant proportion of cases in which there are no substantial assets available for confiscation.9 Nonetheless, the figures are strikingly low – see table 4.4.

Enforcement of confiscation orders

4.22 Even where confiscation orders are made, the amounts collected are significantly lower than the amounts ordered to be confiscated. This is despite the requirement of the law that confiscation orders cannot be made at a level above the offender’s ability to pay (i.e. his or her ‘realisable assets’). Figure 4.1 shows the collection rate against amounts ordered to be confiscated under the drug trafficking legislation; on average under half (about 40 per cent) of the assets ordered to be confiscated are collected.

Table 4.4: Numbers of CJA confiscation orders10

<table>
<thead>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Potential CJA confiscation cases11</td>
<td>60,795</td>
<td>61,909</td>
<td>59,346</td>
<td>62,511</td>
<td>52,456</td>
</tr>
<tr>
<td>Confiscation orders made</td>
<td>21</td>
<td>50</td>
<td>159</td>
<td>151</td>
<td>136</td>
</tr>
<tr>
<td>Percentage where confiscation made</td>
<td>0.03%</td>
<td>0.08%</td>
<td>0.2%</td>
<td>0.2%</td>
<td>0.3%</td>
</tr>
</tbody>
</table>

Figure 4.1: Drug trafficking collection rate12

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8 See Chapter 2.
9 See Investigating, Seizing and Confiscating the Proceeds of Crime, M. Levi and L. Osofsky, Home Office Police Research Group Crime Detection and Prevention Series Paper 61, 1995. But this paper also states that “there is more than likely to be as much as £460 million of proceeds from property crimes and £190 million from drug trafficking crimes available for confiscation per annum”, vastly more than the total value of confiscation orders made each year.
10 Source: Crime and Criminal Justice Unit (RDS), Home Office (England and Wales figures).
11 i.e. convictions in the Crown Court less drug trafficking convictions.
12 See footnote 8.
4.23 The collection rate for all crime cases under the PCA is illustrated in Figure 4.2 overleaf; this shows a lower rate of collection, with around 30 per cent being collected on average.

4.24 The figures above are presented on an actual basis and do not reflect the significant time lag that occurs between the making of an order and collection. The time lag is not routinely measured, but little is normally collected in the year of the confiscation order. For example, in 1997 Customs obtained drug trafficking confiscation orders of some £7.5 million, but only 11 per cent of this (some £0.8 million) had been collected by November 1998.

4.25 Authorities such as the DSS, Immigration Service, Inland Revenue and Serious Fraud Office also undertake significant cases leading to confiscation. For example, the Inland Revenue’s Special Compliance Office currently has over £24 million restrained in eight outstanding tax cases. The Department of Social Security’s Financial Investigation Unit restrained £3.35 million in 1998/99 and saw nearly £1 million confiscated.

4.26 Overall, the amount confiscated and collected under the confiscation regime is very small by comparison with, for example, estimates made by the National Criminal Intelligence Service (NCIS) of the amount of criminally derived funds in circulation of 2 per cent of GDP (i.e. approximately £18 billion). It is clear that the confiscation regime is not making a significant impact on the stock of criminal assets.

**Amounts forfeited**

4.27 In addition to confiscation orders, unlawful assets can be recovered by forfeiture orders applied for by the police under the statutes described in paragraph 4.5 above.

<table>
<thead>
<tr>
<th>Table 4.5: Numbers of forfeiture orders 1994–1998</th>
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<tbody>
<tr>
<td>Magistrates’ Court</td>
</tr>
<tr>
<td>Crown Court</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Total re. drug offences</td>
</tr>
</tbody>
</table>

13 ibid.
14 NCIS Strategic Threat Assessment, 1999.
15 Source: Crime and Criminal Justice Unit (RDS), Home Office (England and Wales figures).
There is very little information available relating to the total value and types of assets recovered under these orders. The information available relating to the numbers of forfeiture orders is, however, summarised in Table 4.5 above.

4.28 It can be seen that forfeiture orders are routinely applied for. In 1998, for example, there were around 27 forfeiture orders for every confiscation order made (shown in Tables 4.3 and 4.4).

Cash detained at borders

4.29 Forfeiture orders are also used to recover cash found at borders believed to represent the proceeds of drug trafficking or be intended for use in drug trafficking. The recent track record of forfeiture of cash detained at borders is shown in Table 4.6.

4.30 The UK’s cash at borders detention regime can only be intercepting a tiny percentage of the flows of drug money out of the UK. For example, between September 1991 and March 1996, only £7.1 million was forfeit under Section 42 of the DTA, whilst data compiled by the Office for National Statistics suggests that approximately £970 million cash left the country in, for example, just the one year 1994, to pay for the supply of drugs.17

4.31 The problem is both legislative and a matter of operational priority. The 1999 and 2000 figures do indicate a more concentrated effort on cash seizure work. But when compared with the results of drug seizure activity, the figures illustrate the historical lack of priority given to cash seizure work on the part of Customs. In 1998, for example, drugs with a street value of £710 million18 were seized whilst cash of only £1.9 million was detained.

Table 4.6: Cash forfeited under Section 42 of DTA16

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Cash forfeited</td>
<td>£2.1 million</td>
<td>£1.9 million</td>
<td>£2.8 million</td>
<td>£4.4 million</td>
</tr>
</tbody>
</table>

Improvements in the pipeline

4.32 Although the current systems are not delivering as intended, a number of changes are already under way to improve the system. These include the:

- extension of civil forfeiture powers;
- improvement of the computer systems used by NCIS to co-ordinate aspects of law enforcement intelligence; and
- introduction of new powers to enable the Financial Services Authority (the FSA) to help reduce financial crime in the regulated financial sector.

Civil forfeiture

Home Office proposals

4.33 Proposals for significant extensions to the current cash at borders civil forfeiture powers are under consideration. Recommendations being developed by the Home Office include the introduction of civil forfeiture anywhere in the jurisdiction of property of any kind representing the proceeds of, or intended for use in, criminal conduct.19 These are addressed in detail in Chapter 5.

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16 Source: HM Customs & Excise.
17 Drug Cash Trafficking Strategic Threat Assessment, HM Customs & Excise.
NCIS Economic Crime Unit (NCIS ECU)

4.34 The role of NCIS\(^\text{20}\) is to provide criminal intelligence in the fight against serious and organised crime in the UK and throughout the world. It is a multi-agency organisation working in partnership with others, including law enforcement agencies and government. NCIS is accountable to a service authority representing the public, law enforcement agencies and government. Originally formed in April 1992, the Police Act 1997 put the service on a statutory footing for the first time and made it independent of central government from 1 April 1998.

4.35 NCIS ECU includes a mix of civilian, regulatory and law enforcement officers, helping to create a pool of knowledge on financial crime. Its primary role is to build and disseminate intelligence packages based upon suspicious transaction reports submitted by financial institutions in accordance with their obligations under money laundering legislation. The ECU also draws upon specialist knowledge from within NCIS Strategic and Specialist Intelligence Branch on counterfeiting, kidnapping, football crime, immigration, automobile crime, drugs, West African organised crime and extortion.

4.36 To enhance the NCIS ECU function, a new disclosure database system was introduced in late 1999 which has a planned maximum turnaround time of 15 days from receipt of disclosure to dissemination of an intelligence package to the appropriate operational unit.\(^\text{21}\) This new database will be able to receive disclosures directly from institutions in electronic format, undertake automated searches against key factors, communicate electronically with Financial Investigation Units (FIUs), provide enhanced intelligence packages and intelligence charts as a matter of course and monitor FIUs for feedback that can be passed to institutions.

4.37 NCIS has also received approval for funding to introduce further electronic links between ECU, law enforcement, Government departments and financial institutions. A more secure electronic link will also be developed with institutions to allow trend reporting and money laundering alerts to be rapidly communicated to the industry.

Box 4.1: Role of NCIS ECU

- Receiving disclosures made by financial institutions relating to suspicious transactions.
- Cross-checking these disclosures against intelligence, police, Customs and other databases.
- Building up intelligence packages on specific criminal financial activities linked to the disclosures.
- Passing the disclosure intelligence packages to the most appropriate operational FIU.
- Providing feedback to disclosing institutions.
- Providing a centre of expertise for queries relating to the money laundering legislation from both law enforcement and private sector.

\(^{20}\) See website at www.ncis.co.uk

\(^{21}\) Source: NCIS ECU.
Financial Services Authority

4.38 Banks and other financial institutions have been subject to a variety of authorisation-based, statutory or statute-backed regulatory regimes. The Government announced in May 1997 that these various regulators were to be combined and a new law brought into force.

4.39 The new single regulator is the FSA\textsuperscript{22} (which is operating under the multiplicity of previous powers) and the proposed new law is currently going through Parliament as the Financial Services and Markets Bill. A significant change from the predecessor regimes is that the Bill provides for the FSA:

- explicit statutory objectives (one of which is the “reduction of financial crime”); and
- specific powers in relation to money laundering (to make rules for authorised persons and to prosecute breaches of the Money Laundering Regulations 1993).

4.40 The FSA’s powers will complement those of the present criminal law intelligence and enforcement bodies. The area where the FSA expects to concentrate is that of good design and effective operation of anti-laundering systems and controls by the organisations that it regulates.

4.41 There are many other improvements under way in other bodies. The Performance and Innovation Unit has taken account of these in preparing its conclusions.

\textsuperscript{22} See website at www.fsa.gov.uk
5. CIVIL FORFEITURE

Summary

5.1 The Home Office, with the assistance of an interdepartmental group, has carried out a study into the possible extension of civil forfeiture powers beyond those relating to the seizure of cash at borders set out in Chapter 4. Following this study, the Home Office proposes that, with appropriate safeguards, more extensive civil forfeiture powers should be introduced to England and Wales. The Home Office proposals envisage the powers being used “where there is strong evidence of the criminal origins of the property, but insufficient evidence for criminal conviction of the owner”.

5.2 The proposed civil forfeiture regime is intended to:

- be reparative – taking away from individuals that which was never legally owned by them;

- be preventative – taking assets which are intended for use in committing crime;

- open up a new route to tackling the assets of those currently beyond the reach of the law, by targeting the activities of organised crime heads who are remote from crimes committed to their order, yet who enjoy the benefits; and

- allow the recovery of unlawful assets held in the UK, but derived from crime committed overseas.

An overview of the legal aspects of the proposed scheme is shown in Box 5.1.

5.3 Civil forfeiture is a significant extension in the powers available to the State to deal with the proceeds of crime. It can be expected to be viewed as controversial by some. There is a careful balance to be struck between the civil rights of the individual and the need to ensure that the State has the tools to protect society by tackling crime effectively. This chapter sets out a number of safeguards to ensure that the right balance is struck and that the proposals give expression to the European Convention on Human Rights (ECHR).

5.4 This chapter also deals with practical aspects of implementation of civil forfeiture in the UK, including the establishment of a new National Confiscation Agency (NCA).

Home Office proposals

5.5 The only enhancements to the above recommendations proposed by this report relate to the amounts available from restrained assets to pay legal fees, a point dealt with in Chapter 8, and the compensation provisions, see paragraphs 5.27 and 5.28 below.

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1 The Northern Ireland Office proposes that more extensive civil forfeiture powers should also be introduced to Northern Ireland. The Scottish Executive will want to decide whether to introduce civil forfeiture within Scotland.

Box 5.1: Home Office proposed civil forfeiture provisions

- Civil forfeiture should apply where the value of assets is, or is reasonably expected to be, £10,000 or more and where there are reasonable grounds to suspect the assets represent any person’s proceeds of drug trafficking or criminal conduct or are intended by any person for use in criminal conduct (as defined in existing Criminal Justice legislation).
- In relation to non-cash property, restraint could be ordered against the person and forfeiture against the assets.
- Cash\(^1\) only proceedings would be heard in the Magistrates’ Court, property only and property and cash proceedings in the High Court.
- The burden of proof would remain with the authorities and forfeiture decisions be made on the civil test of the balance of probabilities.
- Safeguards would be built in for the protection of innocent property owners and the rights of victims and third parties.
- Civil legal aid should be available to persons wishing to contest civil forfeiture; property should be capable of release to defend proceedings but not merely to cover living expenses.
- Compensation should be payable at the court’s discretion where a person is found to have suffered asset restraint or forfeiture unjustly (modelled on current criminal compensation provisions, i.e. where there has been some “serious default”).

International comparisons

5.6 This study has drawn on the experience of the wider civil forfeiture powers available in other countries, such as the Republic of Ireland, Australia, Italy and the USA.

5.7 The table below compares the available data on the amounts ordered to be confiscated under these countries’ civil and criminal regimes.

5.8 Of these, Ireland is the most instructive, as the country is a member state of the EU and nearest to the UK in terms of its legal system and the nature of the crime it faces. In Ireland, the introduction of civil forfeiture, and the Criminal Assets Bureau to administer it is considered a successful new initiative in tackling crime (see Box 5.2).

Figure 5.1: Amounts ordered to be confiscated, normalised by GDP, 1996\(^4\)

\(^{1}\) Cash in this context includes notes, coins and all other negotiable instruments, including, for example, travellers cheques, bearer bonds and smartcards.

\(^{2}\) Source: FATF.

\(^{3}\) First year of full operations of the Criminal Assets Bureau: Ir £13.6 million including tax of Ir £10.7 million.
5.9 Irish law enforcement reports that the introduction of civil forfeiture appears to have led to a flight of the heads of half a dozen organised crime groups out of the jurisdiction.7

5.10 The USA also has a civil forfeiture regime which is long established and has been the subject of intense debate as to the balance it strikes between civil liberties and the needs of law enforcement. The US system is complicated by the existence of separate civil forfeiture systems at Federal and State levels. In many cases, it has been the State level legislation that has given cause for public concern. The President has recently signed an Act, the Civil Asset Forfeiture Reform Act8 2000, into law which amends aspects of the US forfeiture system, notably by transferring to the State the burden of proof of the origin of the assets. One aspect of the US system which some view as controversial is the wide-ranging application of civil forfeiture powers to encompass items which are used in the commission of crime, known as instrumentalities. These instrumentalities are subject to forfeiture and can include cars, boats, homes and businesses. In some instances, the ability of law enforcement officers to restrain such property and the prospect of their being able to retain some of the assets has led to a skewing of priorities.

Box 5.2: Civil forfeiture in the Republic of Ireland

The impact of civil forfeiture on crime generally in Ireland was recently referred to in an Irish National Crime Forum Report:4

“...among the most effective responses was the establishment of the Criminal Assets Bureau with powers to confiscate the assets of those whose wealth derived from drugs. This was considered to be such an effective measure that more than one contributor proposed that similar bureaux should be set up at local level to cope with the problem of less prominent pushers who nevertheless have considerable status and power in the community.”

Box 5.3: Criminal Assets Recovery Act (CARA) 1990, New South Wales

New South Wales’ CARA9 introduced a civil forfeiture regime that is different from any other one in operation, in that it is directed at persons rather than assets. The forfeiture trigger is proof to the civil standard that a person has within the past six years committed a serious offence (i.e. one that is punishable by five years’ imprisonment or more). Following such a finding, all that person’s property is liable to forfeiture, unless the owner proves to the civil standard that the property was lawfully acquired. There is no need to prove that assets were derived from criminal conduct.

In recent years, the value of criminal proceeds forfeited under CARA has been greater than the total amount recovered under all other Federal, State and Territory confiscation laws in Australia. Following a report by the Australian Law Reform Commission (ALRC)10, the Australian Government is currently considering the introduction of Federal civil forfeiture legislation modelled on CARA.

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7 Reported by the Criminal Assets Bureau, Ireland.
5.11 The Home Office and the Performance and Innovation Unit (PIU) have taken account of the US system to learn both from where the system has been effective and from where it has not worked so well. The Home Office has also taken account of other civil forfeiture regimes in operation, including that in the state of New South Wales in Australia.

### Rationale for civil forfeiture

5.12 The proposed civil forfeiture regime is intended to provide:

- a reparative measure – taking away from individuals that which was never legitimately owned by them; and

- a preventative measure – taking assets which are intended for use in committing crime.

5.13 Although civil forfeiture is not intended as a punitive measure, it can be expected to be keenly felt and strongly resisted by individuals who have grown accustomed to having possession of their unlawful assets. The quotation above from Willie Hofmeyr, Head of South Africa’s new Asset Forfeiture Unit, reinforces the large body of anecdotal evidence from UK and other overseas law enforcement that individuals associated with criminal activities are as concerned about losing their assets as they are about losing their liberty, in some cases more so.

5.14 Like other forms of asset recovery, civil forfeiture is a disincentive to crime – more effective recovery of unlawful assets will act to reduce the anticipated reward in the risk/reward trade-offs that some criminals make (as explained in Chapter 3). And it reinforces the rule of law – by demonstrating that the justice system will work effectively to remove illegal gains (also explained in Chapter 3). In addition, it:

- opens up a new route to tackling assets that are currently beyond the reach of the law. Civil forfeiture should be used in particular to disrupt the activities of organised crime heads who are remote from crimes committed to their order, yet enjoy the benefits; and

- should allow the recovery of unlawful assets held in the UK, but derived from crime committed overseas.

### Attacking crime through removing unlawful assets

5.15 Organised crime heads use their resources to keep themselves distant from the crime they are controlling and to mask the origins of their assets. This involves obtaining the support of professional advisors, using complex money laundering schemes involving ostensibly legitimate businesses, buying secure housing and building networks kept loyal by intimidation and bribery.

5.16 For these reasons, it has become extremely difficult to carry out successful criminal investigations leading to prosecution of certain individuals despite

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Box 5.4: The effect of removing the benefits of crime

“[Offenders] smiled when they got a 15 or 20-year jail sentence, which they regard as an occupational hazard I suppose, but they literally burst into tears when they lost their favourite Rolls-Royce, the family home, the kids’ private education and the wife’s luxurious lifestyle. Police have started seeing forfeiture as a way of hurting and getting at these guys.”

Willie Hofmeyr, Head of the Asset Forfeiture Unit, South Africa

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11 Sunday Telegraph, 2 April 2000.
evidence that they are living off the proceeds of crime. In some cases, the cost involved in gathering the evidence and the difficulty of proving a criminal offence mean that it is not cost effective to pursue a criminal investigation, even though there is a strong suspicion of criminality. The expense involved in such investigations can include the use of private sector experts to unravel the suspect’s complex financial arrangements and lengthy investigations spanning the world’s financial systems. The need to secure a criminal conviction to enable the removal of unlawful assets has led to a vicious circle, whereby finances used to fund street and drug crimes are effectively out of reach of the law and are available to be recycled to finance more crime.

5.17 Civil forfeiture aims to break this cycle by removing unlawful proceeds from the system, thereby disrupting criminal activities.

UK-based foreign unlawful assets

5.18 Civil forfeiture should also offer the prospect of bringing within the reach of law enforcement assets held in the UK but derived from activities committed overseas, which would have been offences if committed in the UK. Other countries are taking this approach. For example, South Africa’s 1998 Prevention of Organised Crime Act\(^\text{12}\) allows for the civil (and criminal) recovery of assets derived from:

“any act or omission outside the Republic which, if it had occurred in the Republic, would have constituted an unlawful activity.”

5.19 The UK’s money laundering legislation\(^\text{13}\) already allows in the criminal sphere the recovery of such funds where they have been laundered in the UK. It is envisaged that co-operation on civil forfeiture cases with overseas jurisdictions may also provide an expeditious route for recovering criminal assets, where mutual legal assistance on criminal cases can be slow and complex.

Asset restraint in civil forfeiture cases

5.20 Restraint of assets in anticipation of civil forfeiture proceedings should help prevent the dissipation of suspected unlawful assets. This should also increase the numbers of foreign restraint orders (available earlier than the point of charge in most European countries\(^\text{14}\)) that can be enforced in England and Wales, a point explored further in Chapter 11.

Civil rights issues

5.21 Civil forfeiture would be a significant extension in the powers available to the State to deal with the proceeds of crime. It can be expected to be viewed as controversial by some, because it extends the circumstances where assets can be forfeited by the State without a conviction to the criminal standard.

5.22 There is, of course, a careful balance to be struck between the civil rights of the individual and the need to ensure that the State has the tools to protect society by tackling crime effectively. In order to maintain this balance, civil forfeiture powers (as with criminal confiscation powers) must be drawn up in a way that gives expression to the European Convention on Human Rights (ECHR)\(^\text{15}\) and is compatible with the Human Rights Act 1998 which implements the ECHR in the UK.

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\(^\text{14}\) For example, Italy and France.
\(^\text{15}\) The ECHR has been incorporated into UK law by the Human Rights Act 1998 which comes into force in October 2000. The Scottish Parliament and the Scottish Executive are already required to exercise their powers in a way which is compatible with the Convention by virtue of the Scotland Act.
5.23 The Home Office has considered the human rights safeguards that would be required for the proposals to be taken forward and has included them in its current proposal. An appropriate balance must be reached between the right of the individual to legal enjoyment of property and the rights of society to reclaim illegally derived assets, and the Home Office has discounted some of the more stringent provisions available in overseas jurisdictions, such as a wide application to instrumentalities.

5.24 The safeguards include:

- a £10,000 de minimis threshold;
- the burden of proof remaining with the State;
- the provision of civil legal aid;
- compensation provisions; and
- organisational management arrangements to ensure that the civil forfeiture route is not adopted as a ‘soft option’ in place of criminal proceedings.

5.25 The £10,000 limit for civil forfeiture cases should encourage its use in a proportionate way. It is highly likely, in fact, that only proceedings relating to cash seizures by police and customs should be at this low level.

5.26 The introduction of civil forfeiture must not perversely affect the priority of law enforcement activity, i.e. the prosecution and conviction of criminals. It is imperative that it is not used as a substitute for criminal proceedings where there is a reasonable chance of securing conviction. And performance measures for civil forfeiture must not drive the system to pursue a civil route for high-value cases regardless of the additional benefits of following the criminal route. There should be a rigorous process to determine the reasons why a criminal prosecution is not appropriate before civil forfeiture proceedings alone are instigated. Decisions as to whether civil forfeiture proceedings are appropriate should be taken by the Board of the National Confiscation Agency (see below) or Police Superintendent, or equivalent, for cash only cases.16

5.27 The earlier restraint of assets that civil forfeiture will permit is a significant increase in the State’s powers to deal with an individual’s assets. A safeguard is also needed to help avoid and repair any financial loss sustained as a result of early restraint where access to assets has been denied and the civil forfeiture case later fails. Proportionate use of early restraint would be encouraged by some form of extension of the existing criminal compensation requirements (which is payable only when there has been “some serious default” on the part of the prosecutor) for civil forfeiture cases.

5.28 There should be compensation for financial loss (e.g. interest foregone) associated with assets restrained under civil forfeiture found later not to be the proceeds of crime or intended for use in crime. The details of a compensation scheme are being considered further by the Home Office. One option would be to limit compensation in cases where the court considers that the person whose assets have been restrained has caused unnecessary expense or delay by his or her own conduct. Prudent use of civil forfeiture powers should mean that compensation should be needed only in very few cases (for example, in Ireland the State has not lost any civil forfeiture actions).

Implementation issues

Role of the National Confiscation Agency

5.29 The Home Office and PIU work has dealt with the organisational changes that would be needed to apply the new asset

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16 Different procedures may apply to cash seizure at borders by Customs where procedures are already in place.
recovery regime effectively. The basic elements of the proposed scheme are:

- a new National Confiscation Agency (NCA) taking all non-cash civil forfeiture cases on referral from law enforcement;
- Customs and police officers being responsible for carrying out cash only civil forfeitures on application to the Magistrates’ Court;
- the NCA being tasked by law enforcement to pursue a number of the more complex criminal restraint, confiscation and enforcement cases;
- the NCA employing seconded Inland Revenue officers to tax suspected criminal profits; and
- the NCA using expertise to provide support and assistance to investigators and prosecutors.

Civil forfeiture

5.30 The NCA will, in its early years at least, have sole responsibility for pursuing non-cash civil forfeiture cases, tasked by law enforcement. And it will need to ensure that the civil and criminal approaches to criminal assets are properly co-ordinated. The NCA should also be free to propose new tasking through the law enforcement loop (e.g. via the National Criminal Intelligence Service (NCIS)). Customs and police officers will be responsible for carrying out cash only civil forfeitures on application to the Magistrates’ Court. This is essentially an extension of the current powers available to Customs officers at borders to encompass Customs and police officers anywhere in the jurisdiction.

5.31 Cases should be referred to the NCA by senior officers, perhaps the Chief Constables or Head of Customs National Investigation Service. Referral acceptance criteria will need to be agreed between the NCA and the tasking law enforcement agencies. These criteria might include:

- the likely effectiveness of the criminal route;
- the likelihood of bringing a successful civil forfeiture case;
- the public interest in bringing a case;
- the likely impact on criminality of removing the assets;
- the importance to local policing priorities of disrupting the target;
- the sum likely to be recovered; and
- the cost effectiveness of a civil forfeiture approach.

5.32 An investigation intended to lead to civil forfeiture should be able to proceed at the same time as a criminal investigation, so long as it does not prejudice the criminal investigation and so long as the NCA is aware that its materials may have to be disclosed in the criminal case. This will require close communication between the agencies involved. Where the NCA is undertaking a civil forfeiture case, knowledge of this fact will need to be readily available to law enforcement agencies that might be contemplating criminal proceedings and this will require appropriate statutory gateways to be established. The NCA should set up and maintain a central database of all restraint, confiscation and forfeiture activity to which NCIS has access on a real-time basis. And it is anticipated that the police and Customs financial investigators trained and accredited by the NCA (see Chapter 7) will provide a communication channel between the various organisations.

5.33 Powers of civil restraint should be available only to the NCA. If a prosecution subsequently becomes viable, a new (criminal restraint) order would be necessary in respect of property held under the civil procedures.
At this point the civil restraint should be suspended but might be resurrected later if the criminal case fails and the criteria for civil forfeiture are still met.

**Criminal confiscation**

5.34 Law enforcement will also be able to task the NCA to pursue criminal restraint, confiscation and enforcement matters such as those currently carried out by the Central Confiscation Branch of the Crown Prosecution Service (CPS) and the Asset Forfeiture Unit of Customs. Once again, referral acceptance criteria will need to be agreed between the NCA and the tasking law enforcement agencies. But prosecutors outside the NCA will retain the right to pursue such matters themselves, and with enhanced financial investigative expertise throughout law enforcement, investigators and prosecutors outside the NCA will have a substantial role to play in many cases (especially in Customs which both investigates and prosecutes).

5.35 The NCA’s involvement in restraint is likely to be limited to larger cases only and will include oversight of the financial investigation, preparation of financial statements, the confiscation hearing and enforcement. Others outside the NCA will be expected to deal with restraint in criminal matters as a matter of course in relation to cases below a limit to be agreed. In addition, the Home Office should consider whether constables should have a power to apply for restraint orders without involving the CPS. Where restraint is applied at the time of charge, the CPS will have had no prior involvement in the case and police investigators will have the support of the NCA.

5.36 Responsibility for enforcing confiscation orders currently lies with the Magistrates’ Courts, which rely on procedures designed to collect modest fines; they are ill-equipped to collect assets from more serious criminals. The NCA should be responsible for enforcement of all confiscation orders that it obtains. (And may also need to take on enforcement of those raised by other prosecutors where enforcement by the Magistrates’ Court appears unlikely to be effective). The NCA will, in any event, oversee enforcement performance generally and be responsible for all international applications for restraint and confiscation.

5.37 These arrangements will require a large transfer of functions and high quality staff from the CPS and Customs to ensure that the appropriate expertise and powers are available to the NCA from the outset. But this transfer of staff is unlikely to be sufficient to enable the NCA to increase immediately the volume of criminal confiscation proceedings to desired levels and it will need to work progressively towards achieving this. The NCA will need as a priority to recruit more appropriately qualified staff experienced in civil litigation. And there should be a permanent body of staff dedicated to seeing through the enforcement of confiscation orders not dealt with by the Magistrates’ Court.

**Tax**

5.38 The NCA will also employ seconded Inland Revenue officers to deal with taxation of suspected criminal profits, an area explored in Chapter 10. If criminal proceedings are not appropriate or cost effective, the NCA should choose between the civil forfeiture and tax routes on the basis of the respective law enforcement benefits of each, the likelihood of success, public interest, the amounts likely to be recovered and the costs involved. The different uses of the amounts recovered by these various routes is discussed in Chapter 12.
NCA caseload

5.39 The manageable caseload of the NCA is likely to be constrained by its ability to recruit enough highly-qualified staff to take the cases, rather than by any shortage of referrals from law enforcement. A relatively low number of cases may be a source of frustration for law enforcement agencies who would wish to see a greater capacity at the NCA. It is, however, important that the agency is not overstretched in its early years and that it is given a chance to establish itself and its credibility by bringing a number of successful cases.

5.40 The NCA would have jurisdiction in England and Wales. The Scottish Executive will want to decide whether, and if so, how best to introduce and administer civil forfeiture within Scotland. In Northern Ireland, the Director of Public Prosecutions has responsibility for prosecuting criminal confiscation cases. The Crown Solicitor’s Office, the Northern Ireland equivalent to Treasury Solicitors, brings civil forfeiture cases in so far as they are available for cash at borders under drug trafficking legislation. The most appropriate authority to administer civil forfeiture in Northern Ireland has yet to be determined. The options may be affected by any changes arising from the current review of the criminal justice system in Northern Ireland, carried out as part of the Good Friday Agreement. The Review was published on 30 March 2000 and the consultation process will be completed in October 2000.

5.41 The NCA will stand ready to assist the Crown Office in Edinburgh and the relevant authority in Northern Ireland, if its assistance is requested. The details of these arrangements will need to be further developed by the Home Office as part of the preparations for the introduction of civil forfeiture.

Use and targeting of civil forfeiture

5.42 Given the need to ensure that civil forfeiture is used in a proportionate way, and given the probable constraints on the caseload of the NCA, it is appropriate that civil forfeiture should be directed at the suspected unlawful assets of the top tier of individuals associated with crime. But it will also be available to target all points in criminal markets where assets are accumulated, either as conspicuous consumption or for reinvestment in crime. In deciding which civil forfeiture cases to pursue, particular consideration should be given to dealing with local policing priorities by targeting assets of local criminal role models to bring concrete benefits to communities.

5.43 In certain cases it may be appropriate to invoke civil forfeiture after an acquittal or against the assets of absconded or deceased offenders.

Centre of Excellence

5.44 The NCA will also have responsibility for a new Centre of Excellence in financial investigation to recruit, train and accredit financial investigators, both for its own requirements and for those of law enforcement agencies. These financial investigators will be capable of being provided with special investigative powers subject to judicial oversight on application by the Director of the NCA. The NCA’s role in relation to financial investigation and these new investigative powers are set out in Chapter 7. The NCA will also offer its training and accreditation scheme in financial investigation to law enforcement officers from Scotland and Northern Ireland.

Pre-statutory arrangements

5.45 The NCA will require a statutory basis, including power to operate civil forfeiture
and to act as prosecutor in criminal confiscation and enforcement matters. In the interim before the NCA can be established in Statute, many of its proposed functions, e.g. establishing the confiscation strategy described in Chapter 6 and setting up the Centre of Excellence in financial investigation, should be carried out by an embryonic agency comprising loaned staff. The embryonic agency may also be able to start carrying out criminal confiscation and restraint work, subject to loaned staff being able to exercise their existing powers or by the agency being placed temporarily within an existing prosecutor, such as the CPS or Customs.

5.46 The report also concludes that there should be a Director and Board for the NCA. It may, however, be difficult to appoint the long-term postholders before the agency is given a statutory basis. Until those persons can be appointed, a senior official, the Head of Asset Confiscation, and an interdepartmental/agency committee should be tasked with establishing the embryonic NCA and with carrying out as appropriate those tasks allocated to the Director of the agency and its Board. All references in this report to the Director and Board apply, prior to their appointment, to the interim post holders.
Summary

6.1 Chapter 3 set out the benefits that should accrue through a greater emphasis on the pursuit and recovery of criminal assets. Chapters 4 and 5 set out the UK’s current starting position and described initiatives already under way to improve the system. This chapter begins with a vision of what might be achieved by ratcheting up performance and maximising the use of the techniques.

6.2 In order to realise this vision, a new strategy is needed for removing the proceeds of crime – a national Asset Confiscation Strategy. Such a strategy could raise the priority given to asset confiscation, set and enforce demanding targets, align incentives and promote co-operation between different law enforcement bodies. The strategy should aim to change the culture in the criminal justice system so that it is understood that the law has not been satisfied until criminals have been deprived of their unlawful gains.

6.3 This strategy, agreed by Ministers, should be driven forward by a new postholder, the Director of the National Confiscation Agency (NCA), assisted by a Board comprising senior representatives of law enforcement, prosecution and other relevant agencies. The Board of the NCA would also oversee the allocation of a new pooled Recovered Asset Fund to be used in support of the strategy, with the agreement of Ministers. The Director would be directly accountable to the Home Secretary and ensure that the Asset Confiscation Strategy fed into and supported the aims of the cross-cutting Public Service Agreement for the Criminal Justice System. The Director would also be responsible for overseeing the implementation of all the conclusions in this report, accountable to the Home Secretary.

6.4 To be used to best effect, the Asset Confiscation Strategy will need to be informed by a comprehensive picture of the criminal economies it is intended to damage, as part of the Government’s strategy on serious and organised crime.

Vision

6.5 The conclusions in this report aim to make the UK renowned for the effectiveness of its legal and law enforcement systems at recovering the proceeds of crime. In this new environment, criminals will be shown to have had their unlawful gains removed and will be deterred from further criminal activity, because they will recognise the likelihood of losing hold of any gains. Criminal role models will have been removed from positions of power in local communities, resulting in community regeneration, safer environments and less anti-social behaviour. In some areas, local businesses will be flourishing as they are no longer threatened by cut-price competitors, who were formerly subsidised by money laundering activity. The removal of criminal market facilitators will have had the effect of reducing volume crime, as small-time thieves can no longer so readily sell on stolen goods.
6.6 The NCA will house the new Centre of Excellence in financial investigation, acting as a centre of expertise, providing assistance to deal with the most complex cases and keeping pace with the new methods criminals are using. Financial investigators will belong to a much demanded and highly regarded profession within law enforcement.

6.7 The financial sector will be working hand in hand with law enforcement to protect the UK’s financial systems from the taint and risks that come from criminal assets. The Financial Services Authority (FSA) will be monitoring financial institutions to ensure that effective systems are in place. The quality, numbers and processing of suspicious transaction disclosures will mark out the UK’s regime as the international benchmark; feedback given to financial institutions by law enforcement will be timely and of high quality.

6.8 The funds generated by recovering criminal assets will be handled in a fully accountable way and will return to society that which should never have been taken from it. It will be widely understood that crime does not pay.

6.9 Table 6.1 below summarises the different sanctions that will be available to attack criminal assets when the conclusions of this report are fully implemented.

### The need for an overarching strategy

6.10 The vision set out above will only be achieved by adopting a coherent, cross-governmental strategy to remove the proceeds of crime from criminals in a way that respects civil liberties and gives expression to human rights legislation. The strategy should set out:

- the desired outcomes from this activity;
- how the relevant agencies should work together; and
- targets for the performance of the system as a whole.

6.11 The current lack of strategic direction creates an impression that asset recovery is of low priority. It also means that the collaborative efforts of the various agencies

<table>
<thead>
<tr>
<th>Table 6.1: Sanctions available to attack criminal assets</th>
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<tbody>
<tr>
<td><strong>Criminal confiscation</strong></td>
</tr>
<tr>
<td>Criminal conviction needed?</td>
</tr>
<tr>
<td>Assets targeted?</td>
</tr>
<tr>
<td>Standard and burden of proof?</td>
</tr>
<tr>
<td>Agency responsible?</td>
</tr>
</tbody>
</table>
involved suffer from a lack of co-ordination at a strategic level. For example, the current Public Service Agreements for the Home Office, Customs and Excise and the Criminal Justice System (CJS)\(^1\) make no mention of the need to deprive criminals of their unlawful gains. Nor, therefore, is asset recovery one of the areas that is addressed by the CJS Ministerial Steering Group.\(^2\) However, as explained in Chapter 3, the effective pursuit and recovery of criminal assets would contribute to both aims of the criminal justice system.\(^3\)

6.12 A major weakness in the system caused by the lack of overarching strategy is the absence of streamlined and mutually supportive organisational objectives. For example, Customs is set a target for recovery of assets from drug traffickers (£6 million for 1999/2000), whereas police forces have no target for asset recovery. Each service is held accountable only for achieving its own targets. There is, therefore, no systemic incentive for Customs to assist police forces to meet their objectives of detecting crime, nor for police forces to help Customs meet its targets on asset recovery. Co-operation does in fact take place, but it does so despite the incentive mechanisms, not because of them.

6.13 The process of identifying and recovering criminal assets can be difficult and time-consuming and is perceived by some in law enforcement as less central to their role, and certainly less exciting, than catching criminals and seizing drugs. This perception means that a strategy incorporating appropriate targets and other incentive mechanisms is even more important in this field than in others. An important aim of the new strategy will be to engender a process of change in police culture, so that financial investigation and asset confiscation become a routine law enforcement activity.

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Box 6.1: US Asset Forfeiture Reinvigoration Programme

This programme was initiated in 1996 by the US Attorney General who was convinced of the effectiveness of asset forfeiture in destroying the financial underpinnings of, in particular, drugs and white collar criminal enterprises. It requires federal law enforcement agencies to ensure that forfeiture is addressed in every appropriate case and puts in place steps to improve co-ordination between agencies. It also involves:

- dissemination of information on best practice in confiscating assets;
- model asset confiscation plans for law enforcement agencies;
- increased forfeiture training for prosecutors and increased financial investigation training for agents; and
- annual reporting of results.

Since 1996, asset seizure receipts to the Department of Justice fund have almost doubled to $609 million in 1998/1999. The Treasury Department also collected $300 million in that same year.

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\(^1\) As part of the White Paper Public Services for the Future: Modernisation, Reform, Accountability (Cm 4181).

\(^2\) This Group is chaired by the Home Secretary and includes the Lord Chancellor, the Attorney General and, for the time being, the Chief Secretary to the Treasury.

\(^3\) To reduce crime and the fear of crime and their social and economic costs; and to dispense justice fairly and efficiently and to promote confidence in the rule of law.
The US experience

6.14 Other countries have taken steps to introduce a more strategic, co-ordinated approach to asset confiscation. For example, since 1996 the US Government has had a centrally managed and promoted Asset Forfeiture Reinvigoration Programme harnessing the resources of the Federal law enforcement agencies of the Departments of Justice and the Treasury, including the FBI, Drug Enforcement Agency, Secret Service and US Customs.

6.15 The USA also passed in 1999 an associated Money Laundering and Financial Crimes Strategy Act requiring a five-year anti-money laundering strategy to be put in place. This is led by the Departments of Treasury and Justice and involves yearly reporting by each agency. It has four goals:

- to strengthen domestic enforcement to disrupt the flow of illicit money;
- to enhance regulatory and co-operative public/private efforts to prevent money laundering;
- to strengthen partnerships with State and local governments to fight money laundering; and
- to strengthen international co-operation to disrupt the flow of illicit money.

6.16 The essence of these two linked US initiatives is to raise the levels of engagement of US law enforcement in tackling the proceeds of crime and to enhance the way in which the various arms of law enforcement, the prosecuting authorities and policy makers combine their efforts.

A national Asset Confiscation Strategy

Content

6.17 In the light of the weaknesses identified above, the UK’s overarching strategy should:

- ensure the conclusions in this report are implemented;
- set challenging asset recovery targets;
- clarify responsibilities and encourage proactive behaviour by relevant agencies;
- ensure that systemic incentives foster co-operative behaviours and joined-up delivery to enhance asset identification and recovery;
- improve communication and information sharing between the various bodies (including encouraging the use of compatible IT/databases);
- promote co-operation with the financial services industry through improved communication and joint working;
- promote best practice and the sharing of experience;
- maximise effective use of resources outside the public sector; and
- define the indicators that need to be tracked to measure progress.

Delivery of the strategy

6.18 The strategy should be developed, managed and delivered by the Board of the new NCA. This Board’s functions would be to:

- determine the annual Asset Confiscation Strategy, in relation to the aims of the Public Service Agreement for the Criminal Justice System and other priorities including Best Value;
• manage and run the NCA – including establishing who it should target and ensuring the roll out of the Centre of Excellence’s financial investigation training programme;

• monitor the performance of the National Criminal Intelligence Service (NCIS) Economic Crime Unit, the FSA and other law enforcement agencies against the targets in the strategy (see Chapters 4 and 9);

• identify constraints arising in the system and how they could be overcome; and

• allocate the pooled budget funded from confiscated or forfeited assets (see Chapter 12).

Conclusion 3: The Board of the NCA should agree and publish memoranda of understanding with other operational agencies in support of the strategy.

Conclusion 4: The Director of the NCA should oversee implementation of the strategy at official level and be directly accountable to the Home Secretary.

Conclusion 5: The NCA should establish at an early stage a monitoring and evaluation unit to monitor progress of the strategy and evaluate impacts and cost effectiveness. This unit could also participate in, draw together and disseminate research in this area from Home Office Research Development and Statistics Directorate (RDS), NCIS and others.

Conclusion 6: The Home Secretary should make an annual report on the progress of the Asset Confiscation Strategy to the Criminal Justice System Ministerial Steering Group expanded for this purpose to include a Cabinet Office Minister to make appropriate links to the Government’s anti-drug strategy. The agreed report should then be made public.

Feeding into wider anti-crime strategies

6.20 There is a need for more detailed strategic economic analysis of the criminal markets and organisations operating in the UK. Asset deprivation is an economic intervention. To be used to best effect, it is important to establish a comprehensive picture of the market it is intended to damage. A better understanding of these markets will inform a more effective strategy against organised and financial crime generally. The group tasked with producing this wider strategy should build on the annual assessment of the threat from financial crime carried out by NCIS and

Conclusions

Conclusion 1: An Asset Confiscation Strategy should be developed by the Director of the NCA, supported by the Board of the NCA, which is co-ordinated with the Public Service Agreements for the Home Office, Customs and the Criminal Justice System.

Conclusion 2: The Board of the NCA should include representatives of the relevant operational agencies, the FSA and the UKADCU.

* This will need to be done in a way compatible with the FSA’s role as an independent regulator.
commission further economic analysis of UK crime markets. The Asset Confiscation Strategy and analysis should contribute to, and be informed by, this wider strategy. The Director of the NCA should sit on this group.

The three jurisdictions of the UK

6.21 Whilst the Asset Confiscation Strategy is likely to apply formally only to England and Wales, it is essential that a common minimum standard applies across all jurisdictions of the UK (i.e. including Scotland and Northern Ireland) to prevent any part of the UK becoming more attractive to criminals. This will require careful and ongoing co-ordination of the strategy with the Minister for Justice in the Scottish Executive and with the Secretary of State for Northern Ireland who may wish to adopt elements of the strategy.
7. FOCUSING ON FINANCIAL INVESTIGATION

Summary

7.1 Financial investigation is an important tool in the fight against crime.

7.2 But surveys carried out by the Performance and Innovation Unit (PIU) have shown that financial investigation is underused, undervalued and underresourced in the UK. There is also a shortage of people with the right skills and little cross-agency co-operation or sharing of best practice.

7.3 The conclusions in this chapter fall under three headings:

- placing a greater emphasis on financial investigation, to make it central to UK law enforcement investigations;
- creating an enlarged cadre of professional, skilled financial investigators; and
- widening financial investigation powers.

The PIU financial investigation surveys

7.4 As described in Chapter 3, financial investigation is an important tool in the fight against crime. In addition to being the gateway to effective asset identification and recovery, it can provide new avenues for traditional law enforcement investigations. However, management information about financial investigation within UK law enforcement is scarce so, as part of this project, the PIU carried out a comprehensive survey of individual law enforcement officers and management units involved in financial investigation.

7.5 The PIU surveys found that:

- financial investigation is underused and undervalued;

Box 7.1: PIU surveys

Financial investigator survey: a questionnaire was distributed to attendees at a financial investigators’ conference hosted in November 1999 by the National Criminal Intelligence Service (NCIS); further copies were distributed to members of the UK financial investigator electronic bulletin board sponsored by the Home Office Police Scientific Development Branch. The questions concentrated on education, motivation, workload and personal experience of the existing systems. Ninety-six responses were received representing approximately 7 per cent of UK financial investigators.

Financial investigation unit questionnaire: a further questionnaire was distributed to Customs, the National Crime Squad (NCS), and through the Association of Chief Police Officers (ACPO) to police forces to be completed by units dedicated to financial investigation. Questions focused on resources, manpower, relationships with other units and workload. Forty-nine units responded, including Customs, the NCS and 34 out of 43 police forces.

Survey responses were analysed by MORI.
it is also underresourced in the UK, with a shortage of people with the right skills; and

there is little cross-agency co-operation or sharing of best practice.

7.6 The remainder of this chapter sets out the detailed survey findings and the conclusions for change that they lead to.

Survey results

Resources devoted to financial investigation

7.7 There are a number of law enforcement agencies that undertake financial investigation in the UK. Manpower varies widely across organisations and each organises its financial investigators differently.

Table 7.1: Financial investigation - manpower and structures

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Number of financial investigators(^2)</th>
<th>Financial investigation structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police service</td>
<td>1,055</td>
<td>35 forces have dedicated Financial Investigation Units (FIUs). The remainder have financial investigators working in the force but not in dedicated Financial Investigation Units</td>
</tr>
<tr>
<td>National Crime Squad (NCS)</td>
<td>226</td>
<td>Mostly in Money Laundering Investigation Teams</td>
</tr>
<tr>
<td>Customs</td>
<td>158</td>
<td>All financial investigators belong to the National Investigation Service (NIS). They comprise about 8% of NIS personnel</td>
</tr>
<tr>
<td>Serious Fraud Office (SFO)</td>
<td>50</td>
<td>All SFO investigators are financial investigators organised into case-based teams</td>
</tr>
<tr>
<td>Inland Revenue</td>
<td>103</td>
<td>Special Compliance Office deals with criminal activity and serious fraud</td>
</tr>
<tr>
<td>Department of Social Security (DSS)</td>
<td>3</td>
<td>The DSS FIU is based at two London sites. It has national responsibility for all financial investigation for the Benefits Fraud Investigation Service (BFIS) and the BA Security Investigations Service (BASIS)</td>
</tr>
<tr>
<td>Department of Trade and Industry</td>
<td>62</td>
<td>Investigation undertaken in the Company Investigations Branch into the conduct of company affairs, including some financial investigations</td>
</tr>
</tbody>
</table>

\(^1\) Information provided by the relevant agencies.

\(^2\) For police, NCS, Customs and DSS, financial investigators are those who are accredited as financial investigators under the police scheme (see below). For others, financial investigators are those whose work is dedicated to financial investigation.
7.8 The proportion of budget devoted to financial investigation varies greatly across agencies. Within the police service, there is a wide variation from force to force. Only 11 of the 34 forces responding to the PIU’s survey had a specific budget for financial investigation, and the sums set aside ranged between 0.05 per cent and 0.3 per cent of total budget. Customs spent some 2.3 per cent of the total NIS budget on financial investigation (i.e. about 0.3 per cent of the overall Customs budget).

Use of financial investigation

7.9 Although some agencies involve financial investigators from an early stage in their cases, others do not draw on this resource until later, by when it may be too late to identify and freeze assets for confiscation.

7.10 Customs’ financial investigators are more typically involved in cases from a much earlier stage, before arrest in long-term operations and between arrest and committal on referred cases which are adopted by the NIS after arrest. This greater focus on financial investigation is encouraged by the departmental objective to deprive drug traffickers of the proceeds of their crimes measured by the value of amounts realised against confiscation orders and of forfeiture orders made by the courts (the target for 1999/2000 is £6 million).

7.11 Similarly, SFO financial investigators are involved from the start of a case (and one at least will remain with it until its end). When a case is accepted, a multi-disciplinary team is formed consisting of:

- a lawyer (who acts as Case Controller);
- one or more financial investigators;
- one or more police officers; and
- support staff.

7.12 However, in the police service financial investigators typically become involved in investigations relatively late in the day. This involvement is triggered in two main ways: the financial investigators may become involved following investigation of a Suspicious Transaction Report from NCIS relating to an ongoing investigation (see Chapter 9); or they may be brought into a case by other investigators wishing to use their skills. The likelihood of other police officers bringing a specialist financial investigator into a case varies markedly between forces. Forces which responded to the PIU survey used financial investigators in

Figure 7.1: Stages at which financial investigators were brought into cases in 1998
between 0.05 per cent and 5.6 per cent of investigations. Even where financial investigators are involved, in many cases they are not brought in until relatively late in the investigation - sometimes after charge (see Figure 7.1).

7.13 Of the 34 forces that responded to the PIU questionnaire, some 25 reported that they worked to raise awareness of financial investigation and its benefits within the force (mostly through presentations to probationer police constables and other officers). Six forces supplemented presentations with written material such as leaflets. However, only five reported having incentives that encouraged the use of financial investigation across all force work. Two were process related: daily monitoring of investigations taking into account financial investigations; and a requirement that financial investigations were commenced on certain cases before they were accepted. The remaining three cited the prospect of monies being forfeited back to the force (under Section 27 of the Misuse of Drugs Act 1971 and Section 43 of the Powers of Criminal Courts Act 1973) as incentives to encourage financial investigation.

7.14 There is a wide variation between agencies in how financial investigation and those who engage in it are perceived. If the value of a discipline and its practitioners is not appreciated, it will not be used to its full potential.

7.15 In Customs, the spread of ranks of financial investigators mirrors that of the whole NIS.

7.16 However, financial investigators in the police service are typically of lower rank than Customs' financial investigators. Most are police officers who have been in law enforcement for more than ten years and have been financial investigators for three to four years. In some forces, financial investigation is seen as an area an individual enters at the tail end of his or her career. When asked why they became financial investigators, 70 per cent of respondents to the PIU survey said they had a personal interest in the subject while only 16 per cent said it was due to the status of the discipline within law enforcement.

Figure 7.2: Ranking of Customs Investigators in the National Investigation Service

Status of investigators

3 Rankings expressed as Civil Service ‘responsibility levels’, i.e. AO, EO level etc, and assign seniority based on salary and other ‘job weight’ indicators. These are defined and used in Civil Service Statistics 1998.
Training of specialist financial investigators

7.17 The extent of training varies greatly between agencies, reflecting the varied skill levels needed to tackle different complexities of crime. However, the general level of financial investigation training available to law enforcement is low.

7.18 Police and Customs investigators must undertake a three-part course in order to be placed on the NCIS list of accredited financial investigators (and thereby gain access to information from financial institutions). This comprises:

- a pre-course package;
- a five-day residential course; and
- an attachment to an FIU during which the student must complete two simple financial profiles to the satisfaction of an accredited mentor.

7.19 The police service courses are available at three recognised centres in England and Wales, with a standard curriculum. Following accreditation there is some ongoing training.

The Metropolitan Police Service runs a Financial Intelligence Development Course for experienced financial investigators. On average, the police financial investigators who responded to the PIU questionnaire received four days’ training in 1998.

7.20 DSS financial investigators undergo the same training as the police, but this follows the general DSS investigators’ training consisting of seven foundation modules contributing to a university-accredited Certificate in Higher Education.

7.21 Not surprisingly, given the complexity of their cases, 28 per cent of SFO financial investigators are qualified chartered accountants, some with extensive experience in forensic work. The SFO also provides in-house training and sponsorship for various professional courses. Likewise, in the Inland Revenue, new entrants undergo 18 months of basic training including examinations. To become fully qualified tax inspectors they must undergo another four years of training with three examinations in the final year. Before working in a specialised area such as criminal investigations, they will have another year of specialist training.

Figure 7.3: Ranking of financial investigators

![Figure 7.3: Ranking of financial investigators](image)

The diagram shows the percentage ranking of financial investigators from highest to lowest, categorized by different police customs roles.

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4 Ibid.
7.22 Financial investigation should be made central to UK law enforcement, to make it as routine to tackle criminals through their financial arrangements as to use techniques such as surveillance. As is shown above, the use of financial investigation is highly variable. There is a need, especially in the police service, to encourage its use as a basic tool in the fight against crime. Initial training for all recruits to law enforcement agencies should include awareness of financial investigation techniques and information on how to access specialist resources in this area.

7.23 Introduction of the right targets and incentives will drive a more proactive approach to financial investigation. And this can be done in a way that takes account of local priorities. For instance, local crime reduction partnerships (set up under the Crime and Disorder Act 1998) could be encouraged to consider the benefits of including financial investigation and the removal of the proceeds of crime from the hands of local criminals as part of their local crime reduction plans. The new priority for asset recovery and associated targets will necessitate a greater emphasis on financial investigation.

Conclusions

Conclusion 7: The new Asset Confiscation Strategy (described in Chapter 6) should contain measures to raise awareness of the benefits of financial investigation and the use of this tool at all levels of law enforcement.

Conclusion 8: The strategy should set real incentives to encourage heads of law enforcement agencies to give sufficient priority to financial investigation. This could include some form of recycling of funds as described in Chapter 12 (though financial investigation should not be encouraged solely for the purposes of asset recovery).

Conclusion 9: Modules on financial investigation – the legislation, techniques and its importance – should be part of basic law enforcement recruit training.
An enlarged cadre of professional, skilled financial investigators

Need for specialist skills, training and a Centre of Excellence

7.24 Financial investigation requires specialist skills. If the UK is to have effective financial investigation, the right people must be attracted into the field and given the skills they need to tackle criminals who often employ sophisticated techniques and highly-qualified individuals to conceal their wealth and its origin.

7.25 The issues raised by the PIU surveys about the status and training of financial investigators can be addressed through the creation of a recognised qualification, a career structure for specialist financial investigators within law enforcement, and a Centre of Excellence to support them. This Centre would be a resource for the dispersed FIUs, providing training and accreditation, encouraging the sharing of best practice and the development of expertise.

7.26 This Centre would work closely with law enforcement, encourage more civilians to enter the discipline and encourage links with the private sector. It should therefore be part of a central, multi-agency body which is linked to, but not solely part of, law enforcement. It would best be placed in the new National Confiscation Agency (NCA) as this would:

- signal the new approach to financial investigation;
- place the Centre in a multi-disciplinary environment with links to law enforcement and the private sector;
- give an operational context to the Centre;
- enable funding to be allocated to the Centre as part of the set up of the new agency; and
- allow economies of scale to be realised.

This Centre would not need to be heavily staffed; about six people should be sufficient to begin with. Cost estimates are set out in Chapter 12.

7.27 A career path should be created for financial investigators allowing them to progress through their law enforcement career in their chosen specialism – perhaps through promotion from force to regional to national level work. The Centre should develop proposals for introducing such a career in consultation with relevant law enforcement bodies.

7.28 In order to raise skills, this Centre should develop and administer a qualification in financial investigation (perhaps at NVQ Level 4) which an individual would have to obtain to be an accredited financial investigator. Ensuring that this qualification is recognised by and transferable to other organisations, including the private sector, should help improve the status and appeal of the discipline. The qualification should also be available to individuals from the private sector. It could include modules on:

- the relevant legislation;
- rules of evidence;
- acting as a witness in court;
- accountancy and financial investigation techniques; and
- basic business economics.

7.29 The Centre should also provide ongoing training to ensure financial investigators’ skills are maintained.

Use of civilians and the private sector

7.30 Greater use of appropriately qualified civilian personnel could quickly increase the quality of financial investigators working in law enforcement. However, civilians would need to be attracted into the field in greater
numbers than at present and given incentives to stay. At present, only 5 per cent of police service financial investigators are civilians, and there are no civilian financial investigators at all in Customs. The value of civilians is not always recognised in police forces. They are not always fully integrated into investigation teams and their opportunities for advancement are limited. Their effectiveness is also reduced by the restriction of many investigation powers to constables, as outlined below.

7.31 Over the course of the last ten years, a considerable body of financial investigation expertise has grown in the private sector – in both the financial and accountancy sectors. For example, each of the big five accountancy firms operates a forensic accounting department of between 50 and 200 partners and staff nation-wide. There are similar operations across the medium-sized firms, and recently a number of much smaller specialist companies have also entered the market.

7.32 These units are made up of chartered accountants, former law enforcement and revenue officers, analysts, investigators and support staff who are trained and experienced in providing financial investigation services. Their client base consists mainly of victims of fraud and other irregularities who choose the civil rather than criminal route to recover their losses.

7.33 Law enforcement agencies are often reluctant to make use of such private sector expertise, normally on grounds of cost. Only five of the 34 forces who responded to the PIU questionnaire had used private sector accountants in 1999 (two in 1998). It is a resource, however, that is available to those wishing to hide criminal assets. Private sector accountants and lawyers can be used in setting up complex money laundering schemes (see Chapter 9). Forensic accountants are also called upon as defence expert witnesses in criminal cases, as well as being used in civil cases.

7.34 In the Netherlands, specialists from the banking sector have been seconded to the National Investigation Team (LRT) which is also made up of representatives of the police, the equivalent of Customs NIS, the military police and academics. This team is tasked with international legal assistance, financial investigation of organised crime and special investigations focusing on asset seizure.

Box 7.3: Private sector forensic accountants

Forensic accountants:

- have an average of five years’ financial investigation experience in addition to, in most cases, three years of professional training;
- undertake an average of eight days’ investigation training a year; and
- are paid an average of more than £40,000 per year.

The equivalent data amongst law enforcement investigators is:

- average of four years as a financial investigator;
- average of four days’ training a year; and
- average salary of £27,000.

6 PricewaterhouseCoopers, KPMG, Arthur Andersen, Ernst & Young and Deloitte & Touche.
7.35 The new CBI/Metropolitan Police/City of London Police accredited investigator scheme to tackle company fraud in London\(^7\) is a welcome initiative to boost partnership in this area. Approved private sector organisations will be appointed to work alongside the police, under the supervision of a nominated police investigator to investigate suspected cases of fraud.

7.36 However, this should be just the beginning. To harness private sector expertise for the benefit of law enforcement, a programme of greater co-operation between forensic accountants, the financial sector and law enforcement is needed. A programme of secondments (ideally two-way), cross-training and pooling of experience should be introduced. Secondments between the private sector and law enforcement financial investigation units should become standard. It is essential that secondees from the private sector are chosen carefully to ensure they have the right skills and experience including as court witnesses. And the cost effectiveness of using private sector experts should be fully evaluated, with appropriate incentives in place to ensure that where such help is cost effective it is made the most of.

**Conclusions**

**Conclusion 10:** A Centre of Excellence in financial investigation should be established to select, train and accredit financial investigators working in local law enforcement agencies, and to promote sharing of international best practice.

**Conclusion 11:** In order to raise skills, this Centre should develop and administer a qualification in financial investigation (perhaps at NVQ Level 4) which an individual would have to obtain to be an accredited financial investigator.

**Conclusion 12:** Greater use should be made of civilian personnel as financial investigators (coupled with conferring on them some powers of investigation – see below).

**Conclusion 13:** The Centre of Excellence should develop proposals for introducing a specialist career in financial investigation within law enforcement in consultation with the relevant agencies.

**Conclusion 14:** The Centre of Excellence should drive forward a programme of greater co-operation between private sector experts (e.g. forensic accountants and bankers etc) and law enforcement through secondments, cross-training and pooling of experience. And it should ensure that this expertise is harnessed in a cost effective manner.

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7.37 The confiscation laws contain powers to assist investigations into the proceeds of crime. Constables (i.e. police and Customs officers) can ask the court for search warrants or orders requiring production of specific documents to the investigators. These orders are normally used against banks and other financial intermediaries to obtain accounting documents. Constables also have a general power to apply to the court for an order under the Police and Criminal Evidence Act 1984 (PACE) to obtain documents to assist in the investigation of crime.

7.38 These constable powers are not available to civilian financial investigators. Consideration should be given to how civilians working in local financial investigation units could be given relevant investigative powers. This might include specific training by the new Centre of Excellence of individuals who could then

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be given Special Constable status by their Chief Officers.

7.39 Wider investigation powers and powers for non-constables are also available for investigations of particular types of crime (see Box 7.4). These increased investigation powers are reserved for specialist investigators and cannot be used by the police. They are needed due to the complexity of fraud, financial crime and the financial aspects of crime.

Comparisons with other jurisdictions

7.40 There are fewer powers available for routine financial investigation in England and Wales than in a number of other jurisdictions, including Northern Ireland, Australia and France.

Northern Ireland

7.41 Since 1996, investigation powers in Northern Ireland have been wider than on the mainland through use of:

- civilian investigators: on application by a Police Superintendent, the court may appoint a civilian (usually an accountant, banker or lawyer) to carry out financial investigation work;
- compulsory disclosure orders: a civilian financial investigator in Northern Ireland also has powers to require attendance at interviews, production of documents and answers in writing. These orders can also cover documents which are not in an individual’s possession but of which he or she is entitled to obtain a copy;
- general bank circulars: a civilian investigator can also issue a ‘general bank circular’ to the head office of any bank requiring the disclosure of information relating to named account holders. This is used to locate accounts of individuals under investigation.

7.42 Between 1997 and 1999, the RUC appointed civilian investigators on 27 occasions who issued 492 compulsory disclosure orders. General bank circulars have been issued 15 times and identified 650 accounts of which 550 turned out to be relevant to the investigations.

7.43 Bank circulars are already being introduced in the UK to deal with terrorist offences (see Box 7.5).
Box 7.5: Introduction of bank circulars in UK Terrorism Bill

The Terrorism Bill currently before Parliament includes a power for constables to issue general bank circulars when investigating terrorist offences. The provisions of the Bill have been subject to a consultation process, in particular involving banks and financial institutions. The Regulatory Impact Assessment relating to this amendment concluded that:

“The proposal could reasonably be expected to identify around 1,300 relevant bank accounts per year at a compliance cost of around £0.9 million to the banking and financial services industries. It is recommended to proceed [with this proposal].”

Australia

7.44 In Australia, the National Crime Authority was established in 1984 to address sophisticated, complex or organised crime crossing state and national boundaries. It is staffed by lawyers, financial investigators, intelligence analysts and law enforcement officers. The Crime Authority has powers not available to police officers. It can compel production of documents and giving of evidence under oath. Only Crime Authority members can use these powers, subject to permission from the committee of Commonwealth, State and Territory Ministers that oversees its work. The powers are used confidentially to protect the privacy and safety of those required to give evidence.

France

7.45 In France, as with much of continental Europe, investigations are led by a magistrate or Juge d’instruction, assisted by the police or other experts that he or she may appoint. The magistrate has powers to compel production of information and evidence in writing and attendance at court to answer questions.

Giving extended powers to civilian investigators working in the NCA

7.46 There is a clear case for enhancing the investigative powers available in the UK to uncover the proceeds of crime. Further investigation powers should therefore be available for civilian investigators working in the NCA (analogous to the specialist powers set out in Box 7.4 and those already available to civilian receivers after restraint). There are a number of reasons why these new powers are necessary. First, giving investigation powers to non-constables will greatly support specialist investigations, including tax (Inland Revenue investigators cannot currently apply for production orders). It will enable the NCA to use private sector investigators and will encourage the Inland Revenue and law enforcement agencies to use NCA investigators in cases of particular complexity where special expertise is required.

7.47 Second, powers of compulsory disclosure will be extremely valuable in overcoming client confidentiality concerns of professional advisers and other third parties required to provide financial information, a common block to financial investigation. This will be particularly helpful in investigations into the ownership or stewardship of companies and trusts and investigations into money laundering schemes, which should be explicitly dealt with in the provisions setting out the powers. In addition the Home Office should consider whether material can be obtained by means of compulsory powers for use in civil forfeiture proceedings against the person providing the material.

7.48 Third, widening the powers of financial investigators in England and Wales will be a response to the widespread techniques of money laundering increasingly used by criminals. Constables and civilian
investigators working in the NCA should be able to issue ‘general bank circulars’ via the National Criminal Intelligence Service Economic Crime Unit (NCIS ECU).

7.49 To ensure that the powers can be used effectively, they should include specific tipping off provisions, i.e. that it will be an offence for individuals aware of circulars or disclosure orders to inform their clients of the interest or suspected interest of law enforcement in their affairs.

7.50 Consideration should be given to whether an additional power should be given to constables and civilian investigators in the NCA to issue monitoring orders to financial institutions to report movements on accounts suspected to contain the proceeds of crime. The potential impact of such regulation should be assessed.

Safeguards

7.51 Proper safeguards are required to ensure that powers to compel persons to produce documents, answer questions and respond to general bank circulars under compulsion do not infringe privacy and civil rights. Safeguards are needed to ensure that the powers are invoked in a way proportionate to the criminality under investigation.

7.52 Proposed measures to safeguard civil liberties are as follows:

- the new powers will be limited to investigations of the proceeds of crime;
- powers of compulsory disclosure will be reserved to civilian investigators working in the NCA (and the appointment of such civilian investigators by the NCA Board may need some level of judicial oversight); and
- the use of information obtained under compulsion will not be available for use as evidence in criminal cases against those providing it (except in relation to perjury offences).

Compliance costs

7.53 There are financial costs associated with these powers which, in due course, will need a full assessment, approved by the Regulatory Impact Unit in the Cabinet Office. There may be institutional resistance to general bank circulars in line with disillusion at the disclosure regime (see Chapter 9). The high level of automation of bank systems will, however, reduce the cost of responding to a general bank circular. But bank circulars should be issued through NCIS ECU to enable their use and effectiveness to be monitored.

Conclusions

Conclusion 15: Consideration should be given to how civilians working in local financial investigation units could be given authority to exercise relevant investigative powers.

Conclusion 16: Civilian financial investigators working in the NCA should have powers to require attendance at interviews, production of documents and answers in writing (including documents which are not in an individual’s possession but of which he or she is entitled to obtain a copy) for investigations into the proceeds of crime.

Conclusion 17: A constable or NCA civilian investigator should have the power to issue a ‘general bank circular’ to the head office of any financial institution requiring the disclosure of information relating to named account holders. For monitoring purposes, these circulars should be issued via NCIS ECU.

Conclusion 18: The Board of the NCA should monitor and report on the extent to which these new powers are used and their effectiveness in the Annual Report of the Asset Confiscation Strategy.
Summary

8.1 Chapter 4 explained how the statutory framework for confiscation in England and Wales has evolved in a piecemeal fashion and set out the anomalies that exist within it. This chapter proposes a number of legislative and policy changes to strengthen the criminal confiscation regime, to remove the anomalies, and to enhance confiscation powers. These include:

- making the confiscation laws relating to drug and non-drug offences the same. In particular, a criminal conviction should enable the burden of proving the origin of assets to be shifted to the defendant in all cases, except where this would be disproportionate;
- encouraging dedicated training for lawyers, prosecutors and Crown Court judges in confiscation matters;
- strongly encouraging confiscation to be considered by prosecutors after all convictions where criminals have profited; and
- extending the time limit for making confiscation orders.

8.2 In addition, this chapter concludes that a number of steps are necessary to improve the collection rate under confiscation orders, including:

- allowing the State to confiscate restrained assets immediately after conviction in part satisfaction of the confiscation order debt;
- allowing receivers in certain circumstances to maximise the realisable value of restrained assets;
- allowing restraint orders to be made in the Crown Court;
- tasking the National Confiscation Agency (NCA) to oversee all restraint and confiscation matters, ready to apply for the sanction of imprisonment in contempt and default matters; and
- limiting defendants’ access to restrained assets to pay legal fees.

8.3 It further concludes that legislative time should be found as soon as possible to make the legislative changes dealt with in this chapter, ideally in the 2000/2001 session of Parliament.

Making confiscation the norm

8.4 As described in Chapter 4, confiscation orders are made in only 20 per cent of drug trafficking cases. These include offences at the business end of the drugs market (e.g. importing/exporting drugs, dealing with the proceeds of drug trafficking and money laundering), though small-time drug dealers are also included. Overall, confiscation orders are made in only 0.3 per cent of criminal cases.

8.5 Adjusting for population differences, UK confiscation levels are low when compared with those in a number of key overseas jurisdictions, as Figure 8.1 illustrates.
8.6 The intention of the UK’s confiscation law is clear: that offenders should be deprived of their criminal benefit. But this is not happening. Chapters 6 and 7 described a more strategic approach and an increased focus on financial investigation which will ensure that confiscation cases are pursued to court. But further changes are needed to ensure that the courts can then deal properly with those cases and that the confiscation orders made are effectively enforced.

Aligning drug and non-drug confiscation law
8.7 Confiscation law has developed in a piecemeal fashion and is spread across four main statutes (the Criminal Justice Act 1988, Prevention of Terrorism (Temporary Provisions) Act 1989, Drug Trafficking Act 1994 and Proceeds of Crime Act 1995) and amendments to them. This complexity leads to frequent uncertainty and confusion, and dissuades practitioners from using the powers.

8.8 Part of the difficulty in confiscating assets from proven criminals stems from the significant differences between drugs and non-drugs law. These differences have evolved because of the particular focus on tackling drugs crime by governments and law enforcement internationally. The powers in respect of drug trafficking offences are wider, for example:

- the court is required to assume that the assets held by the offender on conviction and his or her previous six years of income relate to the proceeds of drug trafficking, and that all expenditure in the previous six years was met from these proceeds, even following a single conviction; non-drug offences require convictions for two or more ‘qualifying’ offences before similar assumptions are applied;
- the court has wider powers to reassess the amount of criminal proceeds and assets held by a drug trafficking offender;

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2 First year of full operations of the Criminal Assets Bureau: Ir £13.6 million incl. tax of Ir £10.7 million.
3 Including indictable offences (i.e. offences which are or can be heard by the Crown Court) and a limited number of specified acquisitive crimes.
the court may detain cash found at borders above £10,000 proven to a civil standard (i.e. on the balance of probabilities) to relate to drug trafficking; and

the court may, with limitations, deal with the assets of absconderes charged with drug trafficking offences but not yet convicted, and also with the assets of those who die after conviction before a confiscation order can be made.

8.9 These differences fail to take proper account of the fact that criminals may be involved in both drugs and non-drugs businesses, making it hard to ascribe proceeds of crime to one source rather than another. For example, a lorry driver may smuggle tobacco for six months, then drugs for six months, or may smuggle both in the same load. Currently, the confiscation aspects of each case would differ significantly, an anomaly which is exploited by professional criminals as illustrated in Box 8.1 below.

8.10 Similarly, the activities of organised crime groups are known to cover many types of offence, overlapping between drug and non-drug crime. A Home Office study, based on information supplied by law enforcement bodies, showed that in 1998:

- 71 per cent of recognised organised crime groups were involved in drug trafficking;
- 51 per cent were involved in money laundering;
- 19 per cent were involved in counterfeit/forgery; and
- 18 per cent were involved in social security fraud.

8.11 The differences in the law relating to these interchangeable criminal activities has given rise to many difficulties. Cash detention at borders, for example, applies only when funds are found to relate to drug trafficking. Customs reports having to drop cases and return the suspected criminal funds to the defendant because their intelligence, or the previous convictions of the defendant, indicate that a non-drug crime or combination of drug and non-drug crimes were the source of the unlawful funds.

8.12 Alignment of the drug trafficking and other confiscation provisions would remove these anomalies and simplify the provisions to be applied. The drug trafficking provisions should be extended at least to all crime offences covered by the Criminal Justice Act (CJA) (i.e. indictable and specified acquisitive summary offences):

- allowing the High Court to make a confiscation order against persons who have died after conviction, or who have absconded during trial for offences covered by the Criminal Justice Act (CJA);

Box 8.1: Criminals exploiting the law

A heroin dealer supplying drugs on a housing estate pleaded guilty to charges of possession in order to avoid trial for drug trafficking offences. His criminal profits had been used to buy a £40,000 house for cash (despite never having had paid employment), cars, home improvements and new shipments of drugs. However, the assumptions as to the source of these assets could not be made because of his plea to the charge of possession was accepted, significantly reducing the amount available for a confiscation order. (Charges for more serious offences will not always be pressed if a guilty plea to lesser offences has been entered.)

Organised Crime Groups in 1998: organised crime groups involve at least three people, they commit serious offences over a long period and are motivated by the pursuit of power or profit.
allowing a confiscation order to be increased in all crime cases following an increase in the defendant’s realisable property at any time (subject to the limitations described in 8.25 below);

• removing the discretion to leave gifts by offenders out of the assessment of realisable property in CJA cases; and

• permitting ‘statutory assumptions’ to be made in any confiscation hearing (not just in drug trafficking cases or where two or more indictable offences have been committed).

8.13 The Home Office should also consider whether there is a case for simplifying the regime further by allowing the Magistrates’ Court to make a confiscation order in any summary case where it considers the offender has profited from his or her crime rather than in just those cases of the summary offences specified under CJA.

8.14 The creation of a single piece of legislation would also provide an opportunity to close loopholes created by amendment and re-amendment of the three statutes involved. Consolidation will make the provisions of confiscation law easier to understand and use, creating a regime that may be applied uniformly across all cases where criminals have profited and in all criminal courts. It is important to note, however, that it may not be possible to frame the consolidation in such a way so that it has retrospective effect (i.e. applicable in future trials to all offences regardless of when they were committed). Full legal advice will need to be taken on this point.

8.15 Offenders under the non drug trafficking provisions are less likely than drug traffickers to be ‘lifestyle’ criminals. Accordingly, the all-crime regime currently allows for the assumptions to be made about the source of an offender’s assets less readily than in drugs cases. Even with the consolidation, the existing discretion of the court can be invoked to disapply the assumptions in cases where use of them would be unjust. But this discretion should be extended to protect human rights further by allowing the assumptions to be disapplied where their use would be unjust or disproportionate given the circumstances of the defendant.

8.16 One exception will need to be made to the consolidation set out in this section. At present, without-notice production orders are available only when investigating the proceeds of crime or more generally in drug cases. A full consolidation would make those powers available when investigating non-drugs offences. This would risk being disproportionate, as a step too far. The powers would then be available in cases where financial complexity was not an issue, and would undermine the safeguards that currently exist when obtaining general production orders and search warrants. The extension of the purpose of Criminal Justice Act production orders should therefore be limited to investigating the proceeds of an offence or amounts that are subject to confiscation orders.

Consolidating money laundering offences

8.17 Currently there are three types of money laundering offence, depending on whether the underlying crime (or ‘predicate offence’) was drug trafficking, terrorism or other crime. This creates unnecessary complexity, as prosecutors often have to allege three different offences as alternative counts. And defendants are able to plead to the CJA offence in order to avoid invoking the assumptions under DTA when it comes to making a confiscation order.

5 Drug Trafficking Act 1994 Section 4 (4) (b) and Criminal Justice Act 1988 Section 72AA (5) (c).
6 Such as the obligation to give notice to the respondent that the application is being made to the court.
8.18 A single money laundering offence covering the proceeds of all crime should replace the existing offences, mirroring the proposed changes in confiscation law. There may also need to be changes made to the cross-border co-operation agreements for countries that only recognise drug crime in their money laundering, confiscation or other relevant legislation. This aspect should be further researched as part of Home Office’s forthcoming evaluation of the mutual legal assistance system dealt with in Chapter 11.

Ensuring that confiscation is applied in all cases where criminals have profited

8.19 The key to ensuring that crime does not pay is for confiscation to be applied as a matter of routine in all cases where criminals have profited, and where there are assets available for recovery.

8.20 But very little training is given to practitioners as to the importance or practical application of the asset confiscation powers, which are themselves complex. And practitioners have described numerous instances in which the courts have not used the powers allowed under the law, leading to uncertainty and lack of confidence in the confiscation system.

8.21 More training should be available to the legal profession to help make confiscation the norm after convictions in criminal cases. And prosecutors should be strongly encouraged to apply for confiscation hearings in all cases where a criminal has benefited financially from crime. The Judicial Studies Board (JSB) may also want to consider offering full training to Crown Court judges in the area of asset confiscation on the enactment of the changes proposed by this report. This could be achieved by a one-day residential seminar for Criminal Court judges, recorders and assistant recorders involving legal expert speakers and case study exercises (a similar programme to that introduced after the Children Act came into force).

Box 8.2: US training of prosecutors

In the USA in 1997, the Executive Office for US Attorneys offered ten in-house and nine national assets forfeiture seminars, attended by almost 500 prosecutors, supervisors and US Attorneys Office personnel. In addition, it presented forfeiture to a further 380 prosecutors in eight criminal law seminars. This formed part of the Asset Forfeiture Reinvigoration training programme.

Box 8.3: A missed opportunity

On 29 May 1998 the defendant pleaded guilty at the Crown Court to 41 charges contrary to Section 92 of the Trade Marks Act 1994. A confiscation hearing was postponed at the application of the Crown.

On 29 October 1998 the Crown applied for the six-month period to be extended on the grounds of exceptional circumstances. The court directed that the application should be heard before the trial judge before the day on which the six-month period would elapse, 29 November 1998.

The Court Service listed the case for hearing on 9 December 1998, ten days late. The defence submitted that the court no longer had jurisdiction to make the confiscation order, a submission which the prosecutor concluded, on the basis of decided cases, could not be contested.
Time limits and appeals

8.22 Currently, there is a six-month limit from conviction within which a confiscation order must be made, other than in ‘exceptional circumstances’. The practical implications of this limit are that confiscation orders cannot be obtained in a number of cases due to simple administrative delay. For example, lack of court time, unavailability of counsel, trial judge or defendant, or the ongoing trial of a co-defendant have each caused confiscation hearings to collapse following postponement beyond the time limit. And there have also been cases in which defendants have deliberately delayed the inquiry to take advantage of the six-month time limit.

8.23 A recent case, in which the prosecutor’s statement alleged that the defendant’s benefit was £4 million and that he held realisable property of £1 million, illustrates this problem (see Box 8.3).

8.24 The six-month time limit for making a confiscation order should be extended in cases where there are good reasons to do so (not just in exceptional circumstances as at present) for up to two years (which is the time limit within which sentence must be passed) and, in exceptional circumstances, beyond that.

8.25 However, this relaxation of the time limit should not give prosecutors an excuse to delay confiscation work unnecessarily. The courts, therefore, should have the power to strike out confiscation applications made after the current six-month limit where there has been unreasonable and unnecessary delay and prejudice to the defendant can be shown, in particular in cases where assets are restrained during the period of delay. But the power to increase the amount of the confiscation order should run indefinitely in all cases, not just in drug trafficking cases as at present. This power should, however, only relate to assets up to the level of benefit shown when the confiscation order was made.

8.26 In addition, prosecutors should have a clear right of appeal in cases where they are not satisfied that an appropriate confiscation order has been made. This should cover cases both where the prosecutor considers the court to have misapplied the law and where the confiscation amount is considered to be too low.

Widening the scope of restraint

8.27 Effective and early restraint is a vital element of the State’s powers to recover criminal assets. The ease and speed with which cash and assets can be transferred to the safety of foreign jurisdictions requires that assets can be frozen as an emergency measure to prevent this happening.

8.28 In practice, restraint orders are raised in relatively few cases (typically only in those involving high value assets) and the numbers appear to be declining in step with the reduction in confiscation orders, as is illustrated in Table 8.1.

8.29 Restraint orders can only be raised at the point of charge and require the prosecutor to make an application to the

Table 8.1: Comparison of restraint orders to confiscation orders

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Restraint orders</td>
<td>286</td>
<td>252</td>
<td>247</td>
</tr>
<tr>
<td>Confiscation orders</td>
<td>1,716</td>
<td>1,617</td>
<td>1,379</td>
</tr>
<tr>
<td>Percentage</td>
<td>17%</td>
<td>16%</td>
<td>18%</td>
</tr>
</tbody>
</table>

CJA S. 72A (1).
Crime & Criminal Justice Unit (RDS), Home Office.
High Court, based on the case prepared by a police or Customs financial investigator. The Crown Office of the High Court, numbering some 20 judges who sit mainly in London, is the only forum authorised to hear such restraint cases.

8.30 The police and prosecutors should be trained and ready to support applications for restraint throughout England and Wales. To facilitate restraint applications further, restraint hearings should not be confined to the High Court in London, but should be dealt with by circuit judges in Crown Courts so that restraint can be obtained wherever the case arises. The powers of the Crown Court should be extended to cover restraint and charging orders (and their discharge in the event of an acquittal) and issuing of certificates of inadequacy where a defendant’s realisable assets are exhausted.

8.31 The increased caseload of restraint hearings anticipated by the conclusions of this report suggests that the Crown Court will be the most appropriate venue for dealing with them. Increased throughput, together with dedicated training, will help circuit judges develop the expertise necessary to deal with restraint and enforcement matters. In administering these powers, the judiciary may decide that all issues relating to the same defendant (including trial and confiscation) should be dealt with by the same judge. Where restraint and confiscation matters raise issues of particular complexity, there should be a right of appeal to the High Court (see also paragraph 8.43 below).

Conclusions

Conclusion 19: The criminal confiscation and money laundering regime should be consolidated into a single statute aligning the non-drug provisions with those relating to drug trafficking.

Conclusion 20: Confiscation powers should form part of the standard training for prosecutors. This should cover confiscation powers and the importance of confiscation to the criminal justice system. The Judiciary may also wish to make fuller training in this area available to Crown Court judges, through the JSB.

Conclusion 21: Prosecutors should be strongly encouraged to apply for confiscation hearings in all cases where a criminal has benefited financially from crime, and where there are assets available for recovery.

Conclusion 22: The six-month time limit for making a confiscation order should be extended to two years from conviction where the court determines there is a good reason to do so and beyond that in exceptional circumstances.

Conclusion 23: Prosecutors should have a right of appeal where the court misapplies the confiscation law or makes an order that they believe to be inadequate.

Conclusion 24: Restraint and charging orders should be dealt with in the Crown Court.

8.32 The costs of running the training programmes proposed above and the resources required of the NCA and prosecuting agencies to ensure that confiscation targets can be met are considered in Chapter 12.

Increasing the collection rate

8.33 The main powers for enforcing confiscation orders are held by the Magistrates’ Court. The prosecutor also has the power to appoint a receiver in the High Court to deal with restrained assets or realise confiscation orders by requiring possession of the defendant’s property to be given to that receiver.
8.34 But, as described in Chapter 4, the collection rate under confiscation orders is running at an average of 40 per cent or less of the amounts ordered by the court to be seized. This is despite the requirement that the value of a confiscation order is limited by the defendant’s ability to pay, i.e. that defendant’s ‘realisable property’.

8.35 There are a number of reasons for the shortfall. One of these is that confiscation orders are sometimes made for too high an amount, i.e. above the value of realisable property. This is now less common, as defence lawyers have become familiar with the confiscation law and have used the realisable property provision to limit confiscation amounts. But there are still cases in which the defendant fails to prove that he or she cannot pay the amount of the criminal benefit, leading to an order above the level of assets identified as realisable, i.e. the defendant is judged to be holding the assets which cannot easily be identified.

8.36 Another reason for the low collection rate is that some defendants set out to obstruct and overturn the effect of restraint and confiscation orders. Defendants have been known to damage property, including cars and houses, in order to avoid assets being realised for future confiscation orders. They can also dissipate restrained assets to pay their legal fees in defending the criminal case, sometimes at very high rates. A leading management receiver’s experience with its biggest five restraint cases (set out in Table 8.2) illustrates this.10

8.37 Each of these cases illustrates a significant ‘inequality of arms’ in favour of the defence. And most of the receiver’s costs are for defending appeals and other obstacles put up by the defendant (e.g. case 3 involved 13 appeals). In most of the cases the defence team has changed lawyers in the course of the restraint. Of course, Table 8.2 does not include prosecutors’ fees, but even taking these into account the picture remains much the same. In case 1 the prosecutor’s legal costs have been approximately £100,000 to date compared with defence fees of £826,00011 shown above; in case 2, the defence barrister’s fees are estimated to be some £250,000, whilst the prosecuting barrister is likely to be paid only £50,000; and in case 3 the prosecutor’s legal costs were £275,000 compared with defence costs of £811,000.

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Table 8.2: Analysis of receivership costs and defence costs

<table>
<thead>
<tr>
<th>Case</th>
<th>Assets (£000s)</th>
<th>Receiver’s costs (incl legal) (£000s)</th>
<th>Receiver’s costs (incl legal) (%)</th>
<th>Defence costs (£000s)</th>
<th>Defence costs (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1,680</td>
<td>46</td>
<td>3%</td>
<td>826</td>
<td>49%</td>
</tr>
<tr>
<td>2</td>
<td>1,690</td>
<td>104</td>
<td>6%</td>
<td>340</td>
<td>20%</td>
</tr>
<tr>
<td>3</td>
<td>4,440</td>
<td>573</td>
<td>8%</td>
<td>811</td>
<td>18%</td>
</tr>
<tr>
<td>4</td>
<td>2,700</td>
<td>96</td>
<td>4%</td>
<td>175</td>
<td>6%</td>
</tr>
<tr>
<td>5</td>
<td>3,900</td>
<td>166</td>
<td>4%</td>
<td>174</td>
<td>4%</td>
</tr>
<tr>
<td>Total</td>
<td>14,410</td>
<td>985</td>
<td>7%</td>
<td>2,326</td>
<td>16%</td>
</tr>
</tbody>
</table>

9 Data provided by a management receiver.
10 The role of a management receiver is to preserve restrained assets.
11 Incurred mainly in preparing the defence; the case has not come to trial yet.
Immediate confiscation of restrained assets

8.38 A confiscation order creates a debt that the defendant must pay. But under current law, there is no provision for a judge to order the transfer to the State of the ownership of restrained assets when making the confiscation order. Where assets have been restrained or detained (e.g. assets managed by a receiver or cash held by the police), they have to be released by the defendant before the confiscation order can have effect. This can disrupt, delay and jeopardise the enforcement process and is clearly not the most direct way of satisfying the order.

8.39 To make collection more direct and efficient, a judge should have the discretion to order that the restrained goods be confiscated immediately in full or part satisfaction of the debt in cases where it is appropriate to do so. This should cover categories of assets that the court (at the request of the prosecutor, including the NCA) considers it cost effective to deal with in this way, such as cash, domestic bank balances and moveable property (e.g. cars). The court’s confiscation order would then include an enforcement element specifying the manner in which the assets are to be realised (e.g. by the bank transferring a bank balance or NCA investigator collecting and selling a car). To have full effect this new method of collecting confiscation orders should be supported by giving the NCA enforcement resources and powers (e.g. to seize and sell assets).

8.40 A debt would remain for the amount of the confiscation order still outstanding after transfer of the immediately confiscated cash and bank balances and sale of other confiscated property. This debt would then be collected in the normal way by the Magistrates’ Court or NCA. The criminal confiscation system would therefore remain debt-based and not require proof that the restrained goods were tainted by criminality.

8.41 Where the court directed immediate confiscation of assets, third party interests in those assets might also need to be considered. But the most appropriate venue for dealing with complicated property matters is the High Court. Third parties should therefore, with an appropriate time limit, have the right to request that the criminal court gives leave for their interests in immediately confiscated assets to be considered whilst an interim order is in place.

Maximising the value of restrained assets

8.42 The effect of recent case law\(^{12}\) is to remove the discretion of the management receiver to dispose of restrained assets in a way designed to maximise the amount available to meet any confiscation order made at the end of the trial. In both the USA and Ireland the court has such a discretion.\(^{13}\) This discretion is particularly important in the case of depreciating assets (e.g. motor cars) which must be realised at the right time in order to maximise value.

8.43 At the same time, a defendant who is acquitted has the right to resume control of his or her assets with minimum disruption and to replace those which a receiver may have disposed of. A management receiver should therefore be entitled to deal with assets as necessary to achieve the maximum amount possible to satisfy a confiscation order (taking account of the receiver’s costs). However, this discretion should relate only to replaceable assets so as not to unreasonably prevent defendants from being restored to their pre-trial position in the event that confiscation is not ordered.


\(^{13}\) Attacking the Money Trail in International Perspective, Professor Michael Levi.
Using enforcement powers

8.44 The High Court can impose the sanction of imprisonment to enforce its orders, including restraint orders, under contempt of court proceedings. When applied for by the Crown Prosecution Service (CPS), this is usually granted. However, it is not sought where defendants are already in prison or on remand.

8.45 The court also has a power to order that the defendant should serve an additional prison sentence, if he or she fails to satisfy the confiscation debt (though this does not expunge the debt). This is a powerful sanction when invoked after the main sentence, but its effectiveness can sometimes fail where a defendant is content to serve the additional time. And the impetus of the prosecutor to continue to pursue the assets can wane after release (or sometimes deportation) of the defendant. The new NCA should be rigorous in monitoring restraint and confiscation orders to ensure that contempt cases are routinely brought, sentences in default are properly applied and offenders’ debts pursued after their release.

Preventing reckless dissipation of restrained assets in legal fees

8.46 Currently, a restraint order allows the defendant to spend a reasonable amount of restrained assets in legal fees in defending the case. In some instances, defendants may be unable to use restrained assets due to legitimate third party claims, and legal aid may be appropriate. Where fees are being paid from the defendant’s own restrained resources, the prosecutor has a right to ask the High Court to assess their reasonableness (a process known as ‘taxation’). This is rarely done because it is expensive, time-consuming and unlikely to result in a significant reduction.14

8.47 However, as seen in Table 8.2 above, legal fees are causing a considerable drain on the assets recovered under confiscation orders. The amount of legal fees paid from restrained assets should be more effectively controlled whilst protecting the defendant’s legitimate right of access to legal advice. When making a restraint order the court should have power (on application by the prosecutor) to limit the amount payable from restrained assets in legal fees to set rates, for example, legal aid hourly rates, perhaps with an uplift in complex cases. If taxation is still considered necessary, it should be carried out by a Crown Court assessment officer used to applying normal legal aid rules. Corresponding provisions should also be built into civil forfeiture cases.

8.48 This proposal is based on the civil restraint provisions in New South Wales, Australia, where rates up to 20 per cent above legal aid are permitted. The effectiveness of these new arrangements in reducing the amount of restrained assets that are dissipated through excessive legal fees should be reviewed by the Board of the NCA after three years, taking into account any changes to the Legal Aid system.

Conclusions

Conclusion 25: In making a confiscation order, the court should be able to order that the restrained goods be confiscated immediately in part satisfaction of the debt.

Conclusion 26: Management receivers should have the right to deal with replaceable assets under their control as necessary to maximise the amount available to satisfy a confiscation order, so long as this does not unreasonably prevent defendants from being restored to their pre-trial position in the event that confiscation is not ordered.

14 Source: CPS and Customs.
Conclusion 27: Prosecutors and the NCA should be rigorous in ensuring that contempt proceedings are brought where court orders are not complied with.

Conclusion 28: The NCA should also ensure that imprisonment in default of satisfying a confiscation order is enforced and that offenders’ debts are pursued after their release from custody.

Conclusion 29: The court should have the power when restraining assets to limit the amount payable from those assets in legal fees to, as a minimum, legal aid hourly rates. The Board of the NCA should review these arrangements after three years.

8.49 The Home Office has developed a number of other recommendations aimed at addressing the poor collection rate of confiscation orders. They include requiring the judge to specify the assets taken into account when making a confiscation order, requiring orders to be paid forthwith and increasing enforcement powers. These proposals complement those outlined above and should also be implemented.

Compensation orders

8.50 In the case of property crimes against private sector victims, the court also has powers under Section 35 of the Powers of Criminal Courts Act to make a compensation order against an offender in favour of a victim or victims of a crime, after conviction. For example, in 1998, compensation orders amounting to total of approximately £100,000 were made by the courts in England & Wales. The amount payable under a compensation order takes precedence over that due under a confiscation order, which can be reduced accordingly. Nothing in the conclusions included in this chapter should undermine this priority. Increasing the amount of assets that are restrained and available for confiscation will also increase the amount available for compensation orders.
9.1 Under the UK’s anti-money laundering regime, financial institutions and others are required to disclose details of all suspicious transactions to the National Criminal Intelligence Service (NCIS) for investigation. However, an annual average of 15,000 such disclosures has led to only a handful of money laundering convictions. There are also significant delays in processing suspicious transaction reports.

9.2 The UK’s current regime for tackling money laundering should be tightened. Conclusions are drawn under the main themes of:

- improving the use of disclosures in helping law enforcement to attack criminal profits and markets;
- increasing the quantity and quality of disclosures across all institutions where money launderers do business, including bureaux de change and money transmission agents; and
- increasing the money laundering prosecution and conviction rates so that the full force of the legislation is brought to bear in attacking criminal operations.

9.3 Chapter 3 considered the damage caused by money laundering and the threat it poses to legitimate businesses, financial institutions and economies. In the last 15 years, attacking money laundering has been recognised internationally as key to undermining criminal activity. Many criminal businesses are at their most vulnerable when trying to launder funds into the legitimate economy. Effective monitoring of the entry of funds into the system makes UK financial services less attractive to criminal capital, protecting the financial sector from operational and reputational risks, and provides law enforcement with considerable intelligence for use in the pursuit of criminal assets.

9.4 The UK has acted in three main ways to deal with money laundering. It has:

- criminalised money laundering with severe penalties for offenders;
- regulated financial institutions so that they are obliged to put systems in place to detect and prevent money laundering; and
- recovered the proceeds of crime.

Box 9.1

“[The phrase ‘money laundering’] perfectly describes what takes place – illegal, or dirty, money is put through a cycle of transactions, or washed so that it comes out the other end as legal, or clean, money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to reappear as legitimate income.”

Jeffery Robinson, The Laundryman (Simon & Schuster 1994)
legislated to encourage reporting of known or suspected money laundering to the authorities.

Box 9.2: Case example of a money launderer

A man recently convicted of cannabis smuggling was estimated to be earning £500,000 a year from his crime. His proceeds were disguised as profits from a leisure business which he had set up in Spain on his drug smuggling route. Through the company he transferred funds to mainland and offshore bank accounts and bought properties and luxury cars in London and Spain. These assets appeared at first sight to be legitimate but in fact were funded from drug trafficking profits.

Money laundering offences

9.5 By comparison with some other countries, the UK has strong laws and regulations to address money laundering.

Box 9.3: A recent evaluation of the UK’s system

“The United Kingdom anti-money laundering system is an impressive and comprehensive one which has been subject to consistent review and improvement, and which meets, and in many areas goes beyond, the forty recommendations.”

FATF UK evaluation report, 1996

9.6 Under the Criminal Justice Act (CJA) 1988 and Drug Trafficking Act 1994, it is an offence to assist in retaining or controlling the proceeds of crime. This covers concealing or disguising property, removing it from the jurisdiction, or using the proceeds to place criminal funds at someone’s disposal. The maximum sentence is 14 years’ imprisonment and an unlimited fine.

9.7 Historically, however, there have been very few prosecutions and convictions for money laundering in England and Wales. In the period 1987 to 1998, there were only

Figure 9.1: Money laundering prosecutions and convictions

1 Source: Financial Action Task Force (FATF). FATF’s role in assessing anti-money laundering systems and its 40 recommendations are dealt with in Chapter 11.
2 The Prevention of Terrorism (Temporary Provisions) Act 1989 also includes money laundering offences.
3 Source: Crime and Criminal Justice Unit (RDS), Home Office.
4 Provisional 1999 data.
357 prosecutions and 136 convictions. There has, however, been an increase in both prosecutions and convictions since 1994 owing to increased awareness and education around the enhanced provisions of CJA 1993\(^5\) which extended money laundering offences to cover the proceeds of all indictable offences.

9.8 Despite recent increases in the number of UK prosecutions, they are still relatively few in number. By contrast, Italy had 538 prosecutions and the USA 2,034 prosecutions in 1995 alone.\(^6\) And the conviction rate of 44 per cent is also low by comparison with an average Crown Court conviction rate of 76 per cent,\(^7\) indicating the difficulties of dealing with the complexity of money laundering offences in court.

**The Money Laundering Regulations**

9.9 The Money Laundering Regulations 1993 (the Regulations) require designated financial institutions to put in place adequate systems of control to identify suspicious transactions. These systems include carrying out customer identification checks, maintaining records, and training and appointing a Money Laundering Reporting Officer (MLRO) to oversee compliance. Failure to comply with the Regulations can result in two years’ imprisonment and an unlimited fine, but there have been no convictions to date. The Regulations apply to:

- banks, building societies and credit institutions;
- individuals and firms engaged in investment business;
- insurance companies; and
- bureaux de change, cheque encashment agents and money transmission agents.

9.10 The majority of the financial sector’s compliance with the Regulations is overseen by the Financial Services Authority (FSA) which monitors the performance of institutions under its authority. The exceptions include bureaux de change, cheque encashment agents and money transmission agents (see paragraph 9.43). The FSA has recently issued proposals for its new money laundering role and draft rules which will focus on systems and controls (including training) and which are designed to restate and reinforce the requirements of the Regulations.\(^8\)

9.11 The FSA also has power under Section 39 of the Banking Act 1987 to require a bank to report on internal control matters that are causing it concern. In 1999, for example, the FSA commissioned 171 such reports which addressed various internal control matters, including systems for dealing with money laundering.\(^9\) When the Financial Services and Markets Bill currently before Parliament comes into effect, a full range of regulatory powers will be available to the FSA for maximising compliance by authorised persons with the new rules.

**The disclosure regime**

9.12 The money laundering legislation in drug trafficking and terrorist cases compels all individuals (whether or not they are covered by the Regulations) to inform law enforcement whenever they are involved in a transaction that they know or suspect to be laundering the proceeds of drug trafficking or terrorism. Individuals may also choose to disclose details of transactions that they suspect relate to other criminal activity. There is not a requirement to make an ‘all crime’ disclosure, although the fact of having made

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\(^5\) Source: Crown Prosecution Service (CPS).
\(^6\) Source: FATF.
\(^7\) 1998 figure per Digest 4, Home Office RDS.
\(^8\) Money Laundering – the FSA’s new role, April 2000.
\(^9\) Source: FSA.
one can be used as a defence if money laundering charges are subsequently brought.

9.13 These disclosures are made in the form of ‘suspicious transaction reports’ which are passed to NCIS acting as an intelligence clearing house for law enforcement. Within financial institutions, suspicious transactions are first reported to an organisation’s MLRO who will decide what to pass on to NCIS. Failure to disclose carries a maximum sentence of five years but to date there has been only one conviction.

9.14 NCIS will analyse the disclosure and carry out searches and checks to build an ‘intelligence package’ which is sent on to the police or Customs Financial Investigation Units (FIUs) for investigation. FIU investigators usually liaise with the disclosing institution as well as looking for other sources of local intelligence. Having made a

<table>
<thead>
<tr>
<th>Table 9.1: Number of disclosures made to NCIS 1995-1999</th>
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</thead>
<tbody>
<tr>
<td>Total</td>
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<tr>
<th>Figure 9.2: Disclosure per US$ million in circulation in 1998</th>
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</thead>
<tbody>
<tr>
<td>Number of disclosures</td>
</tr>
<tr>
<td>Money supply US$ million</td>
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</table>

Box 9.4: Conviction for failure to disclose

Following an investigation into murder and drug importation offences in April 1998, Arkin Izzigil (an employee of a bank) was prosecuted and convicted for failing to disclose knowledge or suspicion of money laundering. The case was based on evidence obtained during the murder investigation. He received a two-year prison sentence for failure to disclose (against a possible maximum of five years) of a total sentence of 18 years, which also covered drug trafficking offences. No separate prosecution was taken against the bank for breaches of the Regulations. The bank was obliged by the Bank of England to take remedial action to improve its anti-money laundering systems and controls.
disclosure to NCIS, it is an offence for the institution to inform (or ‘tip-off’) third parties, including its clients, of the law enforcement interest in their activities.

9.15 When used effectively, disclosures should lead to investigation (and in some cases prosecution, conviction and confiscation) in relation to both money laundering and the underlying (or ‘predicate’) offences from which suspicious funds were derived. The UK’s track record of disclosures and comparisons with other countries are shown in Table 9.1 and Figures 9.2 and 9.3.

9.16 There are about 15,000 suspicious transactions reported each year in the UK. In absolute terms, the number of disclosures in the UK is lower only than the USA and the Netherlands (although the Netherlands figure shown in Figure 9.3 includes ‘indicator reports’, i.e. disclosures of certain types or levels of activity and not just transactions which appear to be suspicious). But as a proportion of the money supply, the UK’s disclosure levels are modest; the Australian rates of disclosure of suspicious transactions are some four and a half times that of the UK.

Box 9.5

“Given the number of reports being received:

(a) NCIS needs to be able to process these even more efficiently;

(b) it needs to be able to provide a consistent level of relevant feedback to financial institutions and others who report; and

(c) it must be able to provide a greater level of strategic analysis and intelligence, so that accurate and constructive measures can be taken to counter money laundering in the future.”

FATF report on the performance of NCIS in 1996

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14 Amounts ordered to be confiscated are taken from A Review of the Two Rounds of FATF Mutual Evaluations, 2000. Latest figures available except Ireland and Australia which are from 1998. Disclosure figures are from 1998.
9.17 No records are kept of the quality of disclosures in the UK or of the extent to which they have assisted law enforcement in prosecuting either money laundering or predicate offences. Some in the financial sector attribute the low disclosure levels to the success of their efforts to ensure that staff are properly trained in recognising suspicious transactions and that unsubstantiated disclosures are filtered out. Hence the quality of disclosures may be increasing rather than the quantity. But without systematic tracking and feedback on the use to which disclosures have been put, the relative quality is difficult to assess. And there does not appear to be any direct relationship between the number of disclosures and the amounts confiscated across different countries.

9.18 In 1996, FATF reported on the state of the UK system and identified priorities for NCIS as set out in Box 9.5.

9.19 In 1996, the average processing time at NCIS was 15 to 20 days. Since this assessment its processing times have increased further and by the end of 1999 disclosures were taking some seven to eight weeks to process.

9.20 Before it can give specific feedback to disclosing institutions, NCIS relies on receiving feedback from the police and Customs on the use to which disclosures are put. In 1999, NCIS gave feedback to institutions in only 50 per cent of cases. In the remaining 50 per cent it had received no information back from the FIUs dealing with the disclosures. The old NCIS database could not provide details of the average time taken to provide the feedback that was given, but anecdotal evidence from financial institutions suggests that it rarely arrived within six months of the disclosure being made.

9.21 The Economic Crime Unit (ECU) at NCIS has a staff of 30 (including six seconded from other departments) and an annual budget of £0.9 million to handle some 15,000 disclosures each year. By comparison, the Australian body dealing with disclosures (AUSTRAC) has staff of 82 and a budget of £3.8 million, handling 7,000 suspicious transaction disclosures annually. Whilst it is important to recognise the different functions of the two bodies – AUSTRAC also deals with around 5,000,000 indicator based electronic disclosures, 175,000 cash and international transfer reports, as well as fulfilling the role of the national anti-money laundering regulator – the AUSTRAC budget dedicated to the functions held by the ECU amounts to around £3 million. The difference in the budget is striking given the relative size of the financial sectors reporting in each country (i.e. 965 organisations in Australia compared with more than 7,000 firms regulated by the FSA in the UK and others which are not regulated).

9.22 Until recently, the NCIS database for dealing with disclosures was outdated and the time taken to process individual disclosures slow. Unlike the AUSTRAC system, it could not generate automated analysis. AUSTRAC serves as the hub of an electronic disclosure system.

9.23 NCIS has recently invested in a new database system which is described in Chapter 4. Since the introduction of the new database, 12 forces and four banks have established electronic communication links
with NCIS\textsuperscript{19} and a complete roll out of the new communication system to all forces is expected to have been completed by March 2001. NCIS should also use the introduction of its new system to overhaul its processing arrangements, improve the turnaround time to 24 hours for the majority of cases,\textsuperscript{20} carry out automated analysis and generate useful feedback to pass to the reporting institutions.

9.24 Addressing the points raised by FATF will require a re-examination of the funding of ECU (currently at only 2 per cent of the NCIS total).\textsuperscript{21} The priorities for NCIS should be to:

- clear the current backlog of 2,700 disclosures;\textsuperscript{22}
- carefully manage the new system to ensure that the needs of law enforcement and the disclosing institutions are met (for example, by using outside expertise to assist in assessing the current system, carrying out feasibility studies and developing the new database system accordingly, possibly following the AUSTRAC model in which the whole IT operation is outsourced);
- recruit more specialist civilian staff trained in tactical analysis to help improve the quality of intelligence packages produced for law enforcement and the strategic analysis of criminal threats for the Home Office Organised Crime Strategy Group (OCSG); and
- create a higher profile for the ECU within NCIS, perhaps by being headed up by a civilian with financial sector experience at director level.

9.25 Prudent use of its new funding (described in Chapter 4)\textsuperscript{23} will also help NCIS to achieve these aims by improving the electronic links between its new database system and small to medium sized companies including Independent Financial Advisors and estate agents.

9.26 NCIS should have firm targets covering turnaround time for processing and development of intelligence packages (e.g. between one and five days), turnaround time for search requests from law enforcement (e.g. one working day) and speed and quality of feedback to institutions. These targets should be set by re-introducing Service Level Agreements between FIUs, NCIS and reporting institutions, which are currently suspended awaiting the full introduction of NCIS's new database system.

9.27 NCIS ECU's performance against these targets should be evaluated by the Board of the NCA at the end of the year 2000 and then on an annual basis.

\textsuperscript{19} Source: NCIS ECU.
\textsuperscript{20} e.g. 75 per cent, covering the most urgent cases, and five days for the remaining 25 per cent.
\textsuperscript{21} i.e. £0.9 million of £41.8 million which is funded mainly by a levy on police forces, source NCIS.
\textsuperscript{22} As at 31 December 1999 (source NCIS ECU). An action plan is under way to address this.
\textsuperscript{23} The Invest to Save bid amounts to £2.76 million spread over three years of which 25 per cent is from NCIS/stakeholder funds.
Monitoring the turnaround time by FIUs

9.28 Once disclosures reach police force or region level it may take several weeks (for example, two weeks at the Metropolitan Police) while regional databases are searched. The information is then passed to local FIUs where the level of investigation applied to each disclosure is often limited by lack of time and resources.

9.29 NCIS should be tasked with monitoring the disclosure handling times of individual police forces by producing a league table for use by the Board of the NCA, the Association of Chief Police Officers (ACPO) and HM Inspectorate of Constabulary. Use of disclosures in investigating and prosecuting both money laundering and predicate offences should also be monitored and fed back to disclosing institutions.

Conclusions

Conclusion 30: NCIS should achieve a turnaround time for disclosures of 24 hours in 75 per cent of its most urgent cases and five days for the remainder, and full feedback to institutions. NCIS may require additional funding to meet these targets.

Conclusion 31: NCIS should increase the number of specialist law enforcement and professional civilian staff producing financial intelligence packages and strategic threat assessments, and raise the profile of the ECU within NCIS.

Conclusion 32: NCIS should monitor the handling of suspicious transaction reports by police and Customs FIUs, focusing on the speed of turnaround and use made of disclosures in investigating money laundering and predicate offences.

Conclusion 33: The Board of the NCA should review annually the contribution of NCIS ECU to the Asset Confiscation Strategy and make any recommendations arising to the NCIS Board and Service Authority.

Conclusion 34: The Home Office and Treasury may also need to review NCIS’s budgeting arrangements (which comprise ‘top-slicing’ of police force budgets) to ensure NCIS can give an appropriate level of service to all its customers, including the financial sector.

Increasing rate and improving quality of the disclosure rate

9.30 The disclosure system has severe penalties for non-compliance. But the key to its success is building a culture of trust between law enforcement and financial institutions. Parts of the financial sector, and particularly those which are subject to regulation by the FSA, have invested significant time and effort in this area but Table 9.2 overleaf indicates that there are still wide discrepancies of disclosure rates between different types of institution.

In 1999 only 444 organisations disclosed suspicions to NCIS, whereas there are some 7,300 organisations regulated directly by the FSA and others which are unregulated.

Box 9.7

“We believe there is evidence that non-bank financial institutions are increasingly targeted by money launderers, which argues for an upgrading of our efforts outside the banking sector”.

Howard Davies, FSA Chairman

9.31 In the past six years, 1,500 organisations disclosed suspicious transactions to NCIS, most disclosures coming from UK retail banks. In 1999, for example, just 10 of 554 banking institutions contributed 78 per cent of all transactions reports originating from their financial sector, and a significant 39 per cent of all disclosures received during the year. But money launderers use institutions other than banks to disguise criminal proceeds (see Box 9.7).

9.32 In 1999, only 57 solicitors’ firms (out of a total of 12,500) made disclosures. Accountancy firms, numbering some 17,500, made 84 disclosures in the same period.

**Emphasis on feedback and education by NCIS**

9.33 Financial institutions comment that after making a disclosure to NCIS there is not enough feedback on what happened to it. When it comes, feedback is too late to influence decisions around continuing the client relationship (although there is, of course, a fine balance to be drawn between the commercial judgement of the institution, the view of law enforcement and the requirement not to tip off). Feedback is also generally of low quality. The lack of feedback leads to a loss of confidence in the value of the process and has contributed to an uneven pattern of disclosures.

**Table 9.2: Number of organisations disclosing in 1999**

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number disclosing</th>
<th>Number in sector</th>
<th>Percentage of sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSA regulated:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banks</td>
<td>125</td>
<td>554(^{27})</td>
<td>22.6</td>
</tr>
<tr>
<td>Building societies</td>
<td>53</td>
<td>69(^{28})</td>
<td>76.8</td>
</tr>
<tr>
<td>Insurance companies</td>
<td>33</td>
<td>840(^{29})</td>
<td>3.9</td>
</tr>
<tr>
<td>London Stock Exchange member firms</td>
<td>18</td>
<td>271(^{30})</td>
<td>6.6</td>
</tr>
<tr>
<td>Non-FSA regulated:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bureaux de change and money transmission agents</td>
<td>28</td>
<td>Not known</td>
<td>-</td>
</tr>
<tr>
<td>Solicitors(^{31})</td>
<td>57</td>
<td>12,500(^{32})</td>
<td>0.5</td>
</tr>
<tr>
<td>Accountants</td>
<td>17</td>
<td>17,465(^{33})</td>
<td>0.1</td>
</tr>
<tr>
<td>Company formation agents</td>
<td>1</td>
<td>300(^{34})</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>112</td>
<td>Not known</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>444</td>
<td>Not known</td>
<td>-</td>
</tr>
</tbody>
</table>

\(^{24}\) NCIS estimate.
\(^{26}\) FSA (Building Societies Commission).
\(^{27}\) In 1997, according to Association of British Insurers Occasional Paper 9, December 1999.
\(^{28}\) London Stock Exchange.
\(^{30}\) Investment business carried out by solicitors and accountants is regulated by the FSA.
\(^{33}\) Law Society of England and Wales, Law Society of Scotland.
\(^{31}\) Institute of Chartered Accountants of England and Wales (ICAEW).
\(^{34}\) NCIS estimate.
9.34 The performance indicators for NCIS should include targets for the time taken to provide feedback to disclosing organisations, taking account of the feedback time from FIUs on which this relies.

9.35 Generic feedback on the level and usefulness of disclosures, NCIS’s performance against its targets and the outcome of individual cases should be provided as a matter of course to disclosing organisations. This information should be worked up by NCIS and delivered as regular newsletters and presentations in combination with the FSA.

9.36 To further encourage a close working relationship with the private sector, at least one of the senior management posts in the NCIS ECU should be filled by a civilian, probably with a financial services background.

NCIS working together with the FSA

9.37 The role of the FSA is vital in securing a constructive relationship between law enforcement and the financial sector. As described in Chapter 4, the FSA will shortly take on responsibility for dealing with money laundering regulation as part of its objective of reducing financial crime. By issuing new money laundering rules and effectively monitoring compliance with them, the FSA has an opportunity to generate a new level of co-operation between financial institutions and law enforcement and an increase in the quality and quantity of disclosures.

9.38 The FSA’s relationship with NCIS is overseen by its Financial Crime Liaison Unit (FiCLU). The FiCLU will have a key role in building the financial sector’s confidence in the disclosure regime. To operate effectively, it must forge a strong relationship with NCIS, with free exchange of information between the two. The FSA has suggested that MLROs should make an annual report to the board of their companies on the anti-money laundering procedures and levels of reporting. Some mechanism is also needed to ensure that concerns raised by MLROs are communicated to the FSA as a matter of course, possibly by including them in annual regulatory returns (which should also be made available to NCIS) or by the auditors commenting specifically on compliance with the anti-money laundering rules in their reports to the FSA.

Source: FATF.
9.39 NCIS should use its new database system actively to monitor disclosure levels from financial institutions and sectors. The FSA should then encourage disclosure levels upwards in terms of both quality and quantity where they are shown to be inadequate. For instance, it might do this by:

- issuing guidance on customer identification (i.e. ‘know your business’) requirements in response to new technology or services (whilst also recognising the need for monitoring ongoing client relationships);

- encouraging financial services companies to monitor accounts for suspicious activity by use of automated computer software where it is cost effective to do so; and

- issuing guidance on the standard minimum level of information to be included in a disclosure.\(^{36}\)

9.40 In cases of persistent or suspected wilful lack of disclosure by institutions, NCIS should formally request the FSA to initiate investigations, involving law enforcement as necessary, with a view to action for breach of the Regulations. Currently, law enforcement is effectively restricted from carrying out investigations of breaches of the Regulations because of the limited purposes for which production orders and search warrants can be made. HM Treasury and the Board of the NCA may need to review arrangements to make sure the job of investigating breaches is done effectively.

9.41 In order to consolidate these joint working arrangements, a formal memorandum of understanding should be adopted to permit a free exchange of information between NCIS and the FSA. This should cover the provision of FSA reports relating to suspected breaches of the Regulations to NCIS, so as to enable NCIS to advise on whether a full investigation should be initiated. This may require statutory amendments to override the existing gateway arrangements. Given the delicate balance between the FSA’s obligation to reduce financial crime and its need to preserve close relationships with the institutions that it regulates, the memorandum should include guidelines for use by the FSA of information provided by NCIS.

9.42 Individual cases concerning breach of the Regulations should only be pursued on their own merits, but it should only take a few such cases being successfully pursued for the message to be understood by others and for the compliance rate across the board to increase. The performance of NCIS and the FSA in these important areas will need to be closely monitored by HM Treasury in consultation with the Board of the NCA.

A ‘light touch’ regime for bureaux de change and money transmission agents

9.43 The Regulations also apply to sectors of the private financial services industry which currently fall outside the remit of the FSA. Bureaux de change and money transmission agents cause much concern to law enforcement. For instance, there is a significant number of cases where the cash generated by the UK drug trade has been exchanged at bureaux de change before being smuggled abroad to pay suppliers.\(^ {37}\)

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\(^{36}\) The FSA may not be able to fully implement these initiatives until the Financial Services and Markets Bill is enacted.

\(^{37}\) Source: HM Customs & Excise.
In one case alone, a bureau was found to have laundered over £70 million of criminal proceeds between 1994 and 1996. And there are many examples of launderers exploiting the lack of regulation in these areas. Many deposits at money transmission agents, for example, are made at just below the level at which, according to the agents’ internal guidelines, additional customer identification is required.

9.44 Recent efforts of law enforcement have improved the situation. For example, the disclosure rate of bureaux de change and money transmission agents has risen from 7 per cent to 21 per cent of all disclosures between 1995 and 1999. But this generally reflects the development of good relationships with the established operators and updated disclosures on targeted subjects. In 1999, 90 per cent of the disclosures came from only seven organisations.

9.45 Many countries have brought in regulations to deal with these sectors. The EU Money Laundering Directive of 1991 applied to bureaux de change and money transmission agents. The UK is the only EU country that does not regulate them, a point recognised in the FATF assessment of the UK in 1996. The FATF has indicated that persistent lack of regulation would be a cause of serious concern in any future assessment. In the last quarter of 1999, the USA introduced requirements for bureaux de change, including cheque cashiers, to register; this covers some 200,000 offices.

9.46 The UK should introduce a light touch regime to deal with bureaux de change and money transmission agents, including cheque cashiers. This would involve registering through a simple application form which should be renewed every two years on the US model and include details of ownership and a declaration of compliance. There should also be spot checks on the operation of the Regulations and sanctions, including fines and the threat of closure, in cases of non-compliance. The costs of administering this should be borne by levying a small charge on those who register, and a Regulatory Impact Assessment should be carried out to ensure the right balance is struck between the costs and the benefits.

9.47 Under this regime, breaches of the Regulations will be easier to prosecute and disclosure rates likely to increase. Money launderers will need to find more complex and expensive ways of converting their proceeds. When equivalent requirements were introduced in the Netherlands in 1996, about two thirds of the bureaux de change closed down rather than register. In 1998, disclosures from bureaux de change in the Netherlands had risen to 11,193 compared to 5,636 in 1996 (and 2,700 in the UK).

Companies and company formation agents, including lawyers and accountants

9.48 Almost all the most complex laundering operations involve UK shell companies. Despite this, in 1999 there was only one disclosure from a specialist company formation agent and, as described above, very few from accountants and lawyers. Companies can, of course, be set up by anyone but the process commonly involves...
generalist lawyers and accountants (for example, in making statutory notifications to Companies House). But where the activity of solicitors and accountants does not comprise investment business, this currently falls outside the Regulations.

9.49 Once a company is formed, the ability to install ‘nominee directors’ whilst keeping secret the identity of the actual beneficial owners of the company is very useful to the money launderer. Shell companies can carry the added bonus of the good international name of the UK. It is laborious, time consuming and often fruitless for financial investigators to follow transfers of funds and other assets between different companies, perhaps registered in different individuals’ names, but controlled by the same (unregistered) beneficial owner.

9.50 At the same time, ease of incorporation is seen as one of the strengths of the UK’s competitive regulatory environment. There may be legitimate reasons why small, closely-held private companies do not wish details of their ownership to be made public. In other cases, such as investment undertakings, it can be impractical to attribute beneficial ownership of companies to individuals other than trustees.

9.51 However, a regulatory requirement for company formation agents and other company administration agents to register the identity of beneficial owners would not only help financial investigators but greatly assist bankers and other providers of financial services to identify the customers underlying their corporate clients as part of the ‘know your customer’ requirements.

9.52 A Regulatory Impact Assessment should be carried out to establish whether the clear law enforcement benefits for financial investigation and prevention of money laundering of publicly registering beneficial owners justifies the burden that it would place on companies. This should also consider the relative benefits that a lower burden would achieve, e.g. that details of beneficial ownership should be made available on enquiry by a law enforcement officer. And it should take account of international standards and initiatives in this area to help deal with those wishing to escape disclosure of beneficial ownership by operating through nominee owners outside the UK jurisdiction (by extending, for example, account opening and land registry requirements in respect of corporations from countries where beneficial ownership is not registered).

9.53 The Regulations should be widened to cover company formation agents and company administration agents. And given the close involvement of professional advisers in their clients’ enterprises, HM Treasury should approach the professional bodies representing accountants and solicitors with a view to extending the Regulations generally to those professions. Prosecutors should inform professional bodies whenever a lawyer or accountant is convicted of money laundering in order that appropriate action may be taken.

Conclusions

Conclusion 35: There should be a new emphasis on rapid and useful feedback to and education of institutions by NCIS.

Conclusion 36: NCIS should work closely with the FSA to further educate the financial sector as to its disclosure obligations and the sanctions for non-compliance, i.e. prosecution and loss of licence. The disclosure levels from individual institutions

45 Extensions of the scope of the Regulations to cover these sectors have been proposed by the draft Second EU Directive on Money Laundering.
should be monitored and, where necessary, investigations of breaches of the Regulations carried out by the FSA in partnership with law enforcement.

**Conclusion 37:** A formal information exchange gateway between NCIS and the FSA should be implemented as soon as possible with a statutory basis, if necessary.

**Conclusion 38:** A light touch regime should be introduced to regulate bureaux de change and money transmission agents (including cheque cashiers), possibly administered by the FSA.

**Conclusion 39:** HM Treasury or the DTI should carry out a Regulatory Impact Assessment to establish whether the clear law enforcement benefits for financial investigation and prevention of money laundering justify the burden that public registration of beneficial owners, or provision of this information on request by law enforcement officers, would place on companies.

**Conclusion 40:** Company formation agents and company administration agents should be brought into the list of businesses covered by the Regulations.

**Conclusion 41:** HM Treasury should approach the professional bodies representing accountants and solicitors with a view to extending the Regulations generally to those professions.

**Conclusion 42:** The Board of the NCA should review annually the contribution of the FSA’s money laundering work to the Asset Confiscation Strategy in a way that recognises the FSA’s role as an independent regulator.

9.54 The Board of the NCA will also need to monitor the extent to which the increases in disclosures anticipated by this section are matched by the law enforcement resource to deal with them, an issue which is considered in detail in Chapter 12.

**Prosecuting money launderers**

**Encouraging law enforcement to investigate money laundering offences**

9.55 The resources of law enforcement agencies are generally directed towards dealing with mainstream criminal offences. There is a reluctance to take on money laundering cases as they are thought to be ancillary to the main crime being targeted, or too complex to address. But money laundering plays an important part in acquisitive crime and damages both individual businesses and the economy.

**Box 9.8**

“More than 30% of the cases handled by my agency would have been brought to trial one year earlier had they also been considered for money laundering charges.”

Head of Investigations, UK prosecuting agency

9.56 Between 1994 and 1998, there were 33,775 drug trafficking convictions. Yet in the same period there were only 204 prosecutions for money laundering, one for every 165 convicted drug traffickers (leaving aside those convicted for other acquisitive crimes).

9.57 But there has recently been a small increase in prosecutions for money laundering. And there have been some notable successes, in particular the El Kurd case brought by Customs in 1999 which
resulted in a 14-year prison sentence for the manager of a bureau de change in West London without the underlying criminal offences being identified or proven. The new Centre of Excellence at the NCA should be tasked with training investigators nation-wide in how to build money laundering cases.

9.58 Law enforcement agencies should be strongly encouraged to investigate money laundering offences wherever appropriate, in particular focusing on sectors where there is little evidence of compliance with the money laundering regime and Regulations. In addition, prosecutors should take full account of the clear public interest in pursuing money laundering offences, whether alone or in addition to other charges, of deterring other offenders. Their internal guidance (the Code for Crown Prosecutors) should be amended accordingly, and the future performance in bringing money laundering prosecutions should be monitored by the Board of the NCA.

### Simplifying money laundering law

9.59 Currently, it is an offence to assist someone else to retain the benefits of criminal conduct. But to prove this, it is necessary to show that the defendant knew or suspected that the other person had indeed benefited from crime. This is hard to prove without an admission of guilt. It relies on making inferences as to the state of an individual’s mind and demonstrating to a jury that a transaction or series of transactions appeared suspicious. This difficulty dissuades prosecutors from bringing money laundering cases and contributes to a relatively low conviction rate.

9.60 The formulation of this part of the legislation permits a professional to ask no questions and then claim that he or she had no suspicion or knowledge in relation to laundering. This is known as ‘blind-eyeing’, as a recent case illustrates (see Box 9.10).

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**Box 9.9: The El Kurd Case**

The El Kurd prosecution relied on building a general picture of money laundering activity by bringing as evidence:

- the amount and number of transactions;
- comparison with legitimate transactions of other bureaux de change;
- the criminal background of close associates of the defendant; and
- lack of disclosures by the defendant.

The judge in the case concluded that:

“a jury is fully entitled to draw appropriate inferences from all the evidence which they have heard, not only in relation to the size of the sums, but the manner in which they were physically handled at the time.”

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47 Ruling on submission of no case to answer, *R v El Kurd & Others*.

48 This summarizes the provisions of DTA S 50 and CJA S 93A.
9.61 The offence of concealing or transferring another’s proceeds of drug trafficking differs from other money laundering crimes in that it requires proof merely that the person “knew or had reasonable grounds to suspect” that the property represented proceeds of drug trafficking. It is not necessary to show actual knowledge or suspicion.

9.62 In aligning the drugs and non-drugs legislation as described in Chapter 8 a single offence of money laundering should be created. Further, the test for all money laundering offences, including that of assisting another to retain the benefit of criminal conduct, should be simplified so as to remove obstacles weighting the test unacceptably in the defendant’s favour. The Home Office should consider whether this can be achieved by extending all money laundering offences to cover circumstances in which the defendant had reasonable grounds to suspect that he or she was dealing with the proceeds of crime.

**Conclusions**

**Conclusion 43:** The police and Customs should be strongly encouraged to investigate money laundering offences wherever appropriate and prosecutors should recognise the clear public interest of bringing money laundering prosecutions in the Code for Crown Prosecutors.

**Conclusion 44:** The Centre of Excellence should support this initiative by increasing the training given to financial investigators in money laundering, recognising that cases may be brought without the underlying offence having been proven or even identified.

**Conclusion 45:** In consolidating the money laundering offences (see Chapter 8), the test for money laundering should be simplified so as to remove obstacles weighting the test unacceptably in the defendant’s favour. The Home Office should consider whether this can be achieved by extending all money laundering offences to cover circumstances in which the defendant had reasonable grounds to suspect that he or she was dealing with the proceeds of crime.

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**Box 9.10: Turning a blind eye to laundering**

Law enforcement officers contacted a local law firm and passed on information that they were aware that the UK and offshore companies set up by the solicitors were being used by organised criminal groups and drug traffickers. The firm responded that it did not need to make any disclosure so long as it did not enquire into its clients’ affairs. It would then neither know or suspect that they might be involved in money laundering.

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49 DTA S 49(2).
Summary

10.1 Many criminal businesses generate substantial revenues that are untaxed. The organisations involved in drugs, prostitution, selling stolen goods and illegal gambling in the UK are estimated to have generated between £6.5 billion and £11.1 billion in 1996. The powers of the Inland Revenue to raise assessments and enforce removal of assets against those shown to have undeclared income and wealth are considerable but they are little used against suspected criminals.

10.2 Overseas experience shows the value of using taxation to remove assets from criminal businesses. And in the UK, where law enforcement agencies and Inland Revenue have worked hand in hand to target criminal assets, there have been modest successes.

10.3 The conclusions are that there should be:

- increased co-operation between the Inland Revenue and law enforcement, including open exchange of information; and
- a correction of tax law anomalies.

Criminal revenues

10.4 In addition to the criminal activities identified above, armed robbery alone generated some £16 million for criminals in 1997, whilst organised illegal immigration could have generated as much as £480 million in 1998. Cross-channel tax evasion on excise duties has been estimated at costing the Exchequer £2.5 billion, the profits from which have been evidenced in some cases to be reinvested into drugs trafficking.

10.5 While some individuals running illegitimate businesses pay tax on their income (examples exist in the field of vice), for the vast majority of illegal activities generating income, no declaration is made to the Inland Revenue. This means that wherever illegal activity is detected, the Inland Revenue could raise a tax assessment on income received over a long period. The origin of funds is not important; it is the identification of wealth and/or income on which a fair amount of tax has not been paid that is material. This, coupled with the Revenue’s ability to impose additional fines, raises the very real possibility that much, and in some cases all, of a person’s illegally gained wealth could be removed.

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1 Source: Office for National Statistics (ONS) 1996.
2 Source: NCIS Strategic Assessment (1997 figures).
3 Source: Immigration Service, based on average price per illegal immigrant and estimated numbers seeking to enter UK. Does not include benefits payments.
4 Source: HM Treasury.
Use of taxation powers against criminals

10.6 The Inland Revenue has the power to raise an annual tax assessment against almost all individuals and companies operating within the UK. It also has a range of powers to gather information by demanding production of records and information about a person’s financial affairs. It can apply to a circuit judge for the power to search and seize where serious tax fraud is suspected.

10.7 The Inland Revenue has a total staff of some 65,000 and gross running costs of about £2.4 billion5 for 1999/2000. Detection and investigation of suspected serious tax fraud, evasion, avoidance and non-compliance is the responsibility of the Special Compliance Office (SCO), which institutes criminal proceedings where appropriate. The SCO also deals with overseas countries on tax matters, and information received from overseas has helped recovery of substantial tax revenues.6 The SCO has 103 investigation staff and an annual budget of £23 million.7

10.8 Taxation of criminals and their organisations offers the prospect of all of the benefits that flow from asset removal described in Chapter 3. Thus depriving criminal targets of assets by tax means may yield a greater benefit than simply the amount of money recoverable. In addition, application of Inland Revenue powers against individuals who are otherwise perceived to be above the law would send out a strong message that the UK taxation system is indeed fairly applied across all sections of society.

10.9 Current objectives for the Inland Revenue focus on:

- providing the best possible tax and valuation service by collecting tax due and disbursing tax credits;
- presenting Ministers with advice on tax matters; and
- imparting high quality valuation services where needed.

10.10 These objectives function against a background of cost effectiveness, with the cost of collecting each £1 of tax having been successfully driven down from 2.46p to 1.33p over the past eight years. Decisions about the use of Revenue resources have always been primarily influenced by how well particular activities serve the collection of tax. Performance measures for the SCO relate to total investigations settled, total yield, investigation quality and customer service.

10.11 But none of the Inland Revenue measures captures the externalised benefits of taxing crime. There are, therefore, no incentives to encourage the use of criminal investigation or to target known criminals. Given that criminals will often be more difficult and costly to pursue than mainstream tax evaders, the performance measures that exist discourage a focus on criminals and encourage a focus on more simple cases that can be settled swiftly. At any one time the SCO is examining between two and three thousand cases,8 but few of its cases go to court: in 1998/99 it settled some 877 cases and only prosecuted 52.

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5 Gross running costs for 1999/2000 are forecast as £2,373 million.
7 Source: SCO. Total budget for the SCO was £22.9 million, £23.4 million and £23.3 million for 1997/98, 1998/99 and 1999/2000 respectively, of which an estimated 25 per cent relates to criminal investigation and prosecution. However, these costs do not include those of the Solicitors Office Crime Group and the costs of employing prosecuting counsel.
8 Source: SCO.
Lord Grabiner QC, in his recent review of the ‘Informal Economy’, commented that there “may be too few prosecutions” for tax evasion. He recommended a new statutory offence of fraudulently evading income tax which would be tried in Magistrates’ Courts.

Conclusions

Conclusion 46: In deciding whether to pursue unpaid tax from suspected criminals, full consideration should be given to potential law enforcement benefits of such action. The current performance measures should be reviewed with this in mind.

Box 10.1: Use of Revenue information

“The Police were investigating, and ultimately arrested, an individual whom they suspected of trafficking in narcotics. During the course of the investigation, the police obtained documents in the possession of the Inland Revenue following service of a production order. These documents revealed that, for the past ten years, the defendant had reported to the Inland Revenue that his earnings arose from his activities as a drug trafficker. Since the Inland Revenue are not permitted to make a spontaneous disclosure to the Police in such circumstances because the appropriate statutory gateway does not exist, they had been unable to tell the Police about it until they obtained the relevant production order.”

10.12 Lord Grabiner QC, in his recent review of the ‘Informal Economy’, commented that there “may be too few prosecutions” for tax evasion. He recommended a new statutory offence of fraudulently evading income tax which would be tried in Magistrates’ Courts.

Box 10.2: An Australian co-ordinated response

In its 1997/98 budget, the Australian Government allocated an additional Aus $20 million over three years to fund a joint agency response to contain the growth of organised tax evasion and money laundering services. The goal is to detect, disrupt and deter criminal enterprises engaged in this activity. This multi-agency initiative is tasked with achieving revenue of Aus $80 million during 1998/99 and 1999/2000, of which Aus $60 million is expected to come from tax assessments and Aus $20 million from recovered proceeds of crime.

The specific goals of the project include investigating and prosecuting tax evasion and money laundering offences as a means of bringing serious criminals to justice and disrupting organised criminal networks, attacking the profit motive for crime by raising tax assessments (including penalties) to remove the proceeds of crime, and investigating and prosecuting serious tax evasion that constitutes serious crime in its own right.

Results up to 31 March 2000 included:

- 27 people convicted of 124 offences;
- tax assessments for Aus $150 million raised;
- Aus $38 million already collected and a conservative estimate of a further Aus $38 million that will be recovered; and
- additional revenue of an estimated Aus $66 million being ‘voluntarily’ paid by individuals, as a result of the deterrent impact of an investigation into organised tax evasion in the building and construction industry.


10 March 2000.
**Conclusion 47:** In order to achieve this, Inland Revenue officers (retaining their tax-raising powers) should be seconded to the National Confiscation Agency (NCA) for the purpose of pursuing tax on suspected criminal profits. (See also Conclusions 51 and 55.)

**Increased co-operation and information sharing**

10.13 Involvement of the Inland Revenue in specific investigations into the ‘Shadow Economy’ has certainly already been instrumental in some criminals choosing to cease their UK activities, and a number of law enforcement bodies are anxious to build further links with Revenue officials. The full range of direct and indirect taxes are the responsibility of Inland Revenue and Customs and Excise. The two departments recognise the synergies that exist between them and are publicly committed to an extensive “closer working programme”. Joint Customs/Revenue teams have been set up at a number of locations across the UK under single management to explore new techniques in tackling VAT and other tax evasion.11

**Conclusions**

**Conclusion 48:** The Board of the NCA should monitor the working relationship between Inland Revenue and general law enforcement in support of the Asset Confiscation Strategy.

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**Box 10.3: The Irish experience**

At the Criminal Assets Bureau (CAB) in Dublin, investigative teams include Inland Revenue representatives. This facilitates both identification of assets and evidence of a history of falsification of records to the authorities, and consideration is given as to the most efficient route to remove assets including rapid use of taxation enforcement.

In 1998 tax orders for £10.8 million were laid against targets of the CAB. The introduction of such a proactive taxation regime in the Republic of Ireland has led to a significant number of high level criminals leaving the country.

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**Box 10.4: Cross-agency success**

A financial investigation was undertaken by the police into the background of an armed robber, Mr B, who lived on the outskirts of London. The investigation also focused on the father of the suspect, who himself had a long career in armed robbery. He was living in a large detached house on a private estate valued at several hundred thousand pounds.

Evidence gathered by the financial investigation suggested that the father was involved in smuggling alcohol into the UK from mainland Europe. A joint operation was undertaken with Customs, and his premises were searched, revealing a significant amount of counterfeit clothing. The Inland Revenue was informed. B Senior had never paid income tax, and the Inland Revenue raised an assessment claiming some £600,000.

B Senior closed down his illegal UK operation and left the country.
Conclusion 49: The Centre of Excellence outlined in Chapter 7 should be tasked with educating financial investigators to enlist Inland Revenue assistance.

Conclusion 50: To promote co-operation and transfer skills, secondments between the SCO and law enforcement agencies should be encouraged, either of individuals or of small units. This may be on a case specific basis when targeting a particular organisation or individual, or on a more permanent basis (for example, into the proposed NCA).

Conclusion 51: Proper steps should be taken to protect Revenue officers from criminals targeted by such reinvigorated revenue activity. For example, new specific offences could be created for either threatening a revenue officer or publicising his or her identity. Locating such investigators of serious and organised crime in the NCA should also minimise the risk of their identities being disclosed.

Conclusion 52: Revenue officers accompanying law enforcement officers on searches or field operations should not be under an obligation to identify themselves except as representatives of the Inland Revenue.

Use of Revenue information

10.14 The amount of financial information held by the Inland Revenue is extensive – records for 32 million individuals and 1.1 million companies or other organisations are currently held. Under the Data Protection Act 1994 (DPA), electronic personal data cannot be shared between departments unless they are collected for that purpose and the parties which will receive the data are specified in the entry on the Register of Data Users maintained by the Data Protection Registrar.

10.15 This means that, in general, unless there are statutory sharing arrangements in place, one body cannot inform another of suspicious activity. Tax Inspectors (and Department of Social Security (DSS) Investigators) can be liable to prosecution if they breach the confidentiality of tax or benefits records. This can mean that evidence of criminality has to be ignored because it cannot be shared with other investigating authorities.

10.16 The Inland Revenue, in particular, is heavily restricted in its ability to pass financial intelligence to other Government departments and law enforcement agencies. Historically, disclosures have been made to other law enforcement bodies only in the event of murder or treason. Information can be exchanged with Customs,12 or the DSS.13 Other bodies can obtain specific information on a particular case from the Revenue by means of a production order, but this requires the agency concerned to demonstrate reasonable grounds for believing that the Revenue has useful information in the first place. The Financial Services and Markets Bill plans to allow a discretionary gateway between the Revenue and the Financial Services Authority, recognising the vital role that taxation records can play in investigating all financial activities.

10.17 The ability of law enforcement agencies to pass information to the Inland Revenue is much greater, with information channels already functioning from the National Criminal Intelligence Service (NCIS), the National Crime Squad (NCS), immigration and police.

10.18 The benefit of increased information flows between Inland Revenue, law enforcement agencies and Government departments is demonstrated by the success of a single secondment from Inland Revenue to NCIS. Since March 1999, 248 disclosures were passed from NCIS. This information arising from the financial disclosure system within the Economic Crime Unit and passed to the SCO has already identified potential tax evasion totalling hundreds of millions of pounds.\textsuperscript{14}

10.19 In addition to the general changes proposed to the confiscation order enforcement system, there is merit in informing the Inland Revenue of all confiscation orders, so that future tax assessments can take account of funds used to satisfy the debt.

**Conclusion**

**Conclusion 53:** Legislation should be introduced to allow the Inland Revenue to disclose information on a case by case basis for the purpose of determining whether to initiate, pursue or bring to an end criminal investigations or proceedings.

10.20 Consideration should be given to whether this legislation should extend to all public bodies and also to assisting foreign criminal investigations or proceedings.

**Tidying up tax law**

10.21 Whilst the Revenue can raise a tax assessment against an individual undertaking a trading activity (the provision of goods and services, whether legal or not), tax cannot be collected where a source of the income (including criminal activity) cannot be identified.

10.22 A change in the law is needed so that tax assessments raised on income cannot be defeated simply because a source cannot be identified. This would place the onus on the person assessed to demonstrate that the profits were not derived from a taxable source. If that person displaced a tax assessment by successfully arguing that the profits from which his or her unexplained wealth derived came from criminal activities, then clearly that wealth would be a target for confiscation. Confining the power to raise such assessments to Inland Revenue officers seconded to the NCA would help ensure that use of this tool was limited to targeting the suspected proceeds of crime and used effectively in contributing to the national Asset Confiscation Strategy.

**Conclusions**

**Conclusion 54:** Tax law should be amended to allow tax assessments to be raised even when the source of the income cannot be identified.

**Conclusion 55:** This power should be reserved to Inland Revenue officers seconded to the NCA for the purpose of taxation of suspected criminal profits. Prosecution of tax crimes should remain with the Inland Revenue.

\textsuperscript{14} Source: NCIS.
11. SETTING A HIGHER INTERNATIONAL STANDARD

Summary

11.1 Much of the profit from major organised crime is moved out of the UK. It is typically invested in bank accounts, properties and luxury vehicles. Similarly, proceeds of crime committed overseas are invested in the UK. Criminal assets can move faster than law enforcement and judicial efforts to trace and recover them. This problem is already acute and is getting worse, mirroring the increase in global transactions in the legitimate economy.

11.2 Chapter 9 proposed improvements to the money laundering regime to help stem the flow of criminal funds abroad. This chapter sets out how the UK is contributing to and promoting initiatives at international level to help recover criminal assets which do move overseas.

11.3 International co-operation in tracing and recovering criminal assets is managed through a series of agreements and working groups. These currently rely on the promotion of common anti-money laundering standards to hamper criminal money flows, and mutual co-operation agreements to help in attacking criminal profits wherever they are transferred. But the mechanisms work in a way which is patchy and slow. The EU has decided to make the mutual recognition of restraint and confiscation orders the first area to be subject to the mutual recognition of judicial decisions, as agreed at the 1999 Tampere EU Summit of Heads of State and Government, and as proposed by the UK. This will facilitate the pursuit of criminal assets within the EU, but further action is needed at international level to make it harder for criminals to hide their funds.

11.4 This chapter acknowledges the extensive international initiatives already under way to tackle the movement and recovery of criminal assets and notes some further areas for consideration under the headings of:

- setting a higher international standard for dealing with criminal assets and money laundering;
- encouraging other nations to increase their attack on criminal assets; and
- actively fostering greater international co-operation in investigating and recovering criminal assets.

Globalisation of crime

11.5 With increased availability of electronic methods of moving money, assets can be moved between financial institutions in different countries easily and quickly. This enables the financial and commercial sectors to find the best investment opportunities, and has helped UK institutions to maintain a leading position in world finance. The fact that cross-border capital flows have risen from 5 per cent to 13 per cent of world GDP over the last 20 years is a measure of the degree to which capital has become mobile.\(^1\)

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\(^1\) Quoted in The Future and How to Think About It, a Performance and Innovation Unit (PIU) project. See [www.cabinet-office.gov.uk/innovation/2000,strategic,future.html](http://www.cabinet-office.gov.uk/innovation/2000,strategic,future.html)
11.6 Rapid developments in electronic and telecommunications technology have shortened the time taken to move funds across borders. Transfers can be executed at the touch of a button and settled within 24 hours.

11.7 Cross-border mobility of people is also growing. International airport arrivals have increased from 260 million in 1980 to over 600 million in 1997. Over the last 12 years, the demand for air travel has doubled and is set to double again by 2015.2

11.8 The increasing international mobility of people and capital is matched by (and provides cover for) illegal movements. Wealthy criminals are able to move assets around the world rapidly to conceal their original location and remove them from any particular jurisdiction.

11.9 The PIU’s survey of Financial Investigation Units (FIUs) has indicated that much of the profit from crime committed in the UK is moved overseas. Whilst the amount of criminal assets under investigation in the UK by respondents to the survey doubled since the year ended December 1997 to a total of £80.8 million, assets identified overseas have increased six-fold over the same period to £82 million during 1999. Figure 11.1 shows the split between UK and overseas assets under investigation by the

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Box 11.1: International delays

A UK citizen was arrested in 1997 in possession of 2 kg of cannabis resin, counterfeit banknotes and forged driving licences. As well as assets in the UK, he had shares in a sports facility overseas, a villa (registered in his mother’s name) worth £350,000 and a number of overseas bank accounts. But the Metropolitan Police found it difficult to obtain information from the overseas jurisdiction, as request letters to the authorities were processed slowly. These delays meant that, on the defendant’s conviction for drug offences, there was insufficient evidence to include the assets held overseas in the statement of benefit and therefore in the confiscation order.

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Figure 11.1: Suspected criminal assets identified in the UK and overseas in the PIU survey of FIUs

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48 FIUs that responded. These FIUs reported that such funds are typically invested in bank accounts, properties and luxury vehicles.

11.10 The flight of criminal assets abroad and the delays experienced in tracing them is a cause of deep frustration to the UK’s financial investigators. Despite the increase in criminal assets placed overseas, there has not been a correspondingly sharp rise in requests to overseas jurisdictions for judicial assistance handled by the UK Central Authority (UKCA) over the last five years. This may reflect the difficulty in identifying the destination of criminal assets and the fact that co-operation with requests for international mutual legal assistance is felt to be too slow and patchy to be of use.

**Table 11.1: UK requests for judicial assistance in asset restraint and confiscation cases**

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</tr>
<tr>
<td>Total</td>
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**Box 11.2: Feedback from the PIU’s questionnaire of UK financial investigators**

“Too many transgressors have assets disappear overseas before restraint, frustrating my role.”

“Problems with international confiscation action are becoming so acute that assets overseas are being ignored for confiscation purposes.”

**Ongoing initiatives and the UK’s involvement**

11.11 The UK is acting with international partners on a number of fronts to attack the international financial aspects of crime and to drive up standards of money laundering regulation, including through:

- the Financial Action Task Force on Money Laundering (FATF);
- the European Union;
- the G8 Group; and
- the United Nations.

11.12 In judicial matters, the UK co-operates bilaterally with other nations in recognising and enforcing restraint and confiscation orders (and their foreign equivalents) through the UKCA. There are a number of channels for law enforcement to co-operate in operational matters. The UK is a founder member of the Egmont Group which is an international network of Financial Intelligence Units established to facilitate the exchange of money laundering intelligence. The UK also co-operates in international law enforcement operations through Interpol, Europol and

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1 PIU workshop on financial investigation held on 14 January 2000.
2 Source: UKCA, Home Office.
under various bilateral law enforcement agreements.

11.13 Work under way in the EU and the FATF is currently of particular importance and is therefore set out below.

EU activity

11.14 There are a number of initiatives at EU level to help tackle money laundering and to improve judicial and operational assistance in removing the proceeds of crime. These include:

- developing a system of mutual recognition of judicial decisions, starting with restraint and confiscation orders;

- updating the 1991 Money Laundering Directive. A draft second EU Directive on money laundering was issued in August 1999. This proposes obligations for a range of institutions beyond those currently covered by the UK Regulations;

- helping non-EU countries (especially applicant countries) develop their anti-money laundering systems, including by giving priority to these efforts in assistance under the TACIS and Phare assistance programmes;¹

- facilitating the analysis and exchange of information between member states’ FIUs; and

- extending the competence of Europol to cover money laundering in general, regardless of the crime that generated the laundered funds.

11.15 The UK is working proactively in support of each of these initiatives.

Financial Action Task Force

11.16 The FATF, established in 1989, represented a major step forward in the development of effective international standards in the fight against money laundering. It is now the leading international body setting anti-money laundering standards and identifying best practice for their enforcement.²

11.17 In April 1990, FATF issued 40 recommendations on anti-money laundering practice covering:

- legislation to criminalise money laundering;
- regulatory standards;
- systems of customer identification;
- international co-operation; and
- an obligation to report suspicious transactions.

11.18 The FATF has also conducted two rounds of mutual evaluations of member countries’ compliance with the 40 recommendations. (The UK’s performance in the latest evaluation in 1996 is described in Chapter 9.) It is now focusing on efforts to extend these standards on a global basis and to support a network of countries around the world who can work together to implement them effectively.

11.19 In February of this year, FATF announced an initiative to identify non-co-operating jurisdictions. It has set up four regional review groups to report on territories both within and outside FATF membership. The work of the review groups is expected to be completed late summer 2000.

¹ For more information on Phare and TACIS see www.europa.eu.int
² The FATF has 26 members and has recently welcomed three new observer members (Mexico, Brazil and Argentina) who are working towards full membership in the near future. More details on the FATF can be found at its website at www.oecd.org/fatf
UK involvement

11.20 Although there are many initiatives already under way, more action is needed at an international level to co-ordinate efforts against criminals’ use of international financial systems. As part of its strategic approach to asset confiscation, the UK should take a lead internationally by:

- setting a higher international standard of dealing with criminal assets and money laundering;
- continuing to encourage other nations to increase their attack on criminal assets; and
- actively fostering greater international co-operation in investigating and seizing criminal assets.

Raising the international standard

Publicise and implement the PIU’s conclusions

11.21 The full package of conclusions proposed by this report will put the UK at the forefront of the international attack on criminal assets. In particular, setting a cross-governmental strategic approach, adopting the proposal to consolidate drug and non-drug confiscation law and unifying the money laundering law into a single offence will set a new international standard for tackling the proceeds of crime.

11.22 Applying resource and political priority to financial investigation and confiscation of assets will send a clear signal to criminals both at home and abroad that living from the proceeds of crime is not tolerated in the UK and that the UK will be vigorous in its pursuit of assets moved overseas. Representatives of the UK in the various institutions and groups set out above should take this message with them and share the example of the UK’s new approach.

11.23 The approach contained in this report reflects an increasing international realisation that organised crime operates as a commercial operation and should be attacked in ways which seek to understand its functions as, in many cases, a highly successful business; these efforts should focus on the financial lifeblood that drives the criminal business and the profits that motivate it. The UK should promote co-operation internationally, perhaps through fora such as the G8, to develop a greater understanding of international criminal markets. Such co-operation should include the sharing of intelligence on, for example, suspicious transactions so as to avoid cases being overlooked where no single jurisdiction has enough information to take action, but where a pooling of intelligence would clearly indicate criminal activity.

Box 11.3: Co-operation on intelligence

The NCIS Economic Crime Unit (ECU) and the Dutch equivalent MOT (Meldpunt Ongebruikelijke Transacties) have recognised the importance of cross-border exchanges of database intelligence, and are working in tandem on a pilot scheme to allow limited access to their suspicious transaction report databases. As members of the Egmont Group, success in this project will demonstrate the feasibility of such a scheme for other countries.
Cash movements across UK borders

11.24 To set a higher standard internationally, the UK has to have a domestic regime that will stand up to the closest scrutiny. However, FATF’s latest evaluation of the UK money laundering regime, which took place in 1996, made a number of recommendations, not all of which have been implemented. Chapter 9 sets out conclusions for improving the processing and feedback rates at NCIS ECU which addresses a key part of FATF’s concerns.

11.25 Another of FATF’s observations needs to be carefully considered, namely that the UK should introduce a system for the declaration or monitoring of cash or financial instruments as they cross the border.

11.26 Fifteen out of 26 FATF countries operate cross-border currency disclosure regimes. The rationale for introducing such a disclosure scheme is to:

- increase the risks for criminals associated with taking funds out of the country in person in cash and similar form;
- gather intelligence on cash movements; and
- enable non-disclosure to count as evidence in civil proceedings to determine the origins of assets.

11.27 There is evidence that cash is the dominant means of holding and transferring value in the drugs economy. This is not surprising given the anonymity that comes from dealing in cash. In the USA, 70 to 80 per cent of the Treasury Forfeiture Fund comes from currency seizures and in 1998/99, this represented over $200 million. There is evidence to suggest that efforts to strengthen the money laundering regime, such as through greater suspicious transaction reporting, will lead to a greater criminal dependence on cash. Anything that can make it more difficult for criminals to remove cash from the country will be useful in attacking the illegal drugs economy.

11.28 One objection that has been considered is that a cash import/export disclosure regime might infringe the principle of the free movement of capital. However, a number of other EU countries, such as France, Belgium, the Netherlands and Germany have their own well established cash monitoring systems and it is therefore unlikely that a requirement to declare impedes free capital movements, particularly since it imposes no waiting period on the person making the declaration. But full legal advice will be necessary on this point. There may also be concerns that extra disclosure requirements may represent an infringement of privacy and an increase in administrative costs. Further analysis, not possible within the scope of this project, is needed to establish whether this cash disclosure recommendation is proportionate to the scale of the problem of criminal funds moving out of the UK. This analysis will need to address whether any burdens imposed by a cash disclosure regime would be outweighed and justified by the benefits to law enforcement.

11.29 Between September 1991 and March 1996, anti-smuggling staff in the UK reported a total of £67.1 million of potentially drug related cross-border cash movements. Of this total, £7.1 million was forfeit, £5 million remained under investigation and the balance of £55 million was either not detained or had to be released under the law as it currently stands. Much of this suspected drug cash may have been entirely legitimate, but without a disclosure system there is a risk that vital intelligence is missed that might help build a better picture concerning these and other cash movements that would be subject to declaration.
11.30 The value that is derived from such cash movement information is multiplied by the pooling of intelligence between countries operating such schemes. For example, the pooling of intelligence would enable movements of cash to be traced from the UK through the drug transit countries of the Netherlands, Belgium and France. Also, any discrepancies arising between declarations of currency made on leaving the UK and on arriving in continental Europe, or vice versa, would help identify money laundering schemes. At present, the UK's lack of a cash disclosure system means that the fullest benefit is not being extracted from those operated by our geographically closest EU partners. Information about cash movements in and out of the UK would also provide a useful link in understanding the dynamics of international criminal markets.

Conclusions

Conclusion 56: The National Confiscation Agency (NCA), Home Office, Foreign and Commonwealth Office (FCO) and HM Treasury should each publicise and implement the conclusions contained in this report to share developing UK practice with other countries and set a higher international standard in the attack on criminal assets.

Conclusion 57: In particular, the FCO should promote co-operation internationally to develop a greater understanding of international criminal markets.

Conclusion 58: HM Treasury and Home Office should carry out a short study by end 2000 to consider with law enforcement the benefits and costs of introducing a cash disclosure system.

Encouraging other nations to increase their attack on criminal assets

Support FATF action against non-co-operative jurisdictions

11.31 No final decisions have yet been reached on how the FATF’s list of non-co-operative jurisdictions will be used, but the list has the potential to be a powerful lever in encouraging greater world-wide compliance with FATF standards. It seems likely that the FATF will advocate a determined approach:

Box 11.4: FATF approach

“There may be a need for stronger measures. As a very final step we may also decide to prohibit financial transactions in the identified non-co-operative jurisdictions.”

Financial Times of 20 January 2000 quoting Patrick Moulette, Executive Secretary of the task force

11.32 The UK should take a lead within the FATF to create international consensus on the need to identify and adopt multilateral sanctions against poorly regulated and non-co-operative jurisdictions. In cases where multilateral action is not achievable, the UK should be prepared to take unilateral steps, if necessary, in the face of deficiencies in another jurisdiction threatening the integrity of the UK system. Multilateral action is, however, much to be preferred, so as to have maximum impact and to avoid the costs on legitimate business transactions with the UK being higher than with our international competitors.
11.33 Sanctions might include requiring ‘know your customer’ procedures to be repeated at institutions wishing to accept deposits from non-co-operative jurisdictions. They might also include making disclosure mandatory for transactions or a linked series of transactions amounting to more than £10,000 where the funds have originated or are to be sent to a jurisdiction currently judged to be non-co-operative by the FATF.

**Improve the regulation in British Crown Dependencies and Overseas Territories**

11.34 Some offshore financial centres have become associated with poor international compliance with standards against financial crime, tax evasion and regulatory abuse. No jurisdiction that wishes to uphold the rule of law and play its part in the global community can afford to opt out of international standards in the fight against crime. Over time, the accumulation of criminal assets in a country’s financial sector can have a distorting effect on its financial markets, leading to market inefficiencies and, in extreme cases, to corruption of political systems.

11.35 The UK has a particular responsibility in this area because of its constitutional links with a number of territories around the world which have specialised in the provision of offshore financial services. The Crown Dependencies:

- the Isle of Man;
- Guernsey; and
- Jersey

and seven of the Overseas Territories:

- Gibraltar;
- the Cayman Islands;
- the British Virgin Islands;
- Bermuda;
- the Turks and Caicos Islands;
- Anguilla; and
- Montserrat

have developed significant financial centres offering offshore services to customers around the world.

11.36 Responses to the PIU’s survey of FIUs indicates that around £15.3 million of assets are being pursued by these units in Crown Dependencies and Overseas Territories. This is about 18 per cent of the overall total being pursued by respondents to the survey.

11.37 The constitutional position of the Crown Dependencies and Overseas Territories affords them a large measure of independence, particularly in respect of tax matters and the legal and regulatory system. There are concerns, however, that some of these jurisdictions do not yet fully meet internationally accepted standards. The UK has been taking steps to encourage them to comply.

**The Crown Dependencies**

11.38 In 1997, the Government established a review of the financial regulation in the UK Crown Dependencies (the Isle of Man, Guernsey and Jersey). This review found that, in many respects, the Crown Dependencies had developed effective mechanisms to guard against financial crime and abuse. But additional reforms were recommended in order that they should more fully meet international standards of best practice.

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11.39 Recently, the anti-money laundering systems in the three Crown Dependencies have again been subject to a detailed investigation by an international team of experts, under the aegis of a regional group of the FATF, the Offshore Group of Banking Supervisors, which is due to report later this year.

The Overseas Territories

11.40 The UK Government has also taken steps to help the UK Overseas Territories improve standards of financial regulation. With the exception of Anguilla, all those with significant financial centres now have in place money laundering legislation which captures the proceeds of all serious crimes. But there is still room for improvement in other respects.

11.41 In a recent White Paper, the Government described its new partnership with the Overseas Territories for the 21st century. The White Paper signalled a review of financial regulation in the Overseas Territories with financial centres, except for Gibraltar which is already regularly reviewed by the UK Government. In December 1999, this review was jointly commissioned by the UK, the Caribbean Overseas Territories and Bermuda. It is being conducted by the accountancy firm KPMG and should be completed by July 2000.

11.42 The Overseas Territories are committed to satisfying international standards. The Government should continue to work together with them to address any recommendations made in the review.

Conclusions

Conclusion 59: HM Treasury should take a lead within the FATF to create international consensus on the need to identify and adopt multilateral sanctions against poorly regulated and non-co-operative jurisdictions, and be ready to consider unilateral action where necessary.

Conclusion 60: HM Treasury should encourage the adoption of international standards of financial regulation in the Overseas Territories and Crown Dependencies, as appropriate, and work with the Overseas Territories to make any changes necessary in the light of the forthcoming KPMG report.

Fostering greater international co-operation

Enhance the work of the UK Central Authority

11.43 The process for gathering information from overseas and for requesting mutual recognition of restraint and confiscation orders is necessarily complex, because of the interaction of the legal systems involved. The basis for the UK’s co-operation in this area is the Criminal Justice (International Co-operation) Act 1990 (CJICA). In relation to restraint and confiscation, this enables the UK authorities to give and seek assistance to and from countries designated by Order in Council. Orders in Council are raised when countries sign up to one of the relevant UN conventions or conclude bilateral agreements with the UK.
11.44 As part of enhancing co-operation on criminal matters within the EU, the UK in March 1999 asked to take part in some aspects of the Schengen Agreement, namely police and legal co-operation in criminal matters and the fight against drugs.

11.45 The processing of international requests for assistance under the CJICA is overseen by the UKCA in the Home Office. The assistance provided includes:

- service of foreign summonses and judgments;
- provision of sworn witness statements and authenticated documentary evidence (including bank documents);
- temporary transfer of prisoners with their consent to assist in overseas investigations and proceedings; and
- exercise of search and seizure powers.

11.46 The UKCA currently handles around 4,000 cases annually of which 1,500 are outward requests from UK (Customs, Crown Prosecution Service, Serious Fraud Office etc), and 2,500 are received from abroad for execution in the UK. Requests are received from around 150 countries, with most coming from other EU member states and from North America.

11.47 The Home Office has issued guidance on handling times that the UKCA should meet. These are to:

- process outgoing requests for assistance within 10 working days;
- process incoming requests for assistance within 20 working days;
- forward evidence within 5 working days; and
- execute requests for summonses within 10 working days.

11.48 On average it takes two to three weeks from receiving the request at the UKCA to passing it to the appropriate authority for handling. However, urgent cases can be dealt with immediately, and the police, Magistrates’ Courts and other bodies are able to provide their services at short notice if need be. The UKCA will instigate the processing of the request under the relevant legal mechanisms, and Table 11.2 below gives an indication of the total processing times from start to finish, including not only handling time by the UKCA, but also the time taken to execute the request by investigating and judicial bodies.

<table>
<thead>
<tr>
<th>Country</th>
<th>Outgoing requests</th>
<th>Incoming requests</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Working days</td>
<td>Working days</td>
</tr>
<tr>
<td>Ireland</td>
<td>108.5</td>
<td>N/A</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>N/A</td>
<td>569</td>
</tr>
<tr>
<td>Netherlands</td>
<td>314</td>
<td>31</td>
</tr>
<tr>
<td>Spain</td>
<td>348</td>
<td>368</td>
</tr>
<tr>
<td>Switzerland</td>
<td>394</td>
<td>176</td>
</tr>
<tr>
<td>USA</td>
<td>262</td>
<td>334</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>285</strong></td>
<td><strong>295</strong></td>
</tr>
</tbody>
</table>

Table 11.2: Average processing times of requests for assistance from and to the UK in 1999

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10 See www.europa.eu.int/scadplus/leg/en/lvb/l33020.htm for more information on Schengen.
11.49 Currently, only about 2 per cent of requests received by the UKCA from UK law enforcement involve asset restraint or removal. This can be expected to grow, as the new more proactive approach takes root. For example, the new NCA can be expected to be a significant client for the UKCA’s services.

11.50 As set out in Chapter 5, allowing early restraint in civil forfeiture cases will also increase the opportunity for following through foreign restraint cases in the UK. This will further assist in encouraging co-operation both ways with foreign jurisdictions. Civil forfeiture will also enable the UK to recover from its jurisdiction the proceeds of crimes committed overseas without the complexities that can be involved in co-operating on criminal proceedings.

11.51 The UKCA will be evaluated during 2000 as part of a wide-ranging review of the UK’s mutual legal assistance arrangements. As part of this wider review, the Home Office should consider whether:

- the UKCA is well positioned to respond to the likely increased call on its resources;
- the UKCA needs to acquire greater legal expertise in other countries’ restraint and confiscation laws to assist with requests;
- there are ways of increasing the speed with which incoming and outgoing requests can be processed; and
- there is scope to agree stretching mutual targets with overseas counterparts for the processing of requests for assistance.

**Mutual legal recognition within the EU**

11.52 In an EU of free movement of capital and persons, there is little justification for treating requests for restraint and confiscation of assets from other EU jurisdictions in the same way as requests from other parts of the world. This unnecessary impediment acts to increase the ease with which criminals can frustrate law enforcement efforts to recover assets. The UK has therefore promoted the mutual recognition of judicial decisions at EU level. And it has pressed for the mutual recognition of restraint orders to be the first area subject to any new mutual recognition agreement. At a special meeting of the European Council in October 1999 during the Finnish Presidency at Tampere, the Council decided to enhance mutual recognition of member states’ judicial decisions.

11.53 The UK is actively supporting work under way to implement the Tampere agreement, and it is hoped that mutual recognition for restraint orders will become operational during 2001. This is likely to lead

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**Box 11.5: Presidency Conclusions - Tampere, 15-16 October 1999**

“The European Council [therefore] endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union... The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable.”

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12 This review is designed to enable compliance with the obligations of membership of the Schengen agreement and with the draft new EU Mutual Assistance Convention.

13 For the full conclusions of the Tampere Special European Council see www.europa.eu.int/council/off/conclu/oct99/oct99_en.pdf
to the need for new legislation in this area to amend the Criminal Justice (International Co-operation) Act 1990. This will help make a reality of the establishment of a common judicial area and circumvent some of the current difficulties in securing swift judicial co-operation with restraint orders.

**Asset sharing agreements**

11.54 The UK is currently negotiating asset sharing agreements with the USA and with Canada to manage the sharing of any assets recovered as a result of mutual assistance. These agreements are based on a model asset sharing agreement developed by the G8 forum and are designed to demonstrate the effectiveness of the model in order to encourage its wider adoption.

11.55 Whilst a model agreement is a useful means of encouraging countries to conclude bilateral agreements, the UK should work with the FATF to consider whether a new multilateral asset sharing agreement would be more effective than a multitude of individual bilateral treaties.

**Promote an international contact group on civil forfeiture**

11.56 The new NCA will be responsible for pursuing confiscation and forfeiture within the UK and overseas. An early task of the agency will be to develop the international links necessary to enable it to pursue assets in foreign jurisdictions. When more firmly established, the NCA should promote the establishment of an international contact group for bodies responsible for asset confiscation and forfeiture, where they can be identified. The purpose of the group would be to:

- share emerging best practice in confiscation and forfeiture matters, including on developing strategic approaches, legislative provisions and financial investigation; and
- forge links that might assist in particular cases.

11.57 Potential participant countries would include the UK, USA, Australia, Hong Kong, South Africa and Ireland. This contact group might be modelled on the Egmont Group that exists for the sharing of information world-wide between countries’ Financial Intelligence Units.14

**Conclusions**

**Conclusion 61:** The Home Office should update and enhance the UK’s mutual legal assistance arrangements in the light of the forthcoming review, including, where necessary, any amending legislation.

**Conclusion 62:** The Home Office should expand asset sharing agreements and consider with the FATF the merits of a multilateral approach.

**Conclusion 63:** The NCA should promote an international asset confiscation and forfeiture contact group.

14 More information on the Egmont Group can be found at www.oecd.org/fatf/egmont.htm
12. IMPLEMENTATION, MONITORING AND EVALUATION

Summary
12.1 This chapter describes:

- what is needed to deliver the changes set out in this report;
- the timetable for implementation;
- how much the conclusions are likely to cost; and
- how success may be measured and evaluated.

12.2 The implementation of some conclusions can begin immediately, but others will require legislation. The conclusions should be implemented in full, and be delivering results, within three years. The Director of the National Confiscation Agency (NCA) will have overall responsibility for co-ordinating this implementation.

Delivering change
12.3 Action is needed on a wide range of interconnected issues to deliver the conclusions in this report. These include:

- ensuring appropriate priority is given to the pursuit and recovery of criminal assets by the whole of the criminal justice system (through the development and implementation of a national Asset Confiscation Strategy as described in Chapter 6);
- developing a higher level of skills in dealing with financial investigation and asset recovery in the criminal justice system (through the creation of an NCA containing a Centre of Excellence in financial investigation – see Chapters 7 and 6); and
- putting in place appropriate performance management measures and incentives for delivery, including incentives for cross-agency and cross-sector working.

12.4 To help achieve this, a new pooled Recovered Assets Fund should be created, there should be a new push on the use of multi-agency task forces, and action should be co-ordinated across the three jurisdictions of the UK.

A Recovered Assets Fund
12.5 Under current arrangements, forfeited property can be awarded by the courts direct to the force that recovered the assets,1 though Customs nets such figures off their central provision. Confiscated assets (and cash forfeited by Customs at borders), on the other hand, are paid to the Consolidated Fund. The value of assets confiscated in drugs cases is allocated to a special fund administered by the Home Office on behalf of UK Anti-Drugs Co-ordination Unit (UKADCU). There are no estimates for the total value of forfeitures by police forces and Customs. Confiscations

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1 Sub-section 43(3) of the Powers of Criminal Courts Act 1973 states that “An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and property shall (if not already in their possession) be taken into the possession of the police”. Sub-section 27(1) of the Misuse of Drugs Act 1971 states that “the court… may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and destroyed or dealt with in such other manner as the court may order”.

(drugs and other crimes) amounted to £16.5 million in 1999.

12.6 There are several problems with the current arrangements. The practice by which police forces are able to obtain forfeited property risks skewing priorities away from pursuing confiscation of criminal assets as, in such cases, forces lose out when assets are confiscated back to the Consolidated Fund.

12.7 There are also disincentives in the costs of financial investigation to force budgets, especially when other more visible policing activities might have to be foregone. Because confiscation has been poorly implemented in the past, Chief Officers are, in many cases, not yet fully persuaded of the policing benefits of asset confiscation, nor that confiscation orders that are made will be fully enforced.

12.8 The report concludes that there should be a new push on financial investigation and asset confiscation throughout the criminal justice system. There is likely to be a transition period during which incentives to forces are needed to encourage them to participate fully in this new push. Recycling some of the recovered assets back to financial investigation and confiscation activity will be an important factor in making it work.

The clear message from law enforcement (and from overseas experience) is that law enforcement will need to see some benefits from their involvement in order to be sufficiently incentivised. But it will be important that any such recycling does not adversely skew incentives, therefore no recycled funds should be given direct to the law enforcement agency that initiated the investigation.

12.9 Pooling funds from criminal confiscation, criminal forfeiture and civil forfeiture into a single ‘Recovered Assets Fund’ would avoid the problems associated with direct hypothecation, and would create a flexible pooled budget to facilitate the rolling out of the financial investigation and asset confiscation initiatives proposed in this report. Such a Fund should retain the flexibility to respond to developments that arise in the early days of the policy, but should be used on a bid basis to:

- promote financial investigation as a central law enforcement technique;
- fund treatment and rehabilitation of drug users as administered by the Anti-Drugs Co-ordinator;
- encourage innovation by providing seed funding for new law enforcement initiatives; and

Box 12.1: Skewing incentives – lessons from the US

A law enforcement agency in America was given the chance to act against one of two possible drug deals. The first involved 2.5 lb of cannabis offered by an established dealer to an undercover agent. The second involved an individual looking to purchase 0.5 lb of cannabis for use only by him and his friends. The dealer owned few assets and rented a car, whilst the non-dealer was willing to pay $700 cash and owned a truck. Due to the non-profitability of the first deal for the parent agency, it was not pursued, but the second deal was, and the cash and vehicle were seized and credited to the agency.

However, a smaller quantity of drugs was removed from the marketplace and an established dealer with previous convictions was not acted against even when vulnerable, due to the relative asset seizure benefits available.

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• provide seed funding for local crime reduction partnership and community regeneration initiatives.

12.10 Clearly, core NCA funding should not depend upon uncertain revenues from asset recovery and should be provided from the Home Office budget. But the Recovered Assets Fund – comprising at least 50 per cent or more of confiscated assets – should be used to trial and pilot new initiatives in this area. And by putting management of this Recovered Assets Fund into the hands of the Board of the NCA, the Board would be given real authority to influence behaviours outside the NCA but which relate directly to the national Asset Confiscation Strategy for which it is responsible. In this way, the financial incentive that comes from recycling will help underpin the joined-up delivery of the national Asset Confiscation Strategy.³

Conclusions

Conclusion 64: The anomalies between forfeiture and confiscation need to be removed to avoid skewing of objectives in any one direction. A new pool of all funds (including criminal confiscation, civil forfeiture, criminal forfeiture⁴ and the current Drugs Strategy Confiscated Assets Fund) should be created – the Recovered Assets Fund.

Conclusion 65: A significant proportion of assets recovered (up to 50 per cent in the early years) should be administered by the Board of the NCA. The remainder should revert to the Consolidated Fund. Annual allocation by the Board of the NCA should be made in line with guidelines agreed with HM Treasury and Ministers (including support of the Drugs Strategy – see below).

Conclusion 66: In line with current practice, monies within the new Fund should be available for projects in support of the Drugs Strategy in agreement with Ministers. These monies should be at least equivalent to the amounts available in the current Drugs Strategy Confiscated Assets Fund.

Conclusion 67: Tax collected by the new NCA should be paid to the Inland Revenue in the normal way. This will reinforce the position of criminal confiscation as the NCA’s primary objective (as set out in Chapter 5). However, successful collection of tax should be reflected in the NCA’s performance measures.

Conclusion 68: These funding arrangements should be reviewed after three years of operation.

Multi-agency task forces

12.11 Law enforcement needs to adopt a more strategic approach to operational aspects of asset recovery, including the creation of multi-agency law enforcement task forces.⁵ The Home Office’s Organised Crime Operational Group, in co-operation with the Board of the NCA, should facilitate the establishment and operation of such forces. These task forces, with assistance from security and intelligence agencies and the Inland Revenue where appropriate, will help the State to destroy the most serious criminal markets, networks and organisations. Joint operations under the strategy should become routine, and targeted against the most pernicious criminal organisations that are particularly vulnerable to attack by asset deprivation.

³ A greater use of pooled budgets to achieve more joined-up delivery of policy was recommended in the Performance and Innovation Unit’s (PIU’s) Wiring it Up report of January 2000 (see www.cabinet-office.gov.uk/innovation/2000/wiring/index.htm).
⁵ In some areas multi-agency operations are already in place – most notably in the fight against international drug trafficking.
Common powers across devolved administrations

12.12 The legislative changes set out in this report would most effectively be introduced at the same time in England and Wales, Northern Ireland and Scotland. The PIU has benefited from the co-operation of the Scottish Executive, Crown Office, and Scotland and Northern Ireland Office in the preparation of this report.

12.13 Criminal justice in Scotland is a matter over which the Scottish Parliament has legislative competence, apart from a number of reserved matters such as policy on money laundering and misuse of drugs legislation. The criminal law (except for matters relating to national security) is a reserved matter under the Northern Ireland Act 1998. The Scottish Executive and the UK Government are well aware of the importance of maintaining a compatible legal framework north and south of the border, and to ensure that there are no gaps in the respective regimes which are capable of being exploited by drug traffickers or other major criminals. However, it will be a matter for Scottish Ministers and the Scottish Parliament to determine whether, and how best, to implement the conclusions in this report in Scotland, to the extent that they relate to devolved matters.

12.14 The Secretary of State for Northern Ireland wishes to adopt the conclusions in this report in so far as they are relevant to Northern Ireland. The precise details will need to be worked out to ensure that full account is taken of the Province’s criminal justice system arrangements. To expedite implementation, one Bill might be laid in the Westminster Parliament to cover both England and Wales, and Northern Ireland. This could amend the Northern Ireland confiscation legislation as well as introducing civil forfeiture on a UK-wide basis.

12.15 It is clearly of utmost importance that there is consistency in the powers and in the timing of their introduction in all parts of the UK. Further discussion is needed between the Home Office and the devolved administrations to ensure this. If not, there is a risk that criminals will be quick to exploit gaps that appear between the treatment of these issues in the jurisdictions.

Action plan and timetable

12.16 Conclusions, departmental responsibilities, supporting departmental roles and timings are summarised in the table at the end of this chapter.

12.17 There is a desire to implement the conclusions as soon as possible and a fast approaching deadline for Spending Review 2000. But the proposed timetable of action should nevertheless allow all the major constraints to sustained implementation to be addressed. Chapter 5 describes interim arrangements to enable progress to be made before appointment of a Director and Board for the NCA and before the NCA is placed on a statutory footing.

12.18 Seconded staff from the Crown Prosecution Service Central Confiscation Branch (CPS CCB) should pursue the NCA’s criminal confiscation caseload ahead of the introduction of civil forfeiture. And the financial investigation Centre of Excellence should be established and begin to develop a recruitment and training strategy. Publicity for the new confiscation policy and development of any restructuring plans necessary for the National Criminal Intelligence Service Economic Crime Unit (NCIS ECU) may also proceed ahead of legislation.

* To determine budgets for the next three years up to 2004.
12.19 Full implementation of the conclusions, including the longer-term aspects of establishing the new agency and building up financial investigation skills, is likely to take some time. The timetable implied by the budget estimates in Table 12.1 is somewhat longer, running out to three years hence.

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**Box 12.2: Timetable for Key Events**

**Summer 2000**
- Further consultation by Home Office and HM Treasury on implementation issues.

**September 2000**
- Appointment of a senior official as interim Head of Asset Confiscation reporting to the Home Secretary.
- Appointment of cross-departmental/agency committee to support the interim Head of Asset Confiscation.

**December 2000**
- Cross-departmental committee develops and presents Asset Confiscation Strategy to Ministers.
- Cross-departmental committee publishes draft memoranda of understanding between NCA and other operational agencies in support of the strategy.
- Centre of Excellence in financial investigation established.
- Draft proposals for a light touch regime for selected financial sectors outside the current regulatory regime – including bureaux de change.
- Completion of a regulatory impact assessment into the registration of beneficial owners of companies.

**March 2001**
- Centre of Excellence begins to provide training in Financial Investigation.

**December 2001**
- Home Secretary’s first annual report on the progress of the confiscation strategy to the CJS Ministerial Steering Group.

**2003+**
- Review of the Recovered Asset Fund after three years of operation.
Costs

12.20 The report assumes that the remuneration of the senior official responsible for establishing the NCA can be met by the Home Office between autumn this year and March 2001 and that the costs of loaning staff to the embryonic agency, as described in Chapter 5, will be covered by existing departmental budgets. The additional budgetary costs of the conclusions will therefore kick in from April 2001 and are as follows:

- the cost of the new NCA, including the expected court costs, is estimated by the Home Office to run at around £8 million per year (excluding start up costs in 2001/02); and

- the cost of the Centre of Excellence, in the form of an additional six staff with a training budget for improving the skills of all existing financial investigators and providing specialist training to new recruits, could be in the order of another £8 million in the first year, running at around £5 million per year subsequently.

12.21 Not all of this need be additional, though the agency should subsidise training in financial investigation in the first few years to encourage take up by law enforcement.

12.22 Broadly, we expect the implications for court costs to evolve as follows. The changes in legislation are likely to generate some exceptional short-term costs as the justice system learns and adapts. Test cases will be brought and, possibly, compensation sought for alleged wrongful restraint of assets. Over the longer term, this will settle down; but there will be more court time spent on confiscation hearings and a tendency for longer, more financially complex, cases to be brought. International experience suggests that civil forfeiture may involve many cases being settled out of court so estimates of court time spent on this are difficult to arrive at. The cost calculations which follow do, however, include outline estimates of possible additional court costs, but the potential costs of compensation have not been included.

12.23 Some of the additional costs should be balanced by efficiency savings: the rationalisation of the laws should clarify and simplify cases, while the expected improvement in the effectiveness of the police – in their investigation methods, their better use of intelligence etc – should work towards reducing case lengths, reducing the number of failed cases and improving law enforcement efficiency generally.

12.24 As discussed in Chapter 9 there may also need to be some significant enhancement of the NCIS ECU for it to fulfil its new role. If the ECU’s budget was to be brought up to equivalent levels to that of AUSTRAC in Australia (see Chapter 9), it would entail an additional £2 million per year.

12.25 Since many departments and agencies have already increased their IT budgets in order to upgrade their computer systems, it is assumed that a significant proportion of any additional IT requirements resulting from the conclusions, such as for the more comprehensive collection of data, will already be covered, though this may vary between organisations. Allocations for IT investments from centrally held Invest to Save and Capital Modernisation Funds to the agencies covered by this report are estimated to amount to £80 million in 2000/01.

12.26 The costs of receiving and liquidating the additional levels of criminal assets identified should be included in the NCA budget, or this cost could be covered by privatising this function.

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7 Home Office Press Release (27/03/00).
Monitoring and measurement

The present monitoring and measurement regime

12.27 There are separate Public Service Agreements (PSAs) for the Home Office, the Lord Chancellor’s Department and the Law Officers’ Departments. There is also a joint PSA for the overall Criminal Justice System of England and Wales (CJS) and an interdepartmental Action Plan against illegal drugs. The Home Secretary, Lord Chancellor and Attorney General are individually responsible for commitments in their own PSAs but are jointly responsible for commitments relating to the overall performance against the CJS PSA. A Ministerial Steering Group chaired by the Home Secretary, and including the Lord Chancellor, the Attorney General and, for the time being, the Chief Secretary to the Treasury will oversee the CJS programme. The Ministerial Group is supported by a Strategic Planning Group of senior officials and a new Criminal Justice System Joint Planning Unit staffed from the CJS departments and HM Treasury.

12.28 The aim of a joint PSA is to provide a clear strategic direction to the CJS as a whole. While the independence of elements of the criminal justice system is important in the decision making in individual cases, the

Table 12.1: Indicative gross additional costs of tackling criminal assets

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<tr>
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<th>2001/02</th>
<th>2002/03</th>
<th>2003/04</th>
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<tr>
<td>NCA^9</td>
<td>8.7</td>
<td>7.9</td>
<td>8.3</td>
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<tr>
<td>Centre of Excellence</td>
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<tr>
<td>Staff costs^10</td>
<td>0.3</td>
<td>0.3</td>
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<tr>
<td>Training^11</td>
<td>7.5</td>
<td>4.3</td>
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</tr>
<tr>
<td>Recruitment^12</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
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<tr>
<td>Additional financial investigator salaries^13</td>
<td></td>
<td>5.0</td>
<td>7.5</td>
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<tr>
<td>Training of Judiciary^14</td>
<td>0.4</td>
<td>0.4</td>
<td>0.0</td>
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<tr>
<td>Prosecutor costs^15</td>
<td>2.0</td>
<td>2.0</td>
<td>2.0</td>
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<tr>
<td>Reform of NCIS/ECU^16</td>
<td>2.0</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Total</td>
<td>21.2</td>
<td>22.2</td>
<td>24.9</td>
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</table>

These are indicative, gross budget costs only.

^ These are indicative, gross budget costs only. Start up costs are included under 2001/02.
^ Based on HM Treasury’s Economist Group Management Unit (EGMU) running costs (six permanent staff).
^ Assumes: recommended one day’s introduction to financial investigation for all law enforcement staff can be covered in existing probationary training; specialist financial investigation training adopts the Customs model of six weeks’ training (plus two days’ in-service training every year); all existing financial investigators receive new training package in first year; 1,000 new financial investigation specialists recruited over the three years.
^ Based on HM Treasury/EGMU cost of one round of graduate (fast stream) recruitment per year.
^ Covers uplift in salaries of existing and additional financial investigators to more closely reflect private sector rates. The costs of these increases should be reflected in police and Customs budgets.
^ Based on the Lord Chancellor’s Department’s reported costs of a training programme for 2000 judges and recorders (for the Children Act). But it will be for the Lord Chancellor’s Department to determine appropriate forms of training.
^ This assumes that the Crown Prosecution Service (CPS) and Customs will incur additional costs for training prosecutors, and raising extra criminal restraint and confiscation orders of approximately £4 million per annum. (This does not include costs of bringing more money laundering cases which will need to be worked up separately.) £2 million of these extra costs is assumed to be covered by retaining the existing CPS Criminal Confiscation Branch (CCB) and Customs budgets after some of their functions have passed to the NCA.
^ Assumes NCIS ECU budget is trebled to accommodate PIU recommendations.
^ Includes CPS, Treasury Solicitor’s Department, Legal Secretariat to Law Officers, Government Property Lawyers and Serious Fraud Office.
system as a whole has common aims and objectives which are most effectively and efficiently achieved through co-ordination. The joint CJS strategic plan produced in March 1999 aims to create a ‘whole system’ approach both to planning and practice and to encourage inter-agency co-operation at regional and local as well as national level.

12.29 The joint strategic approach requires the publication of a three-year strategic plan for the whole of the CJS. Each year, a forward business plan sets out expenditure plans, core business programmes and major policy and organisational reforms for the year ahead. Annual reports will document progress against the plans. Quarterly reports on ‘business activity’ – key statistics on the police service, magistrates, Crown Courts, the probation service etc – keep senior managers up to date on the trends in some of the performance indicators.

12.30 In pursuit of the overarching CJS objectives the CJS departments are committed to performance measures and targets to be achieved by the end of the first three-year strategic plan. The majority of measures and targets relate to corresponding measures and targets in the departmental PSAs.

Proposed new indicators of impact and efficiency for asset confiscation

12.31 The proposed Board of the NCA should adopt the model of the joint CJS planning approach. It is important that the different agencies involved in the confiscation process work together to identify their synergies and different constraints.

12.32 The new joint strategy demands committed and careful performance management, not only to establish accountability for the pooled budget but also to ensure that the agencies do indeed work towards a common goal. This, in turn, requires a suite of performance measures.

Measuring progress

12.33 Measuring the impact of these new measures will be difficult. They cannot be separated from the extensive, often co-dependent, range of criminal justice and other measures that address crime prevention and reduction. However, progress can be indicated and measured in key actions which are milestones on the path towards the desired impacts. Four stages of performance measures could be developed:

- start-up;
- development;
- activity; and
- impact.

12.34 These performance measures should be set by the Board of the NCA and agreed by Ministers; those most intimately involved in implementing the system are the best placed to define progress. However, the following performance measures should be considered for adoption. They relate to the benefits of asset confiscation outlined in Chapter 3 and are consistent with the aims and objectives identified by the tripartite criminal justice system strategy and the PSAs of the other relevant agencies. They are not exhaustive. They will need to be agreed with, and integrated into, individual PSAs at all levels. They should form an important part of the strategy document to be drawn up by the Board of the NCA. The entire strategy should be reviewed and performance against targets validated in time for the next spending round in 2003.

1. Start-up measures
   a) setting up the NCA;
   b) setting up the financial investigation centre of excellence;
   c) establishing training of prosecutors;
2. Measures of development

d) increase in total police force financial investigation training days;

e) increase in the ratio of financial investigators to non-financial investigator law enforcers;

f) increase in the ratio of Financial Investigation Unit budgets to total police force budget;

g) increase in the number of forces with serious crime strategies that specifically include or take into account criminal money flows;

h) increase in the percentage of financial organisations enhancing or adopting their own internal anti-money laundering measures (a baseline would need to be established);

3. Measures of activity

i) increase in the proportion of investigations where financial investigators are involved in the initial stages;

j) increase in the percentage of successful cases (for all crimes) using financial investigators’ evidence;

k) a step change increase in the percentage of criminal cases that lead to confiscation orders;

l) increases in the ratio of amounts confiscated to amounts restrained;

m) increases in the ratio of the amounts recovered to amounts ordered to be confiscated;

n) increases in the total amount of criminal assets in the proposed Recovered Assets Fund;

o) increase in the percentage of cases referred to Inland Revenue and Department of Social Security yielding revenue;

p) target for tax yield from NCA cases;

q) a more balanced spread of financial organisations making suspicious transaction reports;

r) increase in cases of UK co-operation in international requests for assistance including a decrease in the turnaround time for responses;

s) increase in total amount of international criminal assets subject to asset-sharing agreements;

t) increase in criminal assets recovered from overseas by UK law enforcement;

4. Measures of impact

u) increase in detection rate for all crimes;

v) increase in detection rate for fraud and forgery;

w) increase in detection rate for serious and organised crime;

x) increase in the number of important national and local criminal organisations identified and disrupted;

y) decrease in reoffending rate of identified important national and local criminals.

Evaluating impact

12.35 Measuring progress against these and other targets should be part of the annual monitoring and reporting requirements for the Board of the NCA. Progress reports should inform annual revisions of strategies and the Recovered Assets Fund allocation process. The progress reports should also inform the longer-term evaluation of asset confiscation and organised crime strategies as crime reduction policies.
12.36 The PIU’s research has confirmed that there is very little collation or evaluation of evidence of impact of these policies. NCIS appraises organised crime threats; the Home Office evaluates crime reduction policies; the CPS holds case files on individuals who have been subject to confiscation orders; individual police forces monitor their local crime situations. Rarely do these agencies come together to share data and information. The creation of the NCA is a unique opportunity to pull together all the data and expertise required to not only generate but also, for the first time, properly evaluate these policies.
Recovering the Proceeds of Crime

Chapter 6: A more joined-up strategic approach

**Conclusion 1:** An Asset Confiscation Strategy should be developed by the Director of the NCA, supported by the Board of the NCA, which is co-ordinated with the Public Service Agreements for the Home Office, Customs and the Criminal Justice System.

**Conclusion 2:** The Board of the NCA should include representatives of the relevant operational agencies, the FSA and the UKADCU.

**Conclusion 3:** The Board of the NCA should agree and publish memoranda of understanding with other operational agencies in support of the strategy.

**Conclusion 4:** The Director of the NCA should oversee implementation of the strategy at official level and be directly accountable to the Home Secretary.

**Conclusion 5:** The NCA should establish at an early stage a monitoring and evaluation unit to monitor progress of the strategy and evaluate impacts and cost-effectiveness.

**Conclusion 6:** The Home Secretary should publish an annual report on the progress of the Asset Confiscation Strategy.

Chapter 7: Focusing on financial investigation

**Conclusion 7:** The new Asset Confiscation Strategy should contain an effective strategy to raise awareness of the benefits of financial investigation and the use of this tool.

**Conclusion 8:** The strategy should set real incentives to encourage heads of law enforcement agencies to give sufficient priority to financial investigation (though financial investigation should not be encouraged solely for the purposes of asset recovery).

**Conclusion 9:** Modules on financial investigation should be part of basic law enforcement recruit training.

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<td><strong>Chapter 7:</strong> Focusing on financial investigation</td>
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18 Before the NCA is established its responsibilities will need to be carried out according to the interim arrangements set out in the report.
**Conclusion**

**Conclusion 10:** A Centre of Excellence in financial investigation should be established within the NCA to select, train and accredit financial investigators.

**Conclusion 11:** In order to raise skills, this Centre should develop and administer a qualification in financial investigation (perhaps at NVQ Level 4).

**Conclusion 12:** Greater use should be made of civilian personnel as financial investigators.

**Conclusion 13:** The Centre of Excellence should develop proposals for introducing a specialist career in financial investigation within law enforcement in consultation with the relevant agencies.

**Conclusion 14:** The Centre of Excellence should drive forward a programme of greater co-operation between private sector experts (e.g. forensic accountants, bankers etc.) and law enforcement through secondments, cross-training and pooling of experience.

**Conclusion 15:** Consideration should be given to how civilians working in local financial investigation units could be given authority to exercise relevant investigative powers.

**Conclusion 16:** Civilian financial investigators working in the NCA should have powers of compulsory disclosure for investigations into the proceeds of crime.

**Conclusion 17:** A constable or NCA civilian investigator should have the power to issue a ‘general bank circular’ to the head office of any financial institution.

**Conclusion 18:** The Board of the NCA should monitor and report on the extent to which these new powers are used and their effectiveness in the Annual Report of the Asset Confiscation Strategy.

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<td><strong>Conclusion 12</strong></td>
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* Date of Royal Assent to proposed legislation.
## Conclusion

### Chapter 8: A new legislative attack

**Conclusion 19:** The criminal confiscation and money laundering regime should be consolidated into a single statute aligning the non-drug provisions with those relating to drug trafficking.

**Conclusion 20:** Confiscation powers should form part of the standard training for prosecutors. The Judiciary may also wish to make fuller training in this area available to Crown Court judges, through the Judicial Studies Board.

**Conclusion 21:** Prosecutors should be strongly encouraged to apply for confiscation hearings in all cases where a criminal has benefited financially from crime, and where there are assets available for recovery.

**Conclusion 22:** The six-month time limit for making a confiscation order should run for two years from conviction where the court determines there is a good reason to do so and beyond that in exceptional circumstances.

**Conclusion 23:** Prosecutors should have a right of appeal where the court misapplies the confiscation law or makes an order that they believe to be inadequate.

**Conclusion 24:** Restraint and charging orders should be dealt within in the Crown Court.

**Conclusion 25:** In making a confiscation order, the court should be able to order that the restrained goods be confiscated immediately in part satisfaction of the debt.

**Conclusion 26:** Management receivers should have the right to deal with replaceable assets under their control as necessary to maximise the amount available to satisfy a confiscation order, so long as this does not unreasonably prevent defendants from being restored to their pre-trial position in the event that confiscation is not ordered.

**Conclusion 27:** Prosecutors and the NCA should be rigorous in ensuring that contempt proceedings are brought where court orders are not complied with.

### Lead responsibility | In support | By when...

| Home Office | Judicial Studies Board | Immediate |
| CPS, Customs, Inland Revenue, NCA | | * |
| CPS, Customs, Inland Revenue | Home Office | * |
| Home Office | Home Office | * |
| Home Office | Lord Chancellor’s Department | * |
| Home Office | | * |
| Home Office | | * |
| NCA and prosecutors | | Immediate (review 12/01)

* Date of Royal Assent to proposed legislation.
**Conclusion 28:** The NCA should also ensure that imprisonment in default of satisfying a confiscation order is enforced and that offenders’ debts are pursued after their release from custody.

**Conclusion 29:** The court should have power when restraining assets to limit the amount payable from those assets in legal fees to, as a minimum, legal aid hourly rates. The Board of the NCA should review these arrangements after three years.

**Chapter 9: Tightening the money laundering regime**

**Conclusion 30:** NCIS should achieve a turnaround time for disclosures of 24 hours in 75 per cent of its most urgent cases and five days for the remainder, and full feedback to institutions. NCIS may require additional funding to meet these targets.

**Conclusion 31:** NCIS should increase the number of specialist law enforcement and professional civilian staff producing financial intelligence packages and strategic threat assessments, and raise the profile of the ECU within NCIS.

**Conclusion 32:** NCIS should monitor the handling of suspicious transaction reports by police and Customs FIUs, focusing on the speed of turnaround and use made of disclosures in investigating money laundering and predicate offences.

**Conclusion 33:** The Board of the NCA should review annually the contribution of NCIS ECU to the Asset Confiscation Strategy and make any recommendations arising to the NCIS Board and Service Authority.

**Conclusion 34:** The Home Office and HM Treasury may also need to review NCIS’s budgeting arrangements (which comprise ‘top-slicing’ of police budgets) to ensure NCIS can give an appropriate level of service to all its customers, including the financial sector.

**Conclusion 35:** There should be a new emphasis on rapid and useful feedback to and education of institutions by NCIS.

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* Date of Royal Assent to proposed legislation.
**Conclusion**

**Conclusion 36:** NCIS should work closely with the FSA to further educate the financial sector as to its disclosure obligations. The disclosure levels from individual institutions should be monitored and, where necessary, investigations of breaches of the Regulations carried out by the FSA in partnership with law enforcement.

**Conclusion 37:** A formalised information exchange gateway between NCIS and the FSA should be implemented.

**Conclusion 38:** A light touch regime should be introduced to regulate bureaux de change and money transmission agents (including cheque cashiers).

**Conclusion 39:** A regulatory impact assessment should be carried out into the public registration of beneficial owners of companies.

**Conclusion 40:** Company formation agents and company administration agents should be brought into the list of businesses covered by the Regulations.

**Conclusion 41:** HM Treasury should approach the professional bodies representing accountants and solicitors with a view to extending the Regulations generally to those professions.

**Conclusion 42:** The Board of the NCA should review annually the contribution of the FSA’s money laundering work to the Asset Confiscation Strategy in a way that recognises the FSA’s role as an independent regulator.

**Conclusion 43:** The police and Customs should be strongly encouraged to investigate money laundering offences.

**Conclusion 44:** The Centre of Excellence should support this initiative by increasing the training given to financial investigators in money laundering.

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<tr>
<td><strong>Conclusion 45:</strong> In consolidating the money laundering offences (see Chapter 8), the test for money laundering should be simplified so as to remove obstacles weighting the test unacceptably in the defendant’s favour. The Home Office should consider whether this can be achieved by extending all money laundering offences to cover circumstances in which the defendant had reasonable grounds to suspect that he or she was dealing with the proceeds of crime.</td>
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<tr>
<td><strong>Chapter 10: Taxing unlawful gains</strong></td>
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</tr>
<tr>
<td><strong>Conclusion 46:</strong> In deciding whether to pursue unpaid tax from suspected criminals, full consideration should be given to potential law enforcement benefits of such action. The current performance measures should be reviewed with this in mind.</td>
<td>Inland Revenue</td>
<td>NCA</td>
<td>Immediate</td>
</tr>
<tr>
<td><strong>Conclusion 47:</strong> In order to achieve this, Inland Revenue officers should be seconded to the NCA for the purpose of pursuing tax on suspected criminal profits.</td>
<td>NCA</td>
<td>Inland Revenue</td>
<td>*</td>
</tr>
<tr>
<td><strong>Conclusion 48:</strong> The Board of the NCA should monitor the working relationship between Inland Revenue and general law enforcement in support of the Asset Confiscation Strategy.</td>
<td>NCA</td>
<td></td>
<td>12/01</td>
</tr>
<tr>
<td><strong>Conclusion 49:</strong> The Centre of Excellence should be tasked with educating financial investigators to enlist Inland Revenue assistance.</td>
<td>NCA Centre of Excellence</td>
<td></td>
<td>03/01</td>
</tr>
<tr>
<td><strong>Conclusion 50:</strong> Secondments between the SCO and law enforcement agencies should be encouraged.</td>
<td>Inland Revenue</td>
<td>NCA</td>
<td>Immediate</td>
</tr>
<tr>
<td><strong>Conclusion 51:</strong> Proper steps should be taken to protect Revenue officers from criminals targeted by such reinvigorated revenue activity.</td>
<td>HM Treasury</td>
<td>Home Office</td>
<td>*</td>
</tr>
<tr>
<td><strong>Conclusion 52:</strong> Revenue Officers accompanying law enforcement officers on searches or field operations should not be under an obligation to identify themselves except as representatives of the Inland Revenue.</td>
<td>HM Treasury</td>
<td>Home Office</td>
<td>*</td>
</tr>
</tbody>
</table>

* Date of Royal Assent to proposed legislation.
### Conclusion

**Conclusion 53:** Legislation should be introduced to allow the Inland Revenue to disclose information on a case by case basis for the purpose of determining whether to initiate, pursue or bring to an end criminal investigations or proceedings.

**Conclusion 54:** Tax law should be amended to allow tax assessments to be raised even when the source of the income cannot be identified.

**Conclusion 55:** This power should be reserved to Inland Revenue officers seconded to the NCA for the purpose of taxation of criminal profits. Prosecution of tax crimes should remain with the Inland Revenue.

### Chapter 11: Setting a higher international standard

**Conclusion 56:** The NCA, Home Office, FCO and HM Treasury should publicise and implement the conclusions contained in this report to share developing UK practice with other countries and set a higher international standard in the attack on criminal assets.

**Conclusion 57:** In particular, the FCO should promote co-operation internationally to develop a greater understanding of international criminal markets.

**Conclusion 58:** HM Treasury and Home Office should carry out a short study to consider with law enforcement the benefits and costs of introducing a cash disclosure system.

**Conclusion 59:** HM Treasury should take a lead within the FATF to create international consensus on the need to identify and adopt multilateral sanctions against poorly regulated and non-co-operative jurisdictions, and be ready to consider unilateral action where necessary.

**Conclusion 60:** HM Treasury should encourage the adoption of international standards of financial regulation in the Overseas Territories and Crown Dependencies, as appropriate, and work with the Overseas Territories to make any changes necessary in the light of the forthcoming KPMG report.

<table>
<thead>
<tr>
<th>Lead responsibility</th>
<th>In support</th>
<th>By when…</th>
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<tbody>
<tr>
<td>HM Treasury</td>
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<td>HM Treasury</td>
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<tr>
<td>HM Treasury, NCA</td>
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<td>NCA, Home Office, HM Treasury, FCO</td>
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<td>HM Treasury, Home Office</td>
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<tr>
<td>HM Treasury, Home Office</td>
<td>Customs</td>
<td>12/00</td>
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<tr>
<td>HM Treasury</td>
<td>Review 12/00</td>
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<td>HM Treasury</td>
<td>Review 12/00</td>
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<tr>
<td>FSA/FCO/DFID</td>
<td>Review 12/00</td>
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</tbody>
</table>

* Date of Royal Assent to proposed legislation.
**Conclusion 61:** The Home Office should update and enhance the UK’s mutual legal assistance arrangements in the light of the forthcoming review.

**Conclusion 62:** The Home Office should expand asset sharing agreements and consider with the FATF the merits of a multilateral approach.

**Conclusion 63:** The NCA should promote an international asset confiscation and forfeiture contact group.

**Conclusion 64:** A new pool of all funds (including criminal confiscation, civil forfeiture, criminal forfeiture and the current Drugs Strategy Confiscated Assets Fund) should be created – the Recovered Assets Fund.

**Conclusion 65:** A significant proportion of assets recovered (up to 50 per cent in the early years) should be administered by the Board of the NCA.

**Conclusion 66:** In line with current practice, monies within the new fund should be available for projects in support of the Drugs Strategy, in agreement with Ministers. These monies should be at least equivalent to the amounts available in the current Drug Strategy Confiscated Assets Fund.

**Conclusion 67:** Tax collected by the new NCA should be paid to the Inland Revenue in the normal way. However, successful collection of tax should be reflected in the NCA’s performance measures.

**Conclusion 68:** These funding arrangements should be reviewed after three years of operation.
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full name</th>
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<tbody>
<tr>
<td>ACPO</td>
<td>Association of Chief Police Officers</td>
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<tr>
<td>ACSG</td>
<td>Asset Confiscation Strategy Group</td>
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<tr>
<td>AFU</td>
<td>Asset Forfeiture Unit. Part of Customs</td>
</tr>
<tr>
<td>AUSTRAC</td>
<td>Australian Transaction Reports &amp; Analysis Centre</td>
</tr>
<tr>
<td>BA</td>
<td>Benefits Agency (UK Government agency)</td>
</tr>
<tr>
<td>BASIS</td>
<td>Benefits Agency Security Investigation Service</td>
</tr>
<tr>
<td>BBA</td>
<td>British Bankers Association. Principal representative body for banks operating in the UK</td>
</tr>
<tr>
<td>BFIS</td>
<td>Benefit Fraud Investigation Service</td>
</tr>
<tr>
<td>CAB</td>
<td>Criminal Assets Bureau. Based in Dublin to facilitate the identification and removal of assets</td>
</tr>
<tr>
<td>CCB</td>
<td>Central Confiscation Branch. Part of the Crown Prosecution Service</td>
</tr>
<tr>
<td>CJA</td>
<td>Criminal Justice Act</td>
</tr>
<tr>
<td>CJICA</td>
<td>Criminal Justice (International Co-operation) Act</td>
</tr>
<tr>
<td>CJS</td>
<td>Criminal Justice System</td>
</tr>
<tr>
<td>CPS</td>
<td>Crown Prosecution Service (UK Government department working on ‘Next Steps’ lines)</td>
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<tr>
<td>DFID</td>
<td>Department for International Development (UK Government department)</td>
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<tr>
<td>DPA</td>
<td>Data Protection Act</td>
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<tr>
<td>DSS</td>
<td>Department of Social Security (UK Government department)</td>
</tr>
<tr>
<td>DTA</td>
<td>Drug Trafficking Act</td>
</tr>
<tr>
<td>DTI</td>
<td>Department of Trade and Industry (UK Government department)</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>Abbreviation</td>
<td>Full name</td>
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<tr>
<td>ECU</td>
<td>Economic Crime Unit. Part of National Criminal Intelligence Service. Produces intelligence packages based on reports submitted under money laundering legislation</td>
</tr>
<tr>
<td>Europol</td>
<td>European law enforcement intelligence agency</td>
</tr>
<tr>
<td>FATF</td>
<td>Financial Action Task Force. Examines measures to combat money laundering. Currently there are 26 member countries</td>
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<tr>
<td>FCO</td>
<td>Foreign and Commonwealth Office (UK Government department)</td>
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<tr>
<td>FiCLU</td>
<td>Financial Crime Liaison Unit. Part of the Financial Services Authority</td>
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<tr>
<td>FIU</td>
<td>Financial Investigation Unit</td>
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<tr>
<td>FSA</td>
<td>Financial Services Authority. Independent body regulating the financial services industry in the UK</td>
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<tr>
<td>G7/8</td>
<td>Group of 7/8 most industrialised nations</td>
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<tr>
<td>Customs</td>
<td>HM Customs and Excise (UK Government department working on ‘Next Steps’ lines)</td>
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<tr>
<td>JSB</td>
<td>Judicial Studies Board. Organises seminars for experienced and newly appointed members of the judiciary, and advises on the training of lay magistrates and chairmen and members of tribunals</td>
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<tr>
<td>LCD</td>
<td>Lord Chancellor’s Department (UK Government department)</td>
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<tr>
<td>MDA</td>
<td>Misuse of Drugs Act</td>
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<td>MLRO</td>
<td>Money Laundering Reporting Officer</td>
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<tr>
<td>NCA</td>
<td>National Confiscation Agency. Proposed new agency with responsibility for achieving criminal confiscation and civil forfeiture results through agencies of the criminal justice system</td>
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<tr>
<td>NCIS</td>
<td>National Criminal Intelligence Service. Independent statutory body providing intelligence in the fight against serious and organised crime</td>
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<tr>
<td>NCS</td>
<td>National Crime Squad</td>
</tr>
<tr>
<td>NIS</td>
<td>National Investigation Service. The criminal investigation arm of Customs</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>PACE</td>
<td>Police and Criminal Evidence Act</td>
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<td>PCCA</td>
<td>Powers of Criminal Courts Act</td>
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<td>Abbreviation</td>
<td>Full name</td>
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<tr>
<td>PIU</td>
<td>Performance and Innovation Unit. Part of the UK Government Cabinet Office</td>
</tr>
<tr>
<td>PSA</td>
<td>Public Service Agreement</td>
</tr>
<tr>
<td>RDS</td>
<td>Research Development and Statistics Directorate, part of the Home Office. Provide information that helps Ministers and policy makers to take evidence-based decisions. Maintain various statistical services published by the Home Office, and carry out and commission research</td>
</tr>
<tr>
<td>Revenue</td>
<td>Inland Revenue (UK Government department working on ‘Next Steps’ lines)</td>
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<tr>
<td>RIA</td>
<td>Regulatory Impact Assessment</td>
</tr>
<tr>
<td>RICO</td>
<td>Racketeering Influenced and Corrupt Organisation</td>
</tr>
<tr>
<td>RUC</td>
<td>Royal Ulster Constabulary</td>
</tr>
<tr>
<td>SCO</td>
<td>Special Compliance Office. Deals with criminal activity and serious fraud for the Revenue</td>
</tr>
<tr>
<td>SFO</td>
<td>Serious Fraud Office (UK Government department working on ‘Next Steps’ lines)</td>
</tr>
<tr>
<td>STR</td>
<td>Suspicious Transaction Report</td>
</tr>
<tr>
<td>UKADCU</td>
<td>UK Anti Drugs Co-ordination Unit. Part of the UK Government Cabinet Office</td>
</tr>
<tr>
<td>UKCA</td>
<td>UK Central Authority. Part of the Home Office, overseeing the processing of international requests for assistance</td>
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<td>UN</td>
<td>United Nations</td>
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