



Home Office

# **Asset Recovery Action Plan**

## **A Consultation Document**

**Home Office May 2007**

This information is available on the Home Office website



## Contents

<b>Foreword</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>How to Respond</b>	<b>5</b>
<b>What Will Happen Next?</b>	<b>7</b>
<b>Executive Summary</b>	<b>8</b>
<b>How are we doing so far?</b>	<b>9</b>
<b>How will we get to £250 million?</b>	<b>11</b>
<b>New powers to help us to £250 million and beyond</b>	<b>24</b>
<b>Creating a step change</b>	<b>28</b>
<b>Annexes</b>	
<b>Action Points and Consultation Questions</b>	<b>37</b>
<b>Consultation Co-ordinator</b>	<b>40</b>
<b>The Consultation Criteria</b>	<b>41</b>
<b>Partial Regulatory Impact Assessment</b>	<b>42</b>
<b>Glossary</b>	<b>45</b>
<b>Relevant Legislation</b>	<b>47</b>



## Foreword by the Home Secretary

From the business premises in the City of London to the high streets and side streets of our regional towns and cities, the idea that perpetrators of crime are allowed to benefit from their criminal actions is one that has no place in our society.

That is why we introduced the Proceeds of Crime Act 2002, which has proved to be a potent instrument in the recovery of assets obtained through criminal activity. Last year we recovered a record total of almost £125m from criminals. This is a five-fold increase in performance over five years and our performance is now one of the best internationally.

So we are on our way and are making good progress. But there is more to be done. The Serious Crime Bill, currently before Parliament, includes measures to improve the seizure and confiscation of criminals' assets, including the merging of the Assets Recovery Agency with the Serious Organised Crime Agency. This will create a more effective law enforcement agency with a wider range of skills and expertise. We believe that this detailed Action Plan, and in particular the proposals for new powers and enhancements that are contained within it, will take us even further and faster in our quest.

At the heart of our strategy is the reduction of harm caused by crime, making clear the message that crime must not pay and criminal gains will be vigorously pursued. We must not relent in our fight to this end. I welcome your views on this consultation document.



A handwritten signature in black ink that reads "John Reid". The signature is written in a cursive style with a long horizontal stroke at the end.

John Reid

## Introduction

The purpose of this paper is to present the Government's Asset Recovery Action Plan and to seek stakeholder views on our proposals for new powers to build on our efforts in the recovery of criminal assets.

The consultation is aimed at those with an interest in the recovery of criminal assets as well as Criminal Justice.

It is available as a printed document, and can also be downloaded from:  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

A Partial Regulatory Impact Assessment is also available within the body of this paper.

The Consultation is also open to other Government Departments, interested organisations and members of the public to contribute.

## How to Respond

The closing date for comments is 23 November 2007

There are a variety of ways in which you can provide us with your views.

You can email us at:

AR.consultation@homeoffice.gsi.gov.uk

Or you can write to us at:

AR Consultation  
Organised and Financial Crime Unit  
Home Office  
5th Floor Fry Building  
2 Marsham Street  
London  
SW1P 4DP

Additional copies of this paper are available through our website:

[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

### Alternative Formats

You should also contact as specified above should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

The information you send us may be passed to colleagues within the Home Office, the Government and related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004)

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with the obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, by itself, be regarded binding on the department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual contributions will not be acknowledged unless specially requested.

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Thank you for taking the time to read this document and respond.

## What Will Happen Next?

The Consultation Period will end on 23 November 2007.

We expect to publish a summary of responses received within 1 month of the closing date for this consultation, and this will be made available on the Home Office website.

## Executive Summary

This plan is about how we build on the major successes of recent years and increase dramatically the quantity of criminal assets recovered.

Asset recovery work can play a major role in reducing the harm that crime causes to the community. It can ratchet up the pressure on criminals, at the criminals' own expense. It can begin to damage the incentives to crime, and undermine negative role models.

The plan is also about embedding the use of asset recovery tools across the Justice system. Nobody charged with an acquisitive crime should be leaving the system still benefiting from the proceeds of that crime. We are proposing enshrining this as a basic principle of sentencing. Along with other radical options, this could help get us towards the ambition of depriving criminals of up to £1 billion a year in the longer term.

Much of the plan is about delivering projects already in place but also about achieving more through increased co-operation and co-ordination. Our longer term ambitions may need changes to law and practice, however, and this plan outlines some radical new proposals for consultation.

The key messages of this plan are

1. *We have delivered an almost fivefold increase in performance from the last five years. We are committed to going further, reaching £250 million by 2009-10. This is not just an aspiration – we have a robust plan and believe we can achieve it*
2. *We are looking to improve co-operation between all agencies involved in asset recovery and particularly in confiscation which involves investigation, prosecution and court enforcement for successful delivery*
3. *Additional powers would help our effort. Options include:*
  - a. *New powers to seize the high value goods of those charged with acquisitive crimes and enable them to be sold if necessary to meet confiscation claims*
  - b. *A new administrative procedure for cash forfeitures – cash is forfeited automatically unless the owner exercises his right to a court hearing*
  - c. *Possible extension of cash seizure powers to cover other high value goods, enabling forfeiture to civil standard of goods that might have served as tools in crime – for example vehicles*
  - d. *Removing loopholes in the civil recovery powers in the Proceeds of Crime Act.*
4. *Getting to £250m is necessary, but not enough. We are looking to embed asset recovery by clarifying as a fundamental principle of sentencing that nobody should leave the system still profiting from the crime they committed*
5. *We will review the use of compensation orders, which benefit the victims of acquisitive crime, with a view to multiplying our current performance several times over. Some legislative changes may be needed here too*
6. *We are also planning a fundamental review of the use of tax against criminals, with possible legislative changes*
7. *Finally, we are interested in views on the possible applicability in England and Wales of US style 'qui tam' provisions, which enable private citizen whistleblowers to sue organisations defrauding the government, securing a share of the damages in return*

## Chapter 1:

# How are we doing so far?

### 1.1: Why does asset recovery matter?

The case for recovering the proceeds of crime is easy to make. Asset recovery prevents criminal proceeds being reinvested in other forms of crime. By reducing the rewards of crime, it begins to affect the balance of risk and reward, and the prospect of losing profits may deter some from crime. Fundamentally it serves justice, in that nobody should be allowed to continue to profit from crime.

The long term purpose of recovering the proceeds of crime is to reduce harm. Our performance regime has tended to measure success in terms of value recovered. There probably is a broad relationship between value and harm reduction – clearly the more extracted, the bigger the deterrence and crime prevention impact is likely to be. But asset recovery can also be powerful against lower level offenders who are damaging role models in communities. Visibly depriving these negative role models of their property can have an impact out of all proportion to the value of the goods recovered.

*“If you buy a home or a car or any possessions you will lose it when you get caught, and nearly everyone gets caught”*

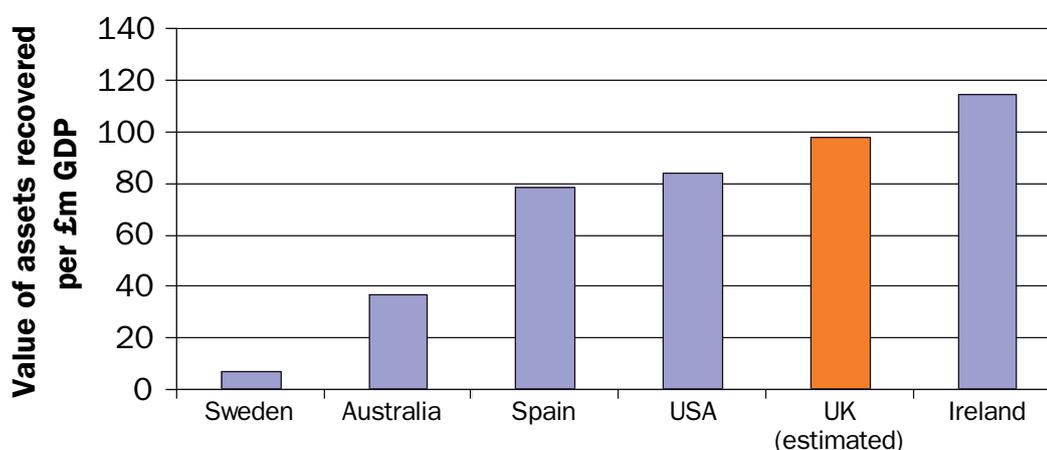
Debriefed Drugs Trafficker, 2007 (forthcoming Home Office research)

### 1.2: What’s been achieved since the Proceeds of Crime Act?

Under this Government, performance on asset recovery has improved out of all recognition. Figures are yet to be finalised, but last year we believe we met the target to recover £125m of criminal assets, five times more than we achieved just five years ago. The Proceeds of Crime Act has simplified the criminal law and radically enhanced the tools at law enforcement’s disposal.

When the Performance and Innovation Unit (PIU) completed its report on criminal finances in 2000, the UK lagged behind many of our partners, whether in asset recovery or in the use of money laundering convictions. Today the UK is a strong international performer. The table below shows results from 2005, the most recent year for which we have results from a range of countries.

### Asset Recovery – Performance by Country



Sources: Internal Home Office Analysis; FATF\* reports; Criminal Assets Bureau Annual Report 2005 (for Ireland), and IMF data for GDP figures. All data relates to 2005 or the latest available year, which varies between countries. In the case of the UK, the figures relate to 2006-07 projected performance. The UK figures do not include Scotland.

\* The Financial Action Task Force (FATF) is an inter-governmental body set up in 1989 for the development and promotion of national and international policies to combat money laundering and terrorist financing. See [www.fatf-gafi.org](http://www.fatf-gafi.org)

There have been a number of big successes. First, the Proceeds of Crime Act 2002 (POCA) provided powerful new tools for financial investigation, and made money laundering convictions in particular much easier to secure. Shorter times to pay, tougher sanctions for non-payment and greater powers to restrain assets helped. Finally, radical new powers like cash seizure and civil recovery have made a significant contribution too.

This improved toolkit has been accompanied by a much greater commitment to proceeds of crime work, and investment and organisation have enabled inroads to be made, for example into the backlog of pre-POCA confiscation orders made but not enforced.

This is an impressive result, but we know that is still only a small proportion of total criminal proceeds out there. Thanks to ground breaking new analysis<sup>1</sup>, we now have a much better understanding of the organised crime economy. Current estimates, though inevitably approximate, suggest that organised criminals alone are probably generating around £2b of recoverable assets in the UK every year, with possibly another £3b of revenue sent overseas.

There is clearly a lot to do before proceeds of crime work starts making deep inroads into the organised crime economy. Government has therefore committed itself to double performance again to reach £250m by 2009-10. Meeting this target should establish the UK as the undisputed world leader in this field.

Receipts to the Exchequer should not be the sole sign of success against criminal finances however. We are also committed to improving procedures for compensating victims and aim to roll out a major expansion in the use of tax powers against criminals. We are also keen to expand our efforts to get criminals' assets restrained or seized overseas. The key factor should be that the criminals are deprived of their gain, and all these asset recovery actions should be recognised in the longer term in the performance framework. Together, these initiatives should enable even our target of £250m to be only a staging post for our longer term ambition of detecting and removing up to £1b of criminal assets annually.

---

1 Organised crime: revenues, economic and social costs, and criminal assets available for seizure (Home Office online report OLR 14/07).

## Chapter 2:

# How will we get to £250m?

These targets are highly challenging. But we think there's a lot we can do to deliver them within existing processes and with current powers. While this action plan discusses possible new powers (see below), legislative timescales and then the long process of securing orders mean that new provisions would be unlikely to have much impact within the period to 2009-10. Over this period we need primarily to maximise the use of the powers already there.

### 2.1: Tighter governance and clearer targets

Following a review by the Prime Minister's Delivery Unit (PMDU), we have now put in place a much clearer accountability structure for driving our effort on asset recovery, with an Asset Recovery Board (ARB) reporting in to the relevant Cabinet Committee.

Up to now, asset recovery targets have been largely indicative and voluntary. As a result, the overall effort has been un-coordinated, and we have relied too heavily on the personal commitment of those working in this field. The ARB is now agreeing with partners binding targets, with delivery monitored both nationally and for confiscation enforcement, through the Local Criminal Justice Boards (LCJBs). Performance on asset recovery will for the first time be introduced as a Performance Indicator underlying the broader Public Service Agreement (PSA) target on Justice for all. Departments and agencies will have delivery plans setting out the contribution they will be making, and asset recovery will be a key part of these. Examples are the new confiscation orders enforcement target for 2007-08, targets for Her Majesty's Revenue and Customs (HMRC), Police, and Serious and Organised Crime Agency (SOCA) on cash forfeiture orders, and the civil recovery targets for the Assets Recovery Agency (ARA) in its Business Plan for 2007-08, building on the targets in earlier ARA Plans. HMRC has also launched a new Criminal Finances Strategic Framework available at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

**Action 1:** A new performance indicator for asset recovery, underlying the Justice for All PSA – to take effect from April 2008

Police forces' asset recovery performance is currently tracked in the Policing Performance Assessment Framework (PPAF) system. We are looking to continue this in the new proposed Assessment of Policing and Community Safety (APACS) system. Confiscation enforcement targets for each magistrates' court area are monitored through the Confiscation and Performance Delivery Board (CPDB) set up in April 2006. In addition, we are looking to maximise openness on our performance, and propose to publish quarterly details of asset recovery performance, broken down by type of activity, police force and agency and court area.

**Action 2:** From Summer 2007, quarterly publication of full details on asset recovery performance to monitor progress towards the target

### 2.2: Building better financial intelligence

Good financial intelligence forms the basis of our asset recovery performance, and we have a long way to go to make the best use of the information already at our disposal.

Much progress has already been made in improving information flows to deliver better enforcement. Use of open source tools like credit reference agencies, but also more routine access to benefit and tax records are important, and the Court Service's National Enforcement Service has made considerable progress here.

Probably the most under-used source of intelligence are the Suspicious Activity Reports (SARs) filed by the regulated sector under the anti-money laundering provisions of POCA.

Recent analysis funded by the assets recovery community and internal work done within SOCA has suggested that SARs are a highly valuable resource. Even relatively simple preliminary checks suggest that financial institutions had good grounds for their suspicion in a significant proportion of cases, perhaps 40%.

If we assume 40% of SARs have good grounds for suspicion, numbers of SARs rising towards 250,000, and with one study suggesting average values of SARs ranging between £10,000 and £36,000<sup>2</sup>, this could mean that SARs represent valuable intelligence on between £1-4b of suspicious transactions flowing through the system.

This represents quite a significant proportion of our total estimates of money laundering passing through the regulated sector. Home Office work suggests organised crime has a total turnover of £15b, with perhaps £10b of this passing through the regulated sector. This does not, of course, take account of money laundering for other non-organised acquisitive crime, some offences like tax evasion, as well as those parts of the criminal economy where the proceeds are retained in cash. More work is being done on the SARs database to see if these early indications of its value are borne out by experience. Even when the transactions are genuinely suspicious, there is a lot to do before these suspicions can be converted into confiscation orders. It is however clear that SARs are a hugely under-used resource at the moment.

Sir Stephen Lander was commissioned to look at ways of improving the SARs system. His report<sup>3</sup> set out 24 recommendations covering improvements to SOCA's handling of reports, feedback to the regulated sector and exploitation of SARs by end users. Twenty two of the recommendations have now been implemented in full.

### 2.3: Funding and incentivising asset recovery work

We are also looking to encourage police forces and agencies to focus resources in this area. The Criminal Justice Departments' settlements for the 2007 Comprehensive Spending Review confirmed that the asset recovery incentivisation scheme would continue, with more than 50% of all asset recovery receipts returned to frontline agencies.

For confiscation orders, the current three way split of incentivisation money, with equal shares going to investigators, prosecutors and enforcement agencies will run until March 2008, after which the details of the split will be reviewed.

**Action 3:** The split of incentivisation money between investigators, prosecutors and enforcement agencies to be reviewed by Jan 08, linked to a review of the pipeline (see below)

There are already promising signs that agencies are realigning their priorities, recognising the huge potential that financial investigation and asset recovery work holds, as in the examples which follow.

---

2 Regulated Sector Targeting of Suspicious Activity: Signal or Noise - Matthew H Fleming (University College London, March 2006). Median value of a sample of 1,196 reports £10,000, mean value £36,000

3 Review of the Suspicious Activity Reports System (The SARs Review): Sir Stephen Lander, March 2006

**Additional investment in proceeds of crime team in SOCA: Asset recovery as a key strategic priority for SOCA**

Organised crime is motivated and facilitated by money and the status it brings. Attacking criminal finances and profits, preventing criminals from benefiting from their crimes, is SOCA's second strategic imperative.

To achieve this, SOCA has increased numbers of staff working on criminal finances and profits activity, including 58 additional Financial Investigators at work on both domestic and foreign investigations. It has also embedded a large proportion of its financial investigators directly into regional operational teams to ensure financial investigation is integral to every SOCA operation. Finally, SOCA has used new powers in the Serious Organised Crime and Police Act 2005 to secure Financial Reporting Orders against convicted criminals. This Order requires a criminal to submit financial statements at a period of SOCA's choosing for up to fifteen years, or twenty for life sentences. Twelve are now in place with an average duration of more than 10 years. The analysis of material submitted by offenders will help to prevent offenders from continuing to profit from criminal activity after conviction, and may bring opportunities for further asset confiscation.

***Roll out of Centres of Excellences (CoEs) in HMCS (Her Majesty's Court Service)***

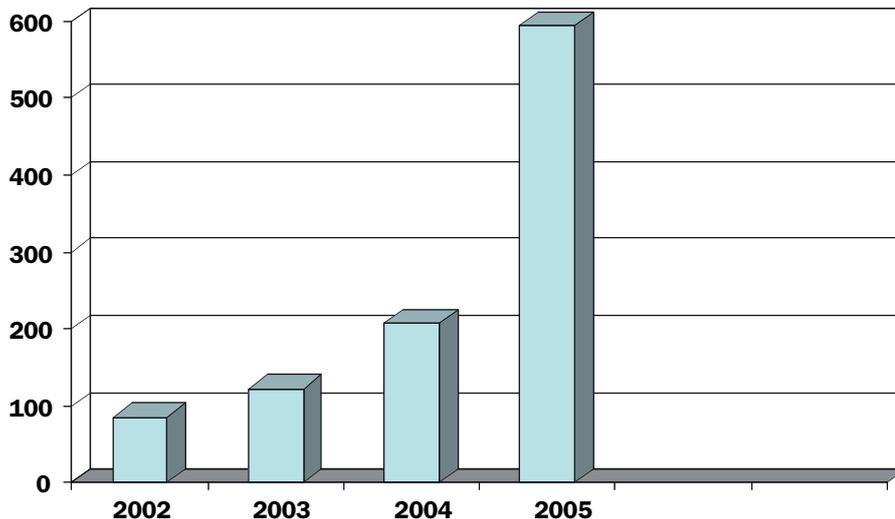
HMCS have decided to concentrate future effort on the enforcement of confiscation orders in nine Centres of Excellence, one for each court region. All nine will be established in 2007. This expansion is being funded through incentivisation receipts.

***RCPO's (Revenue and Customs Prosecutions Office) Asset Forfeiture Division.***

In recognition of the increasing importance of asset forfeiture work to its business, last year RCPO decided to increase the size of its capability here and to create a fully-fledged Division dedicated entirely to asset forfeiture work. Established on 1 January 2007, it is responsible for conducting all of RCPO's restraint and receivership casework and, once a confiscation order has been obtained, its enforcement casework. The Division also deals with confiscation casework where it is substantial or complex. The Division advises HMRC and SOCA officers in relation to the conduct of financial investigations. In the first year of AFD's operation, RCPO saw an increase in receipts from enforced confiscation orders from £21.45 million to £24.2 million.

The recovery of assets is not the only benefit of using the Proceeds of Crime Act. Increasingly law enforcement agencies and prosecutors are increasingly appreciating the new money laundering offences in POCA, which provide a powerful tool, easily understood by juries. Not only have the new offences swept away a lot of the anomalies and complications in earlier offences, they can also provide an alternative line of attack against criminals engaged in serious acquisitive crime where the handling of criminal property may sometimes be easier to prove than the underlying criminality.

## Money Laundering Convictions



Source: Office for Criminal Justice Reform

### 2.4: Maximising Efficiency and Understanding the Pipeline

For some partners at least, asset recovery work is already broadly self funding. This is almost unique for a criminal justice intervention. But costs are higher in other parts of the system. We believe they can be driven down by increased efficiency and to generate further capacity. Given the scale of increase in our activity in recent years, it would be very surprising if all parts of the system were operating as efficiently as they could. We believe there should be considerable scope to increase overall efficiency by learning from the performance of the best.

One of the problems up to now in identifying where efficiencies need to be made is the complexity of the assets recovery pipeline, especially where cases follow confiscation and/or civil recovery, often taking several years to investigate, followed by a long trial and a complex enforcement process. It is important that we understand the overall process and what type of asset recovery be it seizure, confiscation or civil action works best in a particular case. This understanding is particularly important for confiscation which, with its current 60% contribution to overall recovery, is a key driver but recent out-turn is showing a downturn in the flow of new orders, the seedcorn of future enforcement.

The Asset Recovery Board has agreed four priority projects aimed at improving our understanding of the pipeline.

#### System Modelling

Over recent years, the police service has secured considerable benefits by detailed modelling and analysis of its processes. In the scene of crime area, for example, modelling helped identify bottlenecks in the process and recommended improvements, many of which were costless, resulting in quicker turn-round times and substantial improvements in performance.

ACPO (Association of Chief Police Officers) and the Home Office are jointly funding and currently tendering for a similar project to analyse the asset recovery pipeline. The work will carry out 'simulation modelling' of the whole pipeline, from initial intelligence, through to investigation, prosecution and enforcement. The work is designed to give us a better understanding of the inputs that support asset recovery, and also of the blockages and leakages. This will in turn inform investment, resource deployment and partnership working arrangements. The first stage of this work should be completed by the autumn.

**Action 4:** Complete by autumn first stage of study to model the asset recovery pipeline

#### Guidance for investigators on best practice ‘doctrine’

ACPO and the National Policing Improvement Agency (NPIA) have produced ‘doctrine guidance’ on financial investigation for police forces. Supported by Home Office funding, this doctrine is now being piloted in 8 diverse Basic Command Units (BCU) across the country. This work will be subject to formal evaluation, and will enable the service to identify good practice and to understand the potential of asset recovery at local level. This project is running over 12 months, and should be completed by September. Subject to the evaluation and findings, the plan is to circulate the project to all forces and BCU commanders.

**Action 5:** Roll out and evaluate new ‘doctrine’ on best practice in asset recovery work at BCU level by autumn 07

#### Investigating ‘attrition’

Analysis suggests the investigation phase is by some way the most expensive part of the asset recovery process, and forces in particular have invested extremely heavily in this area. Given this investment and that of prosecutors in POCA training, it is all the more important that this effort is not wasted through unnecessary ‘attrition’ in the criminal justice system, for example by being strung out by defence tactics, or the values awarded being arbitrarily reduced.

Home Office and Criminal Justice partners are cooperating in a research project looking at the question of attrition in the system. The study aims to identify the extent of the problem within the process of confiscation order investigation, imposition and enforcement. Using a mixture of analysis of the Joint Asset Recovery Database (JARD), considering case studies and interviews with practitioners, the study will examine why and how attrition occurs at key points and what might be done to tackle it.

**Action 6:** Complete by autumn 07 study on reasons for attrition as asset recovery investigations proceed through the system

#### Pursuit of Confiscation Orders in the magistrates’ courts

One possible area of efficiency is the use of magistrates’ courts for confiscation cases. Currently confiscation orders can only be made in the Crown court, and magistrates’ courts have to refer cases up to the Crown court to make a confiscation order. In practice this does not happen, meaning that it is often not practical to pursue confiscation in the courts where the majority of smaller scale acquisitive criminals are actually dealt with.

We legislated in section 97 of the Serious Organised Crime and Policing Act 2005 (SOCPA) to remedy this. Discussions are underway on timescales and practicalities of bringing this provision into force. Given the sort of crimes tried in magistrates’ courts, the size of orders made is unlikely to be large, and there are considerable implications for costs and training. We will want to pilot the new approach before rolling it out nationally, but extending the power to make confiscation orders fits in well with our aspiration to ensure all acquisitive criminals do not continue to benefit from their crime.

**Action 7:** Implement section 97 of SOCPA by Autumn 2008 pilot its operation in selected court areas and monitor the impact on performance

As a result of all of these measures, and the work already completed by CPDB to improve the flow of orders, the Asset Recovery Board should by Autumn have a much better picture of the workings of the pipeline. This will enabled informed decisions on future targets and investment in order to maximise asset recovery activity

### Performance Management Information

Better asset recovery results can only be delivered if the capacity to drive performance is enhanced. The Prime Minister's Delivery Unit's Review of Asset Recovery supported this conclusion. The Review recommended that further work should be done on how to transform the UK's Joint Asset Recovery Database, the current performance measurement mechanism, to achieve this. Work is underway; if funding can be found, the outcome of this project will be a tool that can drive continuous improvement in asset recovery performance, supporting delivery of this Action Plan.

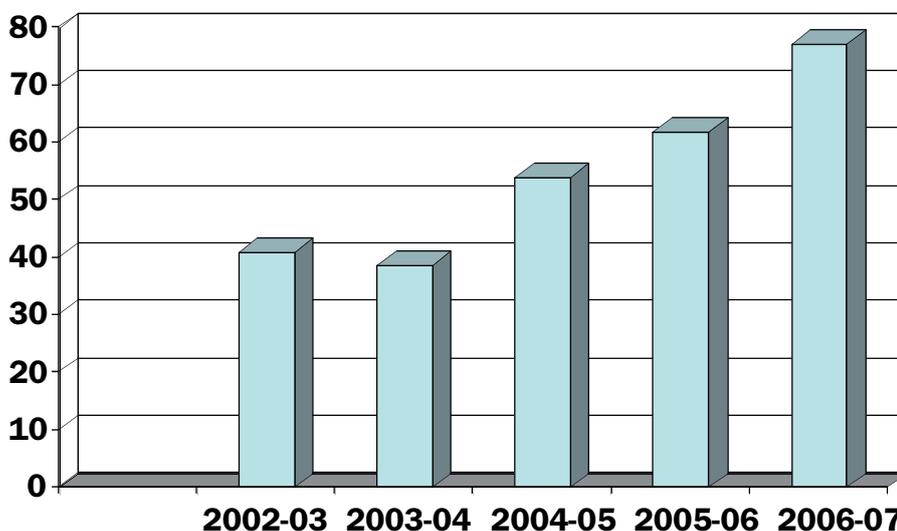
### 2.5: Enforcing Confiscation Orders Better

Because confiscation is the largest driver, historically, the biggest problem in the asset recovery effort has been relatively poor performance on enforcement. The PIU report in 2000 criticised enforcement rates which back then were as low as 40%. As well as being highly inefficient, poor performance on enforcement is damaging to public confidence, and could undermine any deterrent effect that confiscation orders might otherwise have on criminals.

Enforcing court orders properly has been a major theme of criminal justice reform over recent years, and HMCS has established a National Enforcement Service to improve performance. An early focus has been improving fine enforcement, which has improved from 74% in 2002-03 to over 91% now.

Similar effort is being put into increasing the enforcement of confiscation orders through the roll-out of HMCS Regional Centres of Excellence, and early signs suggest a similar level of improvement should be possible. CPDB has been set up to co-ordinate this improved focus on confiscation enforcement and develop co-operation across all contributory Agencies. Out-turn for 2006-07 indicates that it may have exceeded its indicative target.

### Confiscation enforcement performance (£m)



Source: Home Office – confiscation collections from all agencies (excludes Scotland)

Despite that recent growth in performance, it is important further to reduce the backlog of orders. Recovery targets for 2007-08 were set on the basis of both enforcing newly received orders and reducing the backlog. CPDB plans to work with LCJBs to analyse the level of backlog.

**Action 8:** CPDB to draw up and initiate the implementation of a profile-raising Communication Strategy on confiscation enforcement for introduction by Summer 2007

**Action 9:** CPDB to put into operation joint working with Centres of Excellence and LCJBs on analysis of caseload and local action plans by Summer 2007

The legislation helps. POCA provides a considerably more streamlined enforcement process than previous legislation, including shorter time to pay, tougher sanctions for non-payment and an array of new restraint powers. Since then, the Serious Organised Crime and Policing Act 2005 (SOCPA) included specific powers to speed up the civil recovery process. As pre-POCA orders work their way through the system, almost all new orders are now being made under the tougher POCA regime.

Recent legislation has provided those enforcing orders with valuable new tools too. For example, the Financial Reporting Orders in the Serious Organised Crime and Police Act require defendants to provide regular reports on income, assets and expenditure with criminal sanctions for breach. These, combined with better use of the database of Suspicious Activity Reports in SOCA should considerably improve the quality of our financial intelligence on major criminals subject to orders

Given the length of time cases can take to make their way through the system, there are currently two sets of enforcement processes running in parallel; POCA cases and pre-POCA ones.

For the latter, the asset recovery agencies established a special Enforcement Task Force (ETF) to tackle the major backlog of pre-POCA orders. With an investment of around £2m pa, the ETF has delivered over recent years around £30m pa in enforced pre-POCA orders. The ETF pioneered working across the agencies, with seconded financial investigators, prosecutors and staff from enforcement bodies. It is now planned that these will return with their cases to their originating Agencies who will build on the ETF work.

For the POCA orders, changing the legislation on enforcement was important, but will not deliver better performance on its own. Enforcement work in HMCS had historically been under-funded, while the skills of court staff were not always appropriate for dealing with the sort of sophisticated and determined criminals likely to be subject to confiscation orders.

#### **Case study of successful enforcement work: Merseyside**

After a history of poor enforcement performance, Merseyside criminal justice partners cooperated to deliver striking improvements. Measures introduced include; Better communication; co-location of staff, work with the judiciary to introduce specialised monthly confiscation courts presided over by a district judge, training and joint work with the police including 'strike day' operations against defaulters. Amounts collected have increased by over 60%, and considerable inroads made into the backlog of orders, with the rate of outstanding orders down from over 50% in April 2006 to just over 35% now.

While some orders can be dealt with administratively, others will need a lot more effort, including going back to court for additional orders, further financial investigations and enforcement work like searching homes and property and arresting defaulters. There have been impressive examples of this sort of work in action

Co-ordinating this kind of effort is a complex task, and HMCS has noted the lack of critical mass in many of the court areas. They have decided as a result to concentrate future effort in nine Centres of Excellence, one for each court region. All nine will be established in 2007. This expansion is being funded through incentivisation receipts.

As part of the CPDB Action Plan, HMCS is, however, also discussing with ACPO, prosecutors and other partners options for pooling expertise to maximise pressure on defaulters. A pilot in the West Midlands is under consideration.

Co-location is one obvious approach. As well as Regional Asset Recovery Teams (RARTs), ACPO is now developing Regional Intelligence Units (RIU) to coordinate effort against level 2 crime, and address the weaknesses in tackling serious and organised crime identified in Her Majesty's Inspectorate of Constabulary's (HMIC) work on 'protective services'.

In addition to the £8m funding for these RIUs, Home Office has now confirmed that funding will continue for the current five RARTs, with a budget of £8.5m. Home Office, ACPO and Courts Service will look for opportunities to co-locate the Centres of Excellence, RARTs and RIUs, and in any event to ensure maximum cooperation in pursuit of asset recovery work.

Home Office is also working with ACPO to strengthen the governance of RARTs, and introduce stronger central management and coordination to the network, in order to ensure that best practice is shared and performance rises towards that of the strongest.

**Action 10:** Roll out of enforcement Centres of Excellence to be complete in 2007.

**Action 11:** Home Office and ACPO to put in place revised governance and performance arrangements for RARTs by end of Summer 2007.

**Action 12:** CPDB to consider and if feasible facilitate the commencement of a West Midlands pilot in 2007 involving the pooling of experts from HMCS, ACPO as well as prosecutors and other partners to maximise pressure on defaulters.

**Action 13:** CPDB, HMCS, ACPO to explore potential for co-locating and improving coordination between Centres of Excellence, RARTs and Regional Intelligence Units.

All these initiatives should build further on the improvements in enforcement performance we have seen over the last year to eighteen months, with a year on year increase in enforcement receipts of around 25%. Measuring performance in this area is surprisingly complex, however.

It seems straightforward enough to want to measure the proportion of the value of orders made against the value actually enforced, but difficult to do in practice. Enforcement receipts are typically collected some time

after they are imposed, as courts tend to grant longer times to pay, particularly for high value orders. Relatively few defendants pay voluntarily, and the enforcement process is time-consuming.

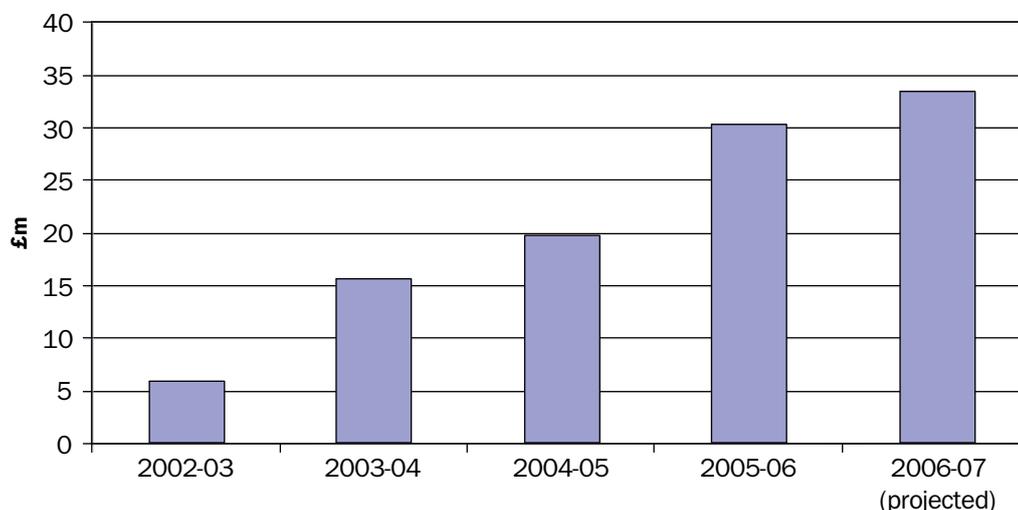
Any performance indicator of value recovered for enforcement can be perversely affected by an unusually high or low number and/or associated value of orders previously made. For 07-08 a new range of indicators was introduced to measure volume and value of orders made (the pipeline feed), numbers of restraint orders (to improve accessibility) and the amount enforced.

**Action 14:** CPDB to monitor the effect of the new 2007-08 targets and consider whether a single realistic measure of their mutual impact on performance can be determined. CPDB to report to the ARB by November 2007

## 2.6: Further exploiting successful areas: Cash Forfeiture

POCA's provisions for the seizure of cash have been a particularly striking success. Criminals are caught in a pincer, with tougher money laundering provisions making it harder to conceal their assets in the financial system, while the POCA seizure powers increase the risk of using cash.

### Cash forfeiture performance



Source: Home Office (Figures for Scotland are not included)

The roll out process for the powers involved putting in place highly effective training and publicity for the police. While this awareness in the abstract is important, nothing can beat word of mouth recommendations from officers who have used the new powers and are overwhelmingly positive about their effectiveness. As a result, cash seizure training is constantly being rolled out into new areas where law enforcement officers may come into contact with criminal cash

### **Police seize over £650,000**

Over £650,000 were seized in January 2007 after traffic officers stopped a man for driving while using his mobile phone.

Police officers pulled a 38-year-old man over in Marylebone Road, Central London, and when he behaved evasively decided to search his Jaguar car.

They found a carrier bag containing over £25,000 in the front passenger seat. As he didn't have a plausible explanation for why he had the money, he was arrested on suspicion of money laundering and taken to Marylebone police station.

Despite providing a false address police traced his home to a farm in Ardley, Hertfordshire. In the early hours of the following morning officers began a search of the address and discovered a suitcase containing approximately £500,000 hidden in a locked upstairs bedroom.

A 30-year-old woman and a 24-year-old man who also lived at the address, were arrested on suspicion of money laundering and taken to Hertford police station. The traffic officers called out specialist detectives from the Met's Money Laundering Team who have taken on the investigation.

Further searches found shoeboxes of cash hidden in the rafters of the roof alongside high value jewellery and two ounces of cannabis resin.

All three people were bailed pending further investigations.

There are still plenty of areas of law enforcement where knowledge of these powers is sketchy. The merger of the Centre of Excellence, currently in the Assets Recovery Agency, into the National Policing Improvement Agency will do more to mainstream knowledge of POCA powers into police training. In addition, we are currently legislating to extend cash seizure powers to immigration officers and to accredited financial investigators. We expect this to increase considerably the reach of these powers. Cash seizure powers are likely to be of particular value to the over 800 Border and Immigration Agency staff working in enforcement.

**Action 15:** NPIA to take on Centre of Excellence (CoEs) by April 2008 (subject to passage of Bill).

**Action 16:** Roll out of training and accreditation for new groups being given cash seizure power as soon as possible after enactment of Serious Crime Bill – planned for April 2008

## **2.7: Strengthen civil recovery**

The most radical new powers outlined in the Proceeds of Crime Act were the new civil recovery provisions, vested in the Director of the Assets Recovery Agency. Under these, the Director may apply to the High Court to forfeit assets which the court, acting to the civil standard, finds were obtained by criminal conduct. POCA,

Chapter 2:  
**How will we get to £250m?**

as amended by SOCPA, also includes considerable powers for the Director to restrain and freeze assets and appoint receivers. Similar arrangements were introduced for Scotland.

The Serious Crime Bill , now before Parliament, includes provisions to merge most functions of the Assets Recovery Agency into the Serious Organised Crime Agency. The Bill will also, however, enable prosecutors to exercise civil recovery powers currently reserved to the Director of ARA. These provisions have been supported during consideration of the Bill in the House of Lords.

The purpose of this merger is to build on the successes ARA has secured and give additional momentum to the use of the civil recovery powers in POCA. The recent National Audit Office report into ARA identified some areas where the process for pursuing civil recovery claims could be improved, and action in this area is in hand. But the report also recognised that ARA has defeated all legal challenges to the civil recovery provisions, and has established a healthy pipeline of cases. ARA has also exceeded targets on restrained assets and organisations disrupted, while in 2006-07 it exceeded its minimum targets for recovery. Not least through the Centre of Excellence, ARA has also played a vital role in raising the profile of asset recovery and the skills of the financial investigator community.

In 2005, Mr Dylan Creaven stood trial for VAT fraud following an investigation by HM Revenue and Customs into allegations that he played a principal part in an international missing trader VAT fraud through his computer chip business in the Republic of Ireland.

Following a subsequent investigation and civil recovery litigation by ARA, with similar litigation by the Criminal Assets Bureau (CAB) in the Republic of Ireland, the ARA lawyers were successful last year in obtaining a freezing order over Mr Creaven's assets.

Having been presented with the evidence compiled by ARA and CAB, Mr Creaven agreed to pay £18-19m in cash and property, including a luxury home in Marbella, Spain, and four racehorses. Just over £12m went to the Agency with £6m to the CAB.

We are convinced that the merger will increase the impetus behind civil recovery work. The Centre of Excellence on Financial Investigation will be incorporated into the new National Policing Improvement Agency, ensuring that the work ARA began on mainstreaming asset recovery in law enforcement will be driven forward by the agency with lead responsibility for police training and modernisation. At the same time NPIA will continue to provide services for non policing agencies involved in asset recovery and financial investigation.

Meanwhile, the merger with SOCA will have considerable benefits. First, the combined agency will benefit from economies of scale. More importantly, we expect major synergies from bringing together experts in civil recovery with the growing team of financial investigators in SOCA. Investigation and development of cases will benefit from access to SOCA's technical resources and wider investigatory powers, as well as full access to the formidable financial intelligence tools, notably the database of Suspicious Activity Reports.

SOCA will continue both to generate its own cases for civil recovery work and to take on cases from local forces, focusing on reducing the harm that individuals cause. In addition to the merger, however, the Bill also extends civil recovery powers to the main prosecutors in England, Wales and Northern Ireland, namely Crown Prosecution Service (CPS), RCPO, Serious Fraud Office (SFO) and Public Prosecution Service for Northern

Ireland (PPSNI). This will give local forces for the first time a choice; either to refer cases to the civil recovery experts now in SOCA, or to pursue them directly in partnership with prosecutors.

The provisions of the Bill therefore take to the next level the process of rolling out awareness of, and access to, the powerful new tools in POCA. We are confident that the merger will give new impetus to the civil recovery effort, and ensure it makes a substantial contribution to meeting the £250m target.

## 2.8: International Recovery

The more we tighten up our asset recovery powers in the UK, the bigger the risks that criminals will seek to hide their assets abroad. To prevent this, the UK needs to work with other countries to ensure collaboration in asset recovery work.

First, the UK wants to raise the profile of asset recovery work among our partners. We will have the opportunity to do so during the UK's Presidency of the Financial Action Task Force (FATF), which begins in July 2007.

We will also be looking at ways of encouraging cooperation in individual operations. This could take the form of memoranda of understanding, right up to full asset sharing agreements. The latter have proved very successful at encouraging cooperation in cases where the intelligence needed to make a case is in one jurisdiction, but the assets themselves are in another.

The UK can already reach *ad hoc* arrangements in individual cases to split assets with partners overseas, and has done so several times. In practice, however, formal asset sharing agreements appear to do more to encourage confidence. We already have agreements in place with the USA, Canada and Jamaica. These agreements are usually highly flexible, allowing receipts to be divided to reflect the relative contribution made by the partner agencies. Officials are currently agreeing a priority list of other countries to secure such agreements with.

Asset Recovery will deter foreign criminals from using the UK financial system. The UK is actively pursuing the proceeds of international corruption in this country.

We have made a good start. Through the efforts of the Metropolitan Police there are currently several million pounds of assets under restraint which are suspected of being the proceeds of corruption in Nigeria. This police activity is funded by the Department for International Development. The Serious Organised Crime Agency has established new structures to ensure that the intelligence from SARs is effectively prioritised and this is beginning to improve the UK efforts to address the money laundering threat posed by Politically Exposed Persons (PEPs). PEPs are individuals whose prominent position in public life gives them opportunities for profiting from corruption.

The Government will repatriate all state assets recovered in the UK from corrupt activity by Politically Exposed Persons (PEPs). We will not seek to keep any of these assets in the UK, apart from the usual deduction of reasonable expenses.

**Action 17:** agree priority list of country for negotiating asset sharing agreements by March 08. Aim to have new agreements in place by March 09

### **2.9: Asset Recovery in Northern Ireland**

This action plan sets out targets covering both England and Wales and Northern Ireland. Nowhere has the arrival of new powers to recover criminal assets been more welcomed and had a more dramatic impact on public confidence than in Northern Ireland, as part of the overall drive to reduce the harm caused by organised crime.

The provisions in this plan should also have a major impact in Northern Ireland. Of most importance is the plan to merge ARA into SOCA. We are confident that this will enable us to increase the use of civil recovery powers against criminals at all levels in Northern Ireland.

The Northern Ireland Office (NIO), in partnership with the Organised Crime Task Force (OCTF), intends to provide a separate asset recovery action plan for Northern Ireland. For 2007-08 this will set out a series of action points to be taken forward over the period, which will be published in parallel with this plan. For subsequent years, to coincide with the merger of SOCA and ARA and the enactment of the Serious Crime Bill, the plan will be more detailed and contain objectives and targets against which performance can be measured.

**Action 18:** NIO and OCTF to produce NI specific action plan: plan with high level aims for 2007-08 and detailed plan for 2008-09 by spring 2008.

## Chapter 3:

# New powers to help us to £250m and beyond

We believe the actions described above should get us to the £250m target. Realistically, given the long lead times for legislation, its implementation and then the development of new asset recovery cases, our performance in 2009-10 will mainly be driven by the powers we have now, and the cases we develop over the next year or so. We do, however, keep the legislation constantly under review, and have identified a number of areas where further improvements can be made to strengthen powers and streamline the system. We would be interested in views on these.

### 3.1: The confiscation process

There is still more that can be done to ensure the process of assessing criminal benefits and confiscation orders is fully joined up across Government.

There are already gateways to ensure that those carrying out financial investigations for the court receive the necessary information on tax and benefits. We are continuing to work with colleagues in HMRC and Department for Work and Pensions (DWP) to ensure these gateways work smoothly. But we also need to put in place a process to ensure relevant information is being passed back.

While section 18 of POCA makes it clear that information provided by the defendant as a result of a court order cannot be used in any criminal proceedings against him, the same does not apply to information provided in a defence statement under section 17. We should make it clear through guidance, or legislative change if necessary, that all information provided by the defendant under section 17 will be passed on to the tax and benefits authorities for further action if necessary. If the defendant seeks to argue assets are not criminal benefits, but the result of legitimate earnings, they will lay themselves open to criminal proceedings if these earnings have not previously been declared for tax and benefits. If the defendant does not then choose to exercise his rights under section 17, the court is entitled to treat him as having accepted the claims made by the prosecutor.

**Consultation question 1:** Do you agree with proposals to increase routine data sharing of information about defendants' finances?

### 3.2: Enforcement

We think there is scope to streamline the enforcement process still further. The Proceeds of Crime Act, as amended, includes a range of powerful tools to obtain financial intelligence, seize and restrain assets as well as secure confiscation orders. But those responsible for enforcing orders are still facing limited options when dealing with defendants who are determined to resist pressure to pay up.

Unlike for civil proceedings, where the court targets specific property as being the proceeds of 'unlawful conduct', for confiscation orders the general principle in POCA is that the defendant has to make the payment in full, but is free to do so with any assets he or she chooses. There are, of course, penalties for non-payment, including additional prison sentences. If money has been restrained or seized under Police and Criminal Evidence Act (PACE) and the time to pay expires, section 67 of POCA allows the money to be taken to pay the order. In the case of other property, POCA allows the appointment of an 'enforcement receiver' to dispose of the assets with proceeds going to meet the order.

This still leaves gaps, however. Appointing an enforcement receiver is appropriate when the assets require management, for example a business. But it seems a cumbersome and unnecessarily expensive process in cases where the assets are already under restraint or even physically in the possession of the authorities. One option

would be to create a new power automatically transferring title in any asset which is under restraint or in the possession of the public authorities once the time to pay for a confiscation order has expired. The power might specify that all of the defendant's title passed to the Crown, enabling third parties with any interest in the same property to continue to pursue their claim.

**Consultation question 2:** Do you agree with the idea of enabling automatic transfer of title in goods under restraint or in the possession of law enforcement once time to pay has expired?

If this approach were adopted, we would expect to see much faster enforcement of orders where there are associated restrained assets. This would increase further the incentive on asset recovery partners to bring criminals' assets under restraint or under their control before the defendant has a chance to disperse them. We already have ambitious targets in place to extend the use of court restraint orders. These are most effective against financial assets and property. While they are also used against high value goods, they can in these cases be much harder to enforce.

One option would be to clarify the law, legislating if necessary, to make it clear that law enforcement could seize high value goods of those offenders charged with acquisitive crimes, whether or not the specific goods are required as evidence for the criminal investigation. These assets could then be held pending the trial and sold off if necessary to meet the value of any order, using the powers proposed above. We would need to provide guidance to ensure only non-essential goods could be seized, and individuals would be able to redeem the goods by putting an equivalent bond in place. There would also need to be provisions for compensation in cases where the charged person is not ultimately convicted of an offence and where specific loss can be claimed (not merely normal processes like depreciation).

These seizure powers would in effect replicate the effect of restraint powers for those goods which are more easily dispersed, or which might not in themselves justify the expense of restraint proceedings. There might be criticism of a power to seize goods without court process. But the power would only be used in cases where an individual had already been charged with an acquisitive crime and where a confiscation process is pending. Pre-emptive seizure of this sort serves the same purpose as the seizure of evidence for PACE purposes, or indeed the ability to remand individuals in custody pending trial, if it is thought the individual is likely to flee the jurisdiction. The ultimate power to impose an order would remain with the courts. Finally the seizure power would also provide a visible sign, early in the case, of society's determination that nobody should be allowed to remain in possession of the proceeds of their crime.

**Consultation question 3:** Do you agree with the idea of a power to seize goods pending a confiscation process once an individual has been charged with an acquisitive crime?

Another option which will be looked at is contracting out the enforcement of unpaid orders, though it is worth noting that early pilots of this on fines and uncollected child support payments have not delivered significantly better performance than in-house working. There may, however, be specialist niche areas where debt collection agencies or others have valuable skills to contribute.

### 3.3: Streamlining Cash Seizure and Forfeiture Powers

The process for forfeiting seized cash is arguably unnecessarily bureaucratic, with a requirement for all orders to be made in the Magistrates' courts whether or not the seizure is contested. In practice, a significant proportion, and probably the majority, of police cash seizures are uncontested costing considerable time in preparing cases, wasting court time and creating delays while hearings are arranged. As the number of orders increases, driven by increasing efforts to recover the proceeds of crime, this will put increasing pressure on the courts.

One option would be to introduce a new process of administrative forfeiture for cash seizures. Basically, this would mean that cash would be automatically forfeited without further process unless the owner challenged the seizure, at which point a court hearing would be needed. The new process might comprise

- The seizing agency or prosecutor notifies interested parties in writing that the assets have been seized as suspected proceeds of crime, and places a public notification (probably on the internet or in local media).
- If the seizure is not contested, then an administrative forfeiture order is applied. If the seizure is contested, then the case moves to the courts for a judicial forfeiture order.

There is some precedent for this sort of power. Goods seized under PACE for evidence purposes and not reclaimed may be sold off under the Police Property Regulations or under Schedule 3 of the Custom and Excise Management Act 1979.

US experience suggests that a substantial proportion of defendants, often in the highest value cases, do not seek to recover their assets. We would also want to make it clear that any statements justifying retention of assets will be shared with tax and benefit authorities and compared with any previous statement the defendants might have made to public authorities about their financial position.

**Consultation question 4:** Do you agree with the proposal to introduce a process for administrative forfeiture of cash seizures?

In the longer run, law enforcement are concerned that criminals will begin to shift towards near cash substitutes, for example e-money, or tradeable high value goods like gold or precious stones. We are keeping these trends under close review. Under POCA we have power by order to specify other forms of monetary instruments to be treated in the same way as cash. Extending the definition of cash beyond monetary instruments to devices like e-payments systems or precious metals would, however, require primary legislation.

There are obvious attractions to introducing a power of this sort. One possible complication is how to apply the current value threshold when dealing with jewellery that hasn't been valued, or e payment systems, where the seizing official is unlikely to know when seizing an e-money card how much value, if any, it represents. On the other hand, seizing officers are not always sure of the total value of seized cash either until it has been counted, so this problem may not be insuperable.

**Consultation question 5:** What are your views on extending cash seizure powers to cover precious metals and other payment mechanisms?

### 3.4: Strengthening Civil Recovery

The civil recovery regime has survived legal challenge, but the Assets Recovery Agency's experience in the courts, and while exercising its powers, have identified some areas where the underlying powers could be improved.

Options for change include looking at the POCA wording allowing the civil recovery of "property obtained by unlawful conduct". This allows defendants to argue that it applies only to properties that have been *obtained* rather than *retained*. For example, if the defendant has evaded substantial quantities of tax, their property may not have been obtained directly by crime, but it has been retained – in that it would otherwise have been sold to pay taxes which are due.

We think this area needs to be looked at. One options might be to include a reference to 'retained' assets, another might be to allow civil recovery action against "assets obtained by *or in connection with* unlawful conduct". This reflects wording in similar legislation in Ireland, Australia, Canada, New Zealand, South Africa and the USA.

**Consultation question 6:** Do you agree with widening the category of assets liable to civil recovery?

Civil recovery is currently subject to a 12 year time limit, and it has been suggested that this prevents successful action against criminals who made their money longer ago than that, including some figures of particular public notoriety.

Twelve years reflects one of the longest time limits in the civil law, although time limits for fraudulent tax claims are longer. There may be a case for arguing that the public interest demands a different presumption in the case of assets secured through crime, including possibly removing the time limit altogether.

**Consultation question 7:** What do you think of extending the time limit within which civil asset recovery actions can be launched?

Whatever the limits and the legal framework, proving the criminal origin of property is an expensive and time consuming business, particularly as criminals wake up to the threat the POCA regime poses. While courts have worked hard to list civil recovery cases in a timely manner, defendants have been successful in using tactics to delay cases for as long as possible. We will continue to work with ARA and the judiciary to identify what more can be done to speed the process of cases through the system, including the option of introducing time limits.

## Chapter 4: Creating a step change

If implemented, we are confident that these measures should get us beyond the ambitious target of £250m by 2009-10, and in the years ahead. But the measures still amount to improvements on the margins. We could achieve these targets, we could ensure that the financial risks facing serious acquisitive criminals are increased considerably, without altering the problem that asset recovery still impacts only on a tiny proportion of defendants.

At present, asset recovery activity tends to be focused on a small group of crime types, notably drug offences. Confiscation orders are secured in fewer than 1% of all acquisitive crime cases. The majority of orders are secured in drugs cases, and even on purely financial crimes like fraud, performance in recovering criminal assets is weak. Of course, a very high proportion of acquisitive crime cases would not be suitable for asset recovery action with very limited prospects of recovering assets. For example, it has been estimated that about half of all acquisitive crime is associated with drug addiction. Nevertheless, there is clear room for improvements in the expansion of asset recovery action.

Prosecutors and law enforcement are working hard to address this problem. They have, for example, recently introduced a new form, MG17, to ensure that prosecutors and investigators have fully considered asset recovery as an option in all cases of acquisitive crime.

**Action 19:** CPDB to draw up a strategy by March 2008 on supporting training and business culture change to ensure confiscation becomes automatic to the criminal justice process.

Asset recovery remains, however, very much a minority speciality amongst the judiciary, and is still not seen as a core part of Criminal Justice System work in England and Wales. The five principles of sentencing in Criminal Justice Act 2003 (punishment, reduction of crime, rehabilitation and reform, public protection and reparation) do not specifically include or necessarily require the 'disgorgement' of criminal gains.

Thinking on reparation has come a long way in recent years. In addition to focusing on specific victims, Government has sought to use sentencing to improve the treatment of victims generally, for example through the surcharge on those convicted provided for under the Domestic Violence, Crime and Victims Act 2004, with the proceeds going to the general provision of services to victims. The Act generally applies to England and Wales, with some applicability to Northern Ireland.

While the principle of 'reparation' would logically seem to encourage compensation orders to victims, this is far from happening routinely, while there is nothing in the sentencing principles to mandate the use of asset recovery powers whenever possible. As a result, there is a risk that asset recovery can be seen as an unfair second punishment, or a tiresome and complicated distraction.

### 4.1: A new principle of sentencing?

We think depriving criminals of their illicit gains is such a basic point of justice and fairness that it should be enshrined as a principle of sentencing. This would help send all practitioners in the criminal justice system the message that one of the system's fundamental purposes should be to ensure nobody should leave the system still in possession of the benefits of his or her crime.

This principle builds on, and could replace or sit alongside the current principle of 'reparation'. It sits well with the new approach to regulatory sanctions outlined in the Macrory review, with its principle that

regulators should ensure that regulated bodies are not allowed to retain benefits which have accrued as a result of breaking the law.

**Consultation question 8:** Do you agree with creating a new principle of sentencing that all criminal gains should be removed?

#### 4.2: Possible new ‘Criminal Benefits Order’ (CBOs) to implement this?

The practical implications of the new principle would be a major increase in asset recovery work, with proceeds being removed either to compensate victims or to be paid to the State.

In practice, this simply reinforces the existing policy, which is to roll out the use of POCA powers as much as possible.

There are clear public confidence reasons for rolling out financial investigations well beyond the relatively narrow categories of cases in which it is currently routine. But we need to examine the scope for a simplified process in lower value cases. While asset recovery work is not intended to be a revenue raising process, like any tool, law enforcement will need to consider the relative costs and benefits before using it.

Home Office estimate the current average full cost of a POCA confiscation order for police, prosecutors and enforcement is at least £15,000, over and above the cost of investigating the predicate offence. Even low value orders might still cost £7,500 (though this lower figure is something of a guess).

Some argue that these costs reflect a process that is perfectly appropriate for dealing with complex drug and fraud cases, which generally require detailed financial investigations both into the proceeds associated with the crime and the financial status of the defendant. This full scale POCA financial investigation process might not be practical for some simpler cases of acquisitive crime, however.

If asset recovery is to be extended and mainstreamed into volume acquisitive crime, we may need radically to streamline the process. We are already planning to implement the provisions in section 97 SOCPA which enable confiscation hearings to be held in magistrates’ courts (See above). But that might not be enough.

It might be possible to use the current POCA powers in a simplified manner, presenting courts with an application focusing simply on the gains made as a result of the crimes for which the defendant had been convicted, rather than seeking to do full a full financial investigation. If we can adapt existing powers to deal with much smaller value orders, this would have major advantages, as we do not want to create unnecessary duplication.

An alternative approach would, however, be to create a new ‘Criminal Benefits Order’ for these cases. This might be applied by a magistrate or judge up to a value of £10k, which would cover 70%+ of all confiscation orders. The order would be set simply assessing the benefit from the criminality for which the defendant has been convicted. When there is a victim, the order should be paid to him or her, when not (eg counterfeiting), payment should be made to the State.

**Consultation question 9:** Do you think current POCA provisions can be adapted to deal with simple low value orders, or do you believe there is a case for a separate Criminal Benefits Order in these cases?

Confiscating assets in low value cases will not always be a feasible option, with some defendants patently unable to pay. In many cases, payment would need to be secured through attachments of earnings or benefits. Currently of the 1 million or so fines imposed annually, about 30,000 have an 'attachment of earnings order'. In these cases, deductions are made at source by the employer, with the money sent directly to the court.

In addition, there are currently a further 60,000 active Deduction from Benefit Orders, where DWP again deducts payments at source and passes the money to the court.

It is not easy to estimate what proportion of defendants might be unable to pay, though it is likely to be substantial, given the number of acquisitive crimes committed to fund a drug habit. None of this takes away from the importance of this new principle of sentencing. Clearly there is only any case for needing to remove criminal benefits when there is evidence that the defendant still possesses the proceeds of his crime.

This new principle of sentencing would highlight the distinction between confiscation orders and the new CBOs on the one hand, and fines on the other. Asset recovery action is simply designed to restore the position before the criminal benefit was made. Sentences, community orders and fines can then be imposed as part of the sentence 'proper'. More work would need to be done on the relative claims of fines, compensation orders and confiscation / criminal benefit orders when there are not enough assets to go round.

#### **4.3: Better compensation for victims**

We have been criticised for focusing our performance regime solely on receipts to Government, with targets that do not cover payments to compensate victims, which should be at least as high a priority. In practice, we have been careful to ensure that individual agencies' targets scored performance both on confiscation orders and compensation orders to victims.

Nonetheless, the Government recognises there is some strength to the criticism, and we are looking to move to a broader target that recognises other ways of depriving criminals of their assets. These additional activities are reflected in our longer term aspiration to move from a £250m receipts target in 2009-10 to a broader target of identifying criminal assets of £1b in the longer term and depriving criminals of access to them.

Of all the areas not well covered by the £250m target, compensation to victims is by far the most important.

Home Office figures from 2005 suggest that compensation is awarded in only 27% of all fraud cases, with as few as 11% in the more serious cases in the Crown Court. POCA has improved the process for awarding compensation, and this figure ought to improve in future. But we are still a long way from the 100% of fraud cases where the public would expect to see victim compensation being considered and delivered if at all possible.

Compensation will not be possible in all cases. For some the only identifiable victim will be the markets or the UK economy as a whole; in others large companies may not seek compensation, or will be pursuing alternative civil remedies. If the victim has been in some way complicit in the offending, this will affect the court's

Chapter 4:  
**Creating a step change**

willingness to award compensation. Compensation cannot be paid if the defendant has no visible means. All these caveats aside, there is still clearly a lot to do to improve services for victims.

In the past, getting compensation orders made was difficult. In particular, courts frequently required a specific link to be proved between the fraud and given assets of the defendant before compensation orders could be made. This was often a high hurdle. Some of these older cases are still making their way through the system. But in general, the provisions of the Proceeds of Crime Act have simplified things considerably.

The Proceeds of Crime Act allows orders to be made to the level of the criminal benefit determined, with no need to prove a link between any particular asset and the crime. The court can then order that compensation be paid to victims from the amount confiscated.

For a victim to be able to receive such compensation, their case must either have been included on the indictment, or on a list of other cases to be taken into consideration (tic). This can cause problems where specimen charges had been brought. Forces are working closely with the CPS to ensure that compensation orders are applied for in all cases, and that victims whose cases are not included on the indictment are covered by the list of offences to be taken into consideration.

Problems remain, however. Adding offences to be taken into consideration only works if the defendant agrees. Even then, prosecutors and judges may be understandably be reluctant to add yet more complexity to cases that might already have taken a considerable time.

Sections 17-21 of the Domestic Violence, Crime and Victims Act 2004 (DVCVA) may help here. These provisions, which came into effect on 8 January 2007, allow two-stage trials with specimen charges being proved before a jury and then the remaining charges being proved before a judge sitting alone. This is a major step forward which may help in some of the most complex fraud and money laundering cases, and will enable a wider range of victims' cases to be entered onto the charge sheet, whether or not the defendant agrees.

The Government's Fraud Review published in July 2006<sup>4</sup> looked at the area of compensating victims. It examined some options which went even further than the provisions of the DVCVA, recommending that the range of non-custodial sentences available to the Crown Court following conviction for a fraud offence should be extended by adding, amongst other things, a power to award compensation to all victims, whether or not their loss was the subject of a specific charge, or an offence taken into consideration.

The Fraud Review considered that the judge would need to make a specific ruling on this point, and would need to hear further evidence about victims not mentioned on the indictment post conviction. The Fraud Review also recommended a co-ordinating mechanism (the rationale behind the "Financial Court" recommendations) to ensure that civil, criminal and regulatory proceedings were taken in the best order. Both of these recommendations would require legislation, although the experience of the police suggests there could also be significant benefits from using existing powers more effectively.

An alternative approach might be for judges to remit the detailed decision on compensation to the lead enforcement agency which brought the case. This partly reflects the approach in the US, where the Securities and Exchange Commission (SEC) is responsible in some cases for reimbursing victims out the proceeds of fines or 'disgorgement' of assets it has levied. In some jurisdictions, this role is carried out by the tax authorities.

---

4 Fraud Review Final Report, published 24 July 2006. Available on [www.attorneygeneral.gov.uk](http://www.attorneygeneral.gov.uk).

This approach would clearly reduce the burden on court time, if potentially at the cost of transparency.

**Action 20:** We will work with the Fraud Review’s programme board, prosecutors and other practitioners to identify the best way forward in expanding the range of victims receiving compensation

Driving up our performance on compensation is a priority, but current data is so poor it would not be realistic to set a target at present. The Asset Recovery Board will look to agree a baseline and metrics for a future target by March 2008.

**Action 21:** Asset Recovery Board to agree a baseline figure and a performance regime for compensation by March 2008

#### 4.4: Extending the use of powers to seize on the civil standard of proof

Under POCA, law enforcement can seize suspect cash and apply for its forfeiture in the courts to the civil standard of proof. The Director of ARA can also seize criminal assets to the same standard. A similar process exists for Scotland. These powers have been highly successful in demonstrating that no criminals can be beyond the law.

On 13 December 2006 at Sutton Magistrates Court, **Sutton Police** were successful in forfeiting £51,400 in cash and were also awarded costs of £10,461 in their favour. Within a few minutes of starting a training exercise to check passengers at Sutton train station a man was immediately identified as suspicious by drugs dog ‘Tosh’. Police discovered that the man’s rucksack contained £51,400 in cash. He was arrested on suspicion of carrying the proceeds of drugs trafficking. Further investigations found new evidence that strongly suggested the money had been in direct contact with heroin. A civil case followed brought by the Metropolitan Police for forfeiture of the money under the Proceeds of Crime Act 2002. **DC Mike Smith, of Sutton’s Financial Investigation Team**, said: “We lost the criminal case but because of the civil recovery aspect, we were able to still hang on to the cash.”

There may be a case for extending this principle into new areas. One possibility would be to allow law enforcement to seize moveable non-cash assets that are suspected of being both the proceeds and instrumentalities of crime (ie help make crime possible) perhaps up to a certain value threshold (e.g. £100,000). The legal basis for this would be the same as for cash seizure: “reasonable grounds to suspect it is recoverable”.

As with cash, non-cash assets would then be forfeited by order in the Magistrates’ courts on the civil standard of proof. The main sort of assets covered would be vehicles. At present, the impact of seizing £2000 in tainted cash from a notorious local drug dealer is blunted if the individual is able to drive off to commit further crimes in his £30,000 car.

There is some precedent for more limited versions of this power. HMRC officers have powers to forfeit conveyances that have been used to smuggle contraband, even if no prosecution is pursued. The power to seize vehicles etc could apply when they were being used for a range of criminal purposes, including the transport of

criminal cash. All defendants would have the right to appeal the seizure to the court, which as a public authority for Human Rights Act purposes would be able to rule on the proportionality of law enforcement's actions.

**Consultation question 10:** Do you agree with creating a new power to seize on the civil standard high value goods which have been the instrumentalities of crime?

A more radical option would be to extend this new power to all non cash assets up to a similar value threshold. As well as cash, cash substitutes and instrumentalities, this would also bring into scope 'lifestyle property' such as jewellery, plasma TVs, laptops etc. While this would be a highly powerful tool against bad criminal role models, it would clearly increase the risk of human rights challenge. We would also need to consider issues of overlap with the general civil recovery powers in POCA.

**Consultation question 11:** What do you think of extending the new power further to cover all high value goods thought to be the proceeds of crime?

#### **4.5: More Use of Tax Powers**

The PIU report identified tax powers as another highly promising but under-used tool against criminal wealth. In Ireland, tax provides more than 80% of the total receipts of the Criminal Assets Bureau (CAB). There is definitely scope for tax to play a greater role than it does at present.

POCA sought to address this by giving tax raising powers to ARA. It also introduced for the first time the ability to tax income whose source could not be determined, although ARA is required to establish that the income or gain arose from a trade or vocation. ARA has used tax powers particularly in Northern Ireland, but also in England, Wales and Scotland. However, criminal asset recovery by way of taxation remains low.

The Serious Crime Bill transfers this ARA power to SOCA. HMRC and Home Office have however agreed to conduct a fundamental review into the use of tax powers against crime. This review is to report by March 2008, but with many key recommendations expected by September 2007. The purpose of the review is to decide how best to ramp up the current effort, decide on whether to concentrate the effort on taxing criminals in HMRC, SOCA or both, and assess the need for legislative changes.

At present, ARA has the ability to levy tax on a slightly broader range of income than HMRC, though ARA has no power to prosecute, and lacks some other HMRC powers, for example search and seizure. In addition, ARA's capacity has been fairly limited given its size.

Some early, high profile tax prosecutions against organised criminals could send a powerful signal. HMRC is currently working with RCPO and other prosecutors to produce guidance to forces and prosecutors on procedures for agreeing and running tax investigations and prosecutions.

The criminal economy undoubtedly makes a substantial contribution to the overall tax gap. Little of the estimated £15b turnover of organised crime will have passed through the legitimate economy and been liable to tax. In the records of Suspicious Activity Reports, we have a potentially invaluable tool for tracking transactions which give rise to suspicions of crime, and are also highly likely to be non tax compliant.

One review suggested Suspicious Activity Reports made to SOCA have a median value of £10k, and a mean of £36k (see footnote 2). If this holds true across the 200k reports filed annually, we may be talking about £5b of transactions in total. Some may be double counted, and some are legitimate. Relatively simple cross checks have suggested good grounds for suspicion in up to 40% of cases. HMRC, SOCA and Home Office are considering a pilot study of SARs to test the validity of this assumption.

The tax review will also be looking at the case for changes in tax law. POCA gave ARA the power to claim tax on income where they cannot determine an exact source of income (a power that is not available to HMRC). However, there is still a requirement to specify a tax charging provision (e.g. rent, interest, trade) in order to issue a tax assessment – this complicates and slows down tax cases.

The HMRC/HO review will work with law enforcement and prosecutors to look at the case for introducing ARA style powers to tax for ‘no source’ income to HMRC. In addition, it may be worth considering introducing a specific tax provision for all criminal income to be charged to. This would replicate the model used in Ireland, where they have a “miscellaneous income” provision to cover unknown and illegal income. ARA believe that this would be the single most beneficial change that could be made to tax assessing powers.

**Consultation question 12:** What do you think of proposals to extend the basis on which tax can be levied on criminals, taking in both no source and ‘miscellaneous’ income?

**Action 22:** HMRC/HO/Prosecutors/SOCA/ARA to complete review of criminal use of tax by March 2008, with many key recommendations made by September 2007

#### 4.6: Enlisting the Citizen to combat Fraud

This action plan seeks to deliver a key principle that all law breakers should be deprived of the proceeds of their criminality.

Currently, the main way proposed to implement this is through the action of the authorities, whether regulators, law enforcement or the criminal justice system. A more radical approach would involve extending these powers to general citizens. One way this is delivered elsewhere is the ‘qui tam’ approach embodied in the US False Claims Acts (FCA)<sup>5</sup>

The Qui Tam provisions in the False Claims Act enable anyone who becomes aware of a past (within certain time limits) or present fraud against the US Government to launch a case on the Government’s behalf. The Government may then choose to intervene on one or more counts (which means the Government takes over the case, although it will continue to work with the whistleblower as necessary). If successful the Government can secure as much as triple damages, the whistle blower secures a share – typically between 15–25% if the government intervenes and 25–30 % of the proceeds where the government declines to intervene. Qui Tam also provides for the recovery of a penalty of between \$5,500 and \$11,000 per fraudulent claim.

---

5 ‘Qui tam’ is a shortening of the Latin phrase ‘Qui tam pro domino rege quam pro se ipso in hoc parte sequitur’, meaning ‘he who sues on behalf of the king as well as for himself’

## Chapter 4: Creating a step change

These provisions have been strikingly successful, particularly in the defence and healthcare sectors, with many billions of dollars raised annually. A law dating back to 1790 authorised private citizens to sue on behalf of the Federal Government but the statute in use today was passed in 1863 as a response to damaging fraud by Union Army suppliers. The FCA was amended in 1943 to tackle parasitic lawsuits where cases were brought on the strength of information already known to the Government. Those amendments prevented the use of information already in the Government's possession and lowered the reward for whistleblowers.

Subsequently very few Qui Tam actions were filed until the FCA was further revised in 1986 making it easier for whistleblowers to initiate Qui Tam actions, although a public disclosure bar is in place which prevents a case being brought the strength of information already in the public domain (the public disclosure bar is the cause of most litigation around Qui Tam actions). Most Qui Tam cases are brought in relation to healthcare and defence procurement.

Since the 1986 amendments Qui Tam actions have increased as a proportion of all FCA cases. There have been over 5,000 actions leading to \$11bn being awarded in judgements, of which over \$10bn has come from cases in which the government has intervened (The Government intervenes in only around 20%–25% of cases it reviews). Whistleblowers have received nearly \$1.8bn in awards, \$1.7bn of which has come from cases in which the Government intervened. Whistleblowers are typically represented by law firms working on a contingency basis.

FCA recoveries far exceed the cost of prosecuting fraud – it has been estimated that for every dollar the federal government invests in investigating and prosecuting these case, it receives \$15 back.

The US Department of Justice believes that the False Claims Act and Qui Tam is an unarguable success bringing a high level of financial recovery and providing the Government with valuable information leading to cases that might otherwise not have been brought. It also believes that Qui Tam acts as a deterrent for industry, including by reducing trust between conspirators (although this is unquantifiable) and an incentive for companies to maintain compliance (a substantial compliance industry has grown up beside Qui Tam), or even to voluntarily disclose fraud or mistakes (thereby reducing the level of penalties and fines which may be imposed).

It also provides an incentive for whistleblowers, who are protected under the False Claims Act, to initiate cases against powerful companies.

Clearly the qui tam provisions of FCA are embedded in a very different US historical, legal and cultural context. They would be a novel import into England and Wales.

Serious issues would need to be addressed. While civil law recognises punitive damages, in normal circumstances damages are more closely related to actual loss, and an automatic multiplier of damages along the lines of that in the US False Claims Act would be unusual.

While legislation like the cartel provisions of the Enterprise Act permit immunity from prosecution for complicit individuals who assist the authorities, we would need to consider carefully how to proceed in cases where the whistleblower may have been complicit in the original fraud. Some organisations representing the interests of whistleblowers in the UK have been sceptical about the Qui Tam approach, arguing it would discredit the practice generally.

On the other hand, the flexibility and power of the Qui Tam provisions as they operate in the US are striking, particularly compared with the complexity and delays in bringing fraud prosecutions and the low sanctions available, as set out again most recently in the Fraud Review. We believe a debate on introducing similar provisions would be well worth having.

**Consultation question 13:** What are your views on the applicability to England and Wales of provisions along the lines of Qui Tam in the US False Claims Act?

### **Conclusion**

The recommendations of this Action Plan will support delivery of ambitious asset recovery results in the future. However, many of the recommendations will take some time to implement, particularly those involving legislative change. In the meantime, the UK has challenging targets for financial year 2009/10. Therefore this Action Plan should be supported by a lower level plan on how the existing powers can best be used to drive the necessary step change in performance for the 2009/10 delivery deadline.

## Annex A:

# Action Points and Consultation Questions

## Action Points

1. A new performance indicator for asset recovery, underlying the Justice for All PSA – to take effect from April 2008
2. From summer 2007, quarterly publication of full details on asset recovery performance to monitor progress towards the target
3. The split of incentivisation money between investigators, prosecutors and enforcement agencies to be reviewed by January 2008, linked to a review of the pipeline
4. Complete by autumn first stage of study to model the asset recovery pipeline
5. Roll out and evaluate new 'doctrine' on best practice in asset recovery work at BCU level by autumn 2007
6. Complete by autumn 2007 study on reasons for attrition as asset recovery investigations proceed through the system
7. Implement section 97 of SOCPA by autumn 2008, pilot its operation in selected court areas and monitor the impact on performance
8. CPDB to draw up and initiate the implementation of a profile-raising Communication Strategy on confiscation enforcement by summer 2007
9. CPDB to put into operation joint working with Centres of Excellence and LCJBs on analysis of caseload and local action plans by summer 2007
10. Roll out of enforcement Centres of Excellence to be complete by end of 2007
11. Home Office and ACPO to put in place revised governance and performance arrangements for RARTs by end of summer 2007
12. CPDB to consider and if feasible facilitate the commencement of a West Midlands pilot by end of 2007 involving the pooling of experts from HMCS, ACPO as well as prosecutors and other partners to maximise pressure on defaulters
13. Courts Service and ACPO to explore potential for co-locating and improving coordination between Centres of Excellence, RARTs and Regional Intelligence Units
14. CPDB to monitor the effect of the new targets and consider whether a realistic measure of their mutual impact on performance can be determined. CPDB to report to the ARB by November 2007
15. NPIA to take on Centres of Excellence (CoEs) by April 2008 (subject to passage of Bill)
16. Roll out of training and accreditation for new groups being given cash seizure power as soon as possible after enactment of Serious Crime Bill – planned for April 2008

17. Agree priority list of country for negotiating asset sharing agreements by March 2008. Aim to have new agreements in place by March 2009
18. NIO and OCTF to produce NI specific action plan: plan with high level aims for 2007-08 and detailed plan for 2008-09 by spring 2008
19. CPDB to draw up and implement a strategy by March 2008 on supporting training and business culture change to ensure confiscation becomes automatic to the criminal justice process
20. We will work with the Fraud Review's programme board, prosecutors and other practitioners to identify the best way forward in expanding the range of victims receiving compensation
21. Asset Recovery Board to agree a baseline figure and a performance regime for compensation by March 2008
22. HMRC/HO/Prosecutors/SOCA/ARA to complete review of criminal use of tax by March 2008, with many key recommendations made by September 2007

### **Consultation Questions**

1. Do you agree with proposals to increase routine data sharing of information about defendants' finances?
2. Do you agree with the idea of enabling automatic transfer of title in goods under restraint or in the possession of law enforcement once time to pay has expired?
3. Do you agree with the idea of a power to seize goods pending a confiscation process once an individual has been charged with an acquisitive crime?
4. Do you agree with the proposal to introduce a process for administrative forfeiture of cash seizures?
5. What are your views on extending cash seizure powers to cover precious metals and other payment mechanisms?
6. Do you agree with widening the category of assets liable to civil recovery?
7. What do you think of extending the time limit within which civil asset recovery actions can be launched?
8. Do you agree with creating a new principle of sentencing that all criminal gains should be removed?
9. Do you think current POCA provisions can be adapted to deal with simple low value orders, or do you believe there is a case for a separate Criminal Benefits Order in these cases?
10. Do you agree with creating a new power to seize on the civil standard high value goods which have been the instrumentalities of crime?
11. What do you think of extending the new power further to cover all high value goods thought to be the proceeds of crime?

Annex A:

**Action Points and Consultation Questions**

12. What do you think of proposals to extend the basis on which tax can be levied on criminals, taking in both no source and 'miscellaneous' income?
13. What are your views on the applicability to England and Wales of provisions along the lines of Qui Tam in the US False Claims Act?

Annex B:

## **Consultation Co-ordinator**

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation co-ordinator Christopher Brain by email at:  
Christopher.Brain@homeoffice.gsi.gov.uk

Alternatively, you may wish to write to:

Christopher Brain  
Consultation Co-ordinator  
Performance and Delivery Unit  
Home Office  
3rd Floor Seacole  
2 Marsham Street  
London  
SW1P 4DF

## Annex C: **The Consultation Criteria**

*This consultation follows the Cabinet Office Code of Practice on Consultation – the criteria for which are set below*

The six consultation criteria

- 1 Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- 2 Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3 Ensure that your consultation is clear, concise and widely accessible.
- 4 Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5 Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- 6 Ensure your consultation follows better regulation best practice, including carrying out Regulatory Impact Assessment if appropriate.

The full code of practice is available at:  
[www.cabinet-office.gov.uk/regulation/Consultation](http://www.cabinet-office.gov.uk/regulation/Consultation)

## Partial Regulatory Impact Assessment

### Purpose and intended effect

#### Objective

1. To reduce the harm caused by crime, by increasing the quantity of criminal assets seized in the UK.

#### Background

2. The Proceeds of Crime Act (POCA) 2002 introduced new powers to seize and recover criminal assets. Over £230m has been recouped from criminals over the three years ending 2005-06. The government has set a target of recovering £125m in 2006-07, and is aiming for a further doubling of receipts to £250m by 2009-10.
3. The aim of asset recovery is to reduce the harm caused by crime by recovering the proceeds of crime. Asset recovery can:
  - disrupt a criminal's ability to fund further crime;
  - create a continued deterrent against further criminality;
  - show the public that crime does not pay and improve public perception of criminal justice; and
  - remove negative role models and their well-flaunted assets from society.
4. There are three main routes available to recover the proceeds of crime: confiscation (following a criminal conviction), civil recovery and cash forfeiture.
5. An estimated £15b gross is believed to be the value of organised crime finance passing through the legitimate economy in the UK every year. It is also believed that about £10b of this amount is passing through the regulated sector. The net profit figure is estimated at £5b with about £2b of that amount being retained within the UK territory. This does not include money laundering carried out for other non-organised acquisitive crime, offences like tax evasion and the cash criminal economy.
6. The UK performance on asset recovery has seen an unprecedented improvement. Last year provisional outturn data show that the target to recover £125m of criminal assets was met. This accounted for at least five times more than was achieved just five years ago. As impressive as this may appear this only account for a fraction of criminal assets in circulation in the UK.

#### Rationale for Government Intervention

7. Government action can improve the asset recovery regime, by putting in place a system which recovers the proceeds of crime more quickly and efficiently.

### Options

#### Option 1

Do Nothing.

#### Option 2

Implement the package of measures proposed in the action plan. These include:

- improving the performance management regime;
- allow confiscation orders to be made in the Magistrates' Court;
- rolling out HMCS' Centres of Excellence;
- reviewing the case for contracting out of the collection of debt;

- introduce a new 'Criminal Benefits Order'; and
- extending the use of powers to seize on the civil standard of proof.

### **Benefits and Costs**

8. The overall purpose and benefit of recovering the proceeds of crime is the reduction of harm. It prevents the reinvestment of proceeds of crime back into crime, acts as a deterrent and works to reinforce the notion that no one should continue to profit from crime. There is a broad association between value recovered and harm reduced. This is further fortified by the reinvestment of recovered assets into the authorities charged with recovery, as well as authorities broadly concerned with the reduction of harm.
9. Fifty percent of all asset recovery receipts are returned to frontline agencies in an incentivisation scheme. Frontline agencies and forces are also encouraged to increase the level of resources in this area, on top of those they receive through the scheme. Achieving their individual 2009-10 targets as well as the overall £250m target over the same period are dependant on this.

#### *Option 1*

10. There are no new additional benefits attached to option 1. Without further action it is likely we will continue to see improvements in asset recovery performance, but probably not enough to meet the Government's £250m 2009-10 target.

#### *Option 2*

##### **Improving the performance management regime**

11. A new performance indicator for asset recovery, underlying the Justice for All PSA, will provide a greater level of focus on asset recovery work. A new performance regime for compensation will highlight the importance of ensuring victims are compensated wherever possible.
12. Quarterly publication of performance, and the development of a metric for measuring enforcement performance, will provide more management information to allow practitioners and policymakers to respond quickly as and when required.
13. This could be met within existing resource. Some performance management work is already undertaken, and these measures would help to make this more systematic and efficient. Provisionally, we believe that this would incur no further costs.

##### **Allow confiscation orders to be made in the Magistrates' Court**

14. Magistrates Courts are less expensive than Crown Courts, so this may help to lower costs. More significantly, it would encourage more confiscation orders against smaller scale acquisitive criminals.
15. Further work needs to be done on the practicalities of this. In some cases, the Magistrate may not have sufficient training to make the confiscation order even if it were low value; in such circumstances, the Magistrate could refer the order to the Crown Court, so the full cost savings will not always be achievable.

##### **Rolling out HMCS' Centres of Excellence**

16. Even though the nine Centres of Excellence have been established, not all have the full complement of staff. This is to be addressed. Additionally, a further obvious step would be the pooling of Police, prosecuting and other partner expertise to maximise pressure on defaulters, for which a pilot is under consideration. There is also merit in co-location with the RARTs which is also under consideration.

### Contracting out of the collection of unpaid confiscation orders

17. This option would take advantage of new resources offered by the private sector, utilising their different skills and experience in recovering debts. Assuming private firms can keep a share of any assets recovered, they would be incentivised to improve performance. Contracting out can also help to set benchmarks to aid performance management.
18. There may be some savings to the public sector, although they could be small because some public sector involvement would still be needed even after contracting out. There may be some costs involved in agreeing a regulatory/contracted framework for private sector involvement. It is also not yet clear whether private firms have enough powers to collect debt more effectively than the public sector.

### Introduce a new 'Criminal Benefits Order'

19. The intention behind this measure is to streamline the process for relatively low value orders. This would lower costs – which could then be reinvested in other harm reducing activities – and encourage the mainstreaming of asset recovery against smaller scale acquisitive criminals. More work needs to be done on the practicalities, and ensure that these new orders are of sufficient robustness.

### Small firms

20. We do not anticipate that these proposals will have a negative impact on small firms.

### Competition Assessment

21. We do not anticipate that these proposals will have an adverse impact on competition.

## Annex E: Glossary

ACPO	Association of Chief Police Officers
APACS	Assessment of Policing and Community Safety
ARA	Assets Recovery Agency
ARB	Asset Recovery Board
BCU	Basic Command Units
CAB	Criminal Assets Bureau
CBOs	Criminal Benefit Orders
CoEs	Centres of Excellence
CPDB	Confiscation Performance and Delivery Board
CPS	Crown Prosecution Service
DVCVA	Domestic Violence, Crime and Victims Act 2004
DWP	Department for Work and Pensions
ETF	Enforcement Task Force
FATF	Financial Action Task Force
FCA	False Claims Acts (USA)
FIs	Financial Investigators
HMCS	Her Majesty's Courts Service
HMIC	Her Majesty's Inspectorate of Constabulary
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
JARD	Joint Assets Recovery Database
LCJBs	Local Criminal Justice Boards
NIO	Northern Ireland Office
NPIA	National Policing Improvement Agency
OCTF	Organised Crime Task Force
PACE	Police and Criminal Evidence Act
PEPs	Politically Exposed Persons
PIU	Performance and Innovation Unit
PMDU	Prime Minister's Delivery Unit
POCA	Proceeds of Crime Act 2002
PPAF	Police Performance Assessment Framework
PPSNI	Public Prosecution Service for Northern Ireland
PSA	Public Service Agreement

RARTs	Regional Asset Recovery Teams
RCPO	Revenue and Customs Prosecutions Office
RIU	Regional Intelligence Units
SARs	Suspicious Activity Reports
SEC	Securities and Exchange Commission
SOCA	Serious Organised Crime Agency
SOCPA	Serious Organised Crime and Police Act 2005
tic	taken into consideration
VAT	Value Added Tax

Annex F:  
**Relevant Legislation**

Criminal Justice Act 2003

Customs and Excise Management Act 1979

Data Protection Act 1998 (DPA)

Domestic Violence, Crime and Victims Act 2004

Environmental Information Regulations 2004

False Claims Acts (USA)

Freedom of Information Act 2000 (FOIA)

Police and Criminal Evidence Act 1984

Proceeds of Crime Act 2002

The Serious Organised Crime and Police Act 2005





