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"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"  
REPORT ON THE UNITED KINGDOM

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# RESTREINT UE



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THE EUROPEAN UNION

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CRIMORG 94

**EVALUATION REPORT ON THE**  
**FIFTH ROUND OF MUTUAL EVALUATIONS**  
**"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**  
  
**REPORT ON THE UNITED KINGDOM**

DECLASSIFIED

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## 1. Introduction

At its meeting on 17 June 2008, the Multidisciplinary Group on Organised Crime (MDG) decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond examining solely the transposition of relevant EU legislation and take a wider look at the subject-matter<sup>1</sup> seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG<sup>2</sup>.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed<sup>3</sup>. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA<sup>4</sup>.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen<sup>5</sup>.

The most recent strategic document, "The Stockholm Programme – An open and secure Europe serving and protecting the citizens"<sup>6</sup>, also attaches great importance to economic crime and corruption and other related criminal phenomena and sets out objectives, which to a large extent correspond to the scope and the aims of the evaluation.

Experts with substantial practical knowledge in the field of financial crime and financial investigations were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

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<sup>1</sup> 10540/08 CRIMORG 89.

<sup>2</sup> 16710/08 CRIMORG 210.

<sup>3</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>4</sup> 8301/3/09 REV 3 CRIMORG 54.

<sup>5</sup> 11060/09 JAI 404.

<sup>6</sup> 5731/10 CO EUR-PREP 2 JAI 81 POLGEN 8.

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At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits<sup>1</sup>. The United Kingdom is the seventh Member State to be evaluated during the round.

It is planned that the experts nominated by Member States should be accompanied each time by experts from the Commission (JLS and OLAF), Europol, Eurojust and the Council Secretariat.

The experts charged with undertaking this evaluation were Ms Maureen McGrath (Detective Inspector, Garda Bureau of Fraud Investigation, Ireland), Ms Maria Kymizi-Antoniou (Counsel of the Republic A, Unit for Combating Money Laundering, Cyprus) and Mr Stefan Benner (Deputy Head, Federal Ministry of Justice, International Cooperation in Criminal Matters, Austria). Four observers were also present: Mr Christian Tournie (JLS, Commission), Mr Stefan de Moor (OLAF, Commission), Ms Ritva Sahavirta (Eurojust) and Mr Carlo van Heuckelom (Europol), together with Mr Hans Nilsson and Mr Michal Narojek from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, on the basis of their findings during the evaluation visit, which took place from 18 to 22 January 2010, and the United Kingdom's detailed and helpful responses to the evaluation questionnaire.

### 2. National system and criminal policy

#### 2.1. Specialised units

##### 2.1.1. Investigative authorities

There is no national police force in the UK. England and Wales have 43 geographical police forces, Scotland has 8, and Northern Ireland, the Isle of Man, Jersey and Guernsey have one each. In addition there are thematic police forces: the British Transport Police, 4 military police forces, airport police, park police, port police and civil nuclear police. The Metropolitan Police Service in London is by far the largest geographical force, making up 20 % of total police strength in England and Wales.

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<sup>1</sup> 5046/1/09 REV 1 CRIMORG 1.

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Investigative agencies with a national remit include HM Revenue and Customs (HMRC), the Serious Organised Crime Agency (SOCA), the Serious Fraud Office (SFO), the Financial Services Authority in Scotland and the Scottish Crime and Drug Enforcement Agency (SCDEA). In addition, there are a number of national governments and local authorities with investigative departments that employ financial investigators and deal with financial crime.

Despite the significant number of police forces and agencies involved, as well as different judicial systems within the United Kingdom, no practical coordination problems at operational level were reported. This is due to an effective case-management system where inquiries can be made in order to discover links between investigations. Overlapping entries are flagged. In Scotland a similar role is played by the Scottish Intelligence Database, which can serve for coordination purposes. All officers have access to that database, which contains all pieces of intelligence available.

In order to address the fragmentation of the law enforcement agencies, enhance their cooperation and foster asset recovery, the Government has set up 5 multi-agency Regional Asset Recovery Teams (RARTs) and is to set up four more to cover all of England and Wales. A RART is a joint agency team with staff from the police, HMRC and the Crown Prosecution Service. The teams are dedicated to confiscating criminal assets, dismantling organised crime groups and tackling money laundering. The cost of one team is estimated at about £1 500 000 a year.

In addition to financial investigators, all the agencies have criminal investigators who are employed to provide evidence for the prosecution of offenders. In Scotland there are no accredited financial investigators able to act independently.

In the context of the lack of a national police force, the role of the Association of Chief Police Officers (ACPO) also needs to be mentioned. This is an independent strategic body which has the status of a private company. In the public interest and in equal and active partnership with the Government and the Association of Police Authorities, ACPO leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland. It does not have any operational functions but may - on behalf of all chief police officers - coordinate the strategic policing response. It has a vital role in promoting and proposing improvements to financial investigations.

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Before different investigative authorities and units are described, the role of Accredited Financial Investigators (AFI) needs to be explained. This is a specificity of the British system, where financial investigators undergo specialised training and are certified. Accreditation gives them special powers. It is also a prerequisite for access to certain databases such as the Suspicious Activity Reports (SAR) Database. Moreover, their performance is regularly assessed and the use of their specific powers is monitored through an advanced IT system. If an accredited investigator does not exercise his powers for a given period of time he loses his specific status.

The National Policing Improvement Agency (NPIA) trains and accredits all UK Financial Investigators. The powers of Accredited Financial Investigators have recently been extended by secondary legislation, and are now broadly the same as constables and other warranted officers working in the same field. The AFIs are deployed (for England and Wales) to various services and units, which reflects the Government strategy of mainstreaming and promoting financial investigations, to be conducted by all law enforcement agencies against all types of crime.

The table below shows the deployment.

<b>Agency</b>	<b>Financial Investigators</b>
46 Police forces (except MPS below)	1140
Metropolitan Police Service (MPS)	436
SOCA	260
HMRC	222
73 Local Authorities	127
Department for Work and Pensions (DWP)	21
Serious Fraud Office (SFO)	17
Financial Services Authority (FSA)	12
12 other Government Departments	48
<b>Total</b>	<b>2283</b>

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As indicated above, each of the main agencies employs financial investigators who investigate financial offences appropriate to each agency, e.g. SOCA investigators investigate serious and organised crime, Metropolitan Police investigators investigate offences committed in London, etc. The largest concentrations of financial investigators are to be found in SOCA, the Proceeds of Crime Department, the MPS Specialist Crime Directorate 6 and HMRC.

It needs to be mentioned that in Scotland financial investigators (there are about 90 of them) have no special powers and their training procedure is different.

### 2.1.1.1 Serious Organised Crime Agency

The Serious Organised Crime Agency (SOCA) is an executive non-departmental public body sponsored by, but operationally independent from, the Home Office. SOCA is an intelligence-led agency with law enforcement powers and harm reduction responsibilities.

SOCA is not a police force, nor is it an intelligence agency. It combines the two roles. SOCA has no uniformed officers or marked vehicles. It has a number of national responsibilities and always works closely with local police forces and other partners. In Scotland and Northern Ireland, its role is focused more on intelligence than on operational activity, and it works closely with the Scottish Crime and Drug Enforcement Agency (SCDEA), the territorial Scottish police forces and the Police Service of Northern Ireland.

In Scotland the prior consent of the Lord Advocate is needed before SOCA officials can undertake any activity (including interviewing witnesses or collecting evidence) even if the crime took place in another jurisdiction (section 22 of the Serious Organised and Police Act 2005). However, SOCA officers have the powers of a constable in Scotland, with the consent of Scottish Ministers or the Director of the SCDEA (section 47 of the 2005 Act).

The Secretary of State determines strategic priorities for SOCA. Before the beginning of each financial year, the agency issues a plan setting out how it intends to exercise its functions during that year. The annual plan must take into account the priorities determined by the Secretary of State.

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It also comprises priorities which SOCA has determined for that year and any current performance targets established by SOCA as well as indicating the financial resources that are expected to be available to SOCA for that year.

SOCA is led by a Board. The Board is responsible for ensuring that the agency discharges its statutory responsibilities and meets the strategic priorities set under statute by the Home Secretary.

The Chair of SOCA, appointed by the Home Secretary, is responsible for SOCA's overall approach and for its relationship with Ministers and with Government generally. He is also responsible for SOCA's strategy and, together with the Board, for overseeing its operational performance.

The Director General is also appointed by the Home Secretary, and is responsible for everything SOCA does operationally and administratively. He is in charge of the day-to-day leadership of SOCA's management team and ultimately for the appointment, accreditation and direction of its staff. As Accounting Officer, he is responsible for SOCA's expenditure and accounting arrangements.

Its actions are governed by the Serious Organised Crime and Police Act of 2005, section 2 of which defines SOCA's functions of:

- (a) preventing and detecting serious organised crime, and
- (b) contributing to the reduction of such crime in other ways and to the mitigation of its consequences.

The Agency also has important tasks concerning gathering and dissemination of data. Under section 3, SOCA has the function of gathering, storing, analysing and disseminating information relevant to:

- (a) the prevention, detection, investigation or prosecution of offences, or
- (b) the reduction of crime in other ways or the mitigation of its consequences.

SOCA may disseminate such information to police forces, special police forces, law enforcement agencies and such other persons as it considers appropriate.

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The law also regulates the powers of the agency. In accordance with section 5 of the Act, SOCA may, among other things:

- (a) institute criminal proceedings in England and Wales or Northern Ireland;
- (b) at the request of the chief officer of a police force in the UK, the States of Jersey Police Force, the salaried police force of the Island of Guernsey and the Isle of Man Constabulary or of a special police force, act in support of any activities of that force;
- (c) at the request of any law enforcement agency, act in support of any activities of that agency;
- (d) enter into other arrangements for cooperating with bodies or persons (in the United Kingdom or elsewhere) which it considers appropriate in connection with the exercise of certain of SOCA's functions.

SOCA currently employs around 4,000 full-time staff, who operate from almost 50 sites in the UK, and also has 40 officers overseas.

SOCA is divided into four functional directorates. Each is led by an Executive Director and specialises in particular aspects of the work. In practice, staff from all of the directorates come together in multidisciplinary teams to tackle particular problems or undertake casework or other operational tasks.

The four directorates are:

- Intelligence, which gathers and assesses information (from both overt and covert sources). It then uses it to produce the best understanding of organised crime and to support the agency's operational work against organised crime targets. The directorate ensures that all activity is knowledge-led and directed towards agreed priorities.
- Enforcement, which provides a flexible operational response to threats. It builds criminal cases against key targets and serious organised crime groups and uses new tools to undermine criminal businesses. It also provides a range of specialist support to the rest of SOCA and to its partners, for example in relation to kidnap, extortion and corruption threats.
- Intervention, which focuses on attacking criminal assets and working with the private sector. It also houses the international arm of SOCA, which is a particularly important element of the business, because most of the organised crime threats affecting the UK originate overseas.
- Corporate Services, which supports and develops SOCA's capabilities.

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It also needs to be mentioned that a SOCA representative chairs the Asset Recovery Working Group (ARWG) where numerous institutions such as ACPO (Association of Chief Police Officers), the prosecution services and the SFO are represented. The Scottish Money Laundering Unit sends a representative to ARWG.

The UK Financial Intelligence Unit (FIU) is also placed within the structure of SOCA. Its main task is to receive, analyse and distribute financial intelligence submitted via Suspicious Activity Reports (SARs). Banks and other businesses in the regulated sector are obliged by the Proceeds of Crime Act of 2002 (POCA) to report knowledge or suspicion of money laundering to SOCA. A "consent regime" is a specificity of the UK system. The regulated sector is required not only to report before the event suspicious transactions that they become aware of, but to desist from completing these transactions until specific consent is received.<sup>1</sup>

Section 335 of POCA provides for the consent regime. The appropriate consent means the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer or the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable or the consent of an officer of Revenue and Customs to do a prohibited act if an authorised disclosure is made to a customs officer. The authorities in question have seven working days to react to the SAR. If the period has expired and the authority has not acted the transaction may be completed. If no response to the submitted SAR is received by the discloser within that time, then the discloser can go ahead with the prohibited act or transactions. If consent is refused within the 7 working days, the transactions must not proceed for a further 31 days. However, if nothing further is heard after the end of the 31-day period, then the discloser can proceed with no risk of committing an offence.

The FIU shares SARs and other financial information with law enforcement organisations as well as warning the private sector about areas of risk. There is a strategic committee dealing with SARs, which is chaired by a SOCA representative. It drafts a strategic report on SARs every 6 months.

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<sup>1</sup> <http://www.homeoffice.gov.uk/documents/cons-2007-consent-regime2835.pdf?view=Binary>

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The UK Asset Recovery Office (for England, Wales and Northern Ireland), is located within the structure of the FIU and comprises a number of experienced financial investigators and intelligence officers.

ARO has a close daily working relationship with all police forces, HM Revenue and Customs, the UK Central Authority on Mutual Legal Assistance matters and the Crown Prosecution Service (in Scotland the Crown Office and Procurator Fiscal Service and in particular the National Casework Division). In reality this liaison is normally with accredited financial investigators (police and customs) or prosecutors dedicated to asset recovery work. ARO is able to disseminate and receive relevant information to and from all parties, normally in real time.

The unit is mandated by the Home Office for England and Wales to undertake the function described in Framework Decision 2007/845/JHA to facilitate the tracing and identification of proceeds of crime and other crime-related property, etc.

ARO's host agency, SOCA (in Scotland SCDEA), has investigation and intervention powers in relation to asset tracing and recovery under the provisions of the Proceeds of Crime Act 2002. In addition ARO, as part of SOCA, has legal gateways to share intelligence with third parties under the provisions of the Serious Organised Crime and Police Act 2005 (in Scotland under the Police Public Order and Criminal Justice (Scotland) Act 2006).

ARO has permanent staff dedicated to identifying and tracing assets believed to represent the proceeds of crime. The staff members are part of a multidisciplinary team with other core responsibilities aimed at national and international sharing of financial (asset) intelligence, for example, through the Egmont and CARIN networks. Where external expertise is required, ARO maintains a close working relationship with relevant asset recovery specialists through informal 'face to face' contact and through structured liaison within the auspices of a newly created forum, the International Asset Recovery Working Group.

ARO has access to numerous governmental and commercial, open and closed source databases. Databases are accessed and searched on a case by case basis and information is disseminated under the provisions of the EU Framework Decision or the legal gateway provided for under sections 32 to 35 of the Serious Organised Crime and Police Act 2005 (in Scotland under sections 19/20 of the Police Public Order and Criminal Justice (Scotland) Act 2006).

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It is important to stress that ARO also covers cases other than those relating to criminal proceedings (civil matters, taxation) as it considers all situations where some form of intervention activity might recover assets acquired through criminality. This intervention may involve civil recovery (non conviction based asset recovery), taxation or other asset denial measures.

### 2.1.1.2 Scottish Crime and Drug Enforcement Agency (SCDEA)

The Scottish Drug Enforcement Agency was established on 1 April 2001. In May 2006, the Agency adopted the Scottish Crime and Drug Enforcement Agency (SCDEA) name as designated in the Police, Public Order and Criminal Justice (Scotland) Act of 2006. The SCDEA is part of the Scottish Police Services Authority (SPSA). Established as a non-departmental public body in April 2007, the SPSA was created to promote the efficiency and effectiveness of the police in Scotland by providing police support services and maintaining the SCDEA. The primary functions of the Agency are to:

- prevent and detect serious organised crime;
- contribute to the reduction of such crimes in other ways and to the mitigation of its consequences; and
- gather, store and analyse information relative to the prevention, detection, investigation or prosecution of offences or the reduction of crime in other ways or the mitigation of its consequences.

The Agency's task is to target those organised criminals who have the capacity and resources to cause the most damage to Scotland's economy and communities. Thus every single investigation of SCDEA has a financial aspect. Financial profiles are commonly drafted in order to identify criminal assets as well as to establish a person's position in the OC group.

At operational level, SCDEA personnel are in regular contact with all Scottish police forces. The Director General regularly consults with other Scottish chief police officers on a wide variety of issues through his membership of the Association of Chief Police Officers in Scotland. The Deputy Director General also initiates, reports and enters into debate on the many strategic and tactical issues that affect the Agency's role, responsibilities and future development.

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The agency cooperates closely with services that have nationwide responsibility, namely SOCA (especially with its Scotland and Northern Ireland Office) and Her Majesty's Revenue and Customs (HMRC) as well as maintaining close working relationships with Scottish and other UK police forces.

The Scottish Money Laundering Unit has been established within the Agency. It conducts large-scale money laundering investigations and actively targets the assets of criminals and criminal organisations who engage in serious and organised crime in Scotland and, where appropriate, makes these assets available to the courts for potential confiscation by way of obtaining restraint orders. Furthermore, individual police forces have dedicated financial investigation units which perform similar functions for local investigations.

As indicated above, Scotland, as a separate jurisdiction, has its own Asset Recovery Office.

The Scottish ARO is used extensively, dealing with several requests a week. It uses the Swedish initiative form (Framework Decision 2006/960/JHA). Although they have never been asked to use them, it would be open to Scottish authorities to apply for investigative orders, including customer information orders, following a foreign request.

The Scottish Asset Recovery Group (SARG) has been also established. It is chaired by the Director of Operations at the Crown Office, and brings together representatives of Scottish Government, the National Casework Division, the Civil Recovery Unit, the SCDEA, HMRC, the Department for Work and Pensions, local authorities and the Scottish Court Service. Its remit is "to provide a strategic focal point for member agencies in their efforts to tackle criminal finances in Scotland and to identify and disseminate best practice in recovering criminal assets. In addition it is to act as a reference point for the Serious Organised Crime Taskforce in matters relating to asset recovery."<sup>1</sup>

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<sup>1</sup> Joint Thematic Report on the Proceeds of Crime Act 2002

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## 2.1.1.3 Serious Fraud Office (SFO)

The Serious Fraud Office is an independent Government department. It needs to be underlined that the Office has unique status as it has both investigative and prosecuting powers concerning serious or complex fraud, and corruption. It is part of the UK criminal justice system with jurisdiction in England, Wales and Northern Ireland but not in Scotland, the Isle of Man or the Channel Islands. It employs mainly forensic accountants, investigators and lawyers. Maintaining confidence in the UK's business and financial institutions is a key objective of the service.

The Serious Fraud Office was established in April 1988. The SFO and its powers were created by the Criminal Justice Act (CJA) of 1987. The Fraud Trials Committee Report, known as the 'Roskill Report' published in 1986, was the impetus for introducing the Criminal Justice Act 1987. Its main recommendation was to set up a new organisation responsible for the detection, investigation and prosecution of serious fraud cases in order to address public dissatisfaction with the UK system for investigating and prosecuting serious and complex fraud. It deals with cases where £1 million or more are involved or which cover more than one national jurisdiction, though it is rare for cases involving less than £1 million to be taken. The threshold of £1 million applies to the value of a contract or other financial operation in question, and not the value of criminal assets as such.

The Director of the SFO is appointed by and accountable to the Attorney General who is responsible to the Parliament. The relation between the Attorney General and other prosecuting services is regulated in a protocol which the Attorney General published in July 2009. The Director is required to report annually on the discharge of his functions, and the Attorney General lays the reports, together with reports of other services, before the Parliament. The Attorney's consent is needed for the prosecution of specific cases.

There are two main branches of the service supervised by the Chief Investigator and the Chief Capability Officer. The Chief Inspector is responsible for the Anti-Corruption and Proceeds of Crime Domain, the Linked Cases Domain and International Assistance. The Chief Capability Officer supervises numerous domains, including the City Domain, the Individual and Investment Domain, the Resources Domain and the Intelligence Domain.

## RESTREINT UE

Serious Fraud Office agents are entitled to search property and to compel persons to answer questions and produce documents. Section 2 of the CJA gives the Director or a designated member of staff the power to require a person or entity to provide information for the purpose of an investigation. This takes the form of interviewing people, requiring them to produce material, or searching premises.

The powers can be used if the Director finds reasonable grounds to suspect that an offence has been committed involving serious or complex fraud or corruption.

Written notice is always given when exercising this power. Notices are typically issued to individuals, banks, financial institutions, accountants and other professionals, most of whom will have a duty of confidence to their clients. Issuing them with Section 2 Notices obliges them to lawfully provide the information required.

Where a person or entity does not comply with a notice, or when someone is interviewed and is found to have given false or misleading information, they can be prosecuted. Only legal professions may invoke their professional privilege in order to refuse to supply data required by the SFO.

### 2.1.2. Prosecuting authorities

The Crown Prosecution Service (CPS) and the Revenue and Customs Prosecution Office (RCPO) are the largest prosecution bodies in England and Wales and they are to merge in the immediate future<sup>1</sup>.

In England and Wales, the CPS prosecutes police and SOCA investigations: it also has specialist money laundering and asset recovery teams. The Serious Fraud Office also has some responsibility for prosecuting money laundering that is connected to fraud cases that it is taking to court itself as it has a prosecution function. In Northern Ireland the RCPO and CPS function is fulfilled by the Public Prosecution Service for Northern Ireland (PPSNI).

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<sup>1</sup> The UK has informed the evaluators that the services were operationally merged shortly after the visit.

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The CPS has no power to conduct or direct investigations; however, under section 3 of the Prosecution of Offences Act 1995, prosecutors may provide advice regarding the law, evidence and procedure to the police and to SOCA throughout the course of an investigation. Many proactive money laundering investigations enjoy the support of a specialist CPS POCA lawyer throughout the case, to maximise the use of POCA powers. A similar relationship exists between the RCPO and HMRC / SOCA in England and Wales and between the Prosecutor for the PPSNI and HMRC, the Police Service of Northern Ireland, and SOCA in Northern Ireland.

The CPS has 42 Areas across England and Wales. Each Area is headed by a Chief Crown Prosecutor (CCP) who is responsible for the delivery of a prosecution service to his or her local community. A 'virtual' 43rd Area is also headed by a CCP and provides out-of-hours advice to the police. Three casework divisions, based at Headquarters, deal with the prosecution of serious organised crime, terrorism and other specialised prosecution cases.

The Proceeds of Crime Delivery Unit (POCDU) within the Business Development Directorate at Headquarters has the policy lead for money laundering and confiscation issues.

POCDU is responsible for the performance management of asset recovery in CPS Areas and for the lawyers within the Regional Asset Recovery Teams (RARTs), collating statistics, reviewing and reporting on Area performance, promoting productive partnerships within the CPS and with external stakeholders, raising awareness of asset recovery and best practice within the CPS, developing business processes, assuring the business requirement for CPS and multi-agency IT systems and providing legal guidance on the Proceeds of Crime Act 2002 (POCA 2002) and related issues.

The Confiscation Unit of the Organised Crime Division at Headquarters deals with asset recovery issues on behalf of the Organised Crime Division and also provides advice to CPS Area lawyers on POCA 2002 confiscation issues. The Unit also works to enforce high-value confiscation orders made under the pre-POCA 2002 legislation.

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Money laundering prosecutions and asset recovery may be dealt with by all lawyers within the CPS, whether at Headquarters or Area level. Area lawyers are supported by a national network of POCA lawyer champions (the role of the champions will be explained in the chapter on training). In addition, five CPS lawyers are co-located with the RARTs providing advice to the police on money laundering and confiscation investigations.

The Commissioners for Revenue and Customs Act 2005 created the Revenue and Customs Prosecution Office (RCPO) as an independent prosecution department. It merged the prosecutorial functions of the former Inland Revenue and the former HM Customs and Excise. The RCPO has 280 staff, of whom 80 are lawyers, who are based in London and Manchester. Its remit covers HMRC offences in England and Wales and prosecuting SOCA investigations into major drug imports and associated money laundering.

The RCPO has 5 casework Divisions. Each division has expertise across the whole range of HMRC work, and one Division is dedicated to SOCA cases. All RCPO lawyers deal with Money Laundering prosecutions and related confiscations. RCPO lawyers work closely with investigators to ensure investigations and prosecutions are successful.

The RCPO also has an expert Asset Forfeiture Unit which is responsible for conducting restraint, confiscation and enforcement proceedings. It also responds to requests from overseas jurisdictions to preserve assets so that they may be used to pay confiscation orders made in those jurisdictions and to enforce confiscation orders made in those jurisdictions against assets located in the UK. It deals with confiscation proceedings in serious and/or complex cases investigated by HMRC and in all cases investigated by SOCA. The Asset Forfeiture Unit is responsible for the enforcement of all confiscation orders obtained by the RCPO.

In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) is the sole prosecuting authority (the RCPO, CPS, SFO, etc. have no jurisdiction) and it is also responsible for the investigation of sudden or suspicious deaths, and the investigation of complaints against the police.

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The COPFS has a specialist money laundering and asset recovery function under the auspices of the National Casework Division, based in the Crown Office in Edinburgh. The National Casework Division includes units dealing with financial crime and with criminal confiscation under the Proceeds of Crime Act 2002 and provides a specialist service in these areas for the whole of Scotland. The NCD also has an international desk providing specialist input to international enquiries (including proceeds of crime work). The specialist Proceeds of Crime Unit comprises 4 lawyers, a full-time forensic accountant, 4 part-time consultant accountants, a financial analyst, a settlement negotiator, two case officers, and administrative support staff. COPFS Proceeds of Crime work has recently been the subject of a review by Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) and the Inspectorate of Prosecution in Scotland (IPS).

In Scotland the COPFS does have some responsibility for investigation as well as prosecution and so has more scope to actively direct the police in their investigations based on the Police (Scotland) Act 1967, section 17(3)(b), and the Criminal Procedure (Scotland) Act 1995, section 12. All money laundering investigations are supervised by the National Casework Division at the Crown Office.

The Civil Recovery Unit (CRU) was established as an operational unit of the Crown Office and Procurator Fiscal Service (COPFS) to act on behalf of the Scottish Ministers as the enforcement authority for Scotland in civil recovery proceedings following the introduction of the Proceeds of Crime Act 2002. It raises proceedings on behalf of the Scottish Ministers under part 5 of the 2002 Act. The Lord Advocate is responsible for the operation of the unit. The CRU is based in Edinburgh and is a multidisciplinary unit made up of solicitors, forensic accountants, financial investigators, police officers, officers from Her Majesty's Revenue and Customs, and administrative support.

The unit is responsible for civil recovery and cash forfeiture in Scotland. The role of the CRU is to investigate property believed to be the proceeds of crime and, in the case of cash, intended for use in unlawful criminal conduct.

The objective of the unit is to disrupt and deter criminality by recovering both the proceeds of crime and cash that is intended for use in unlawful conduct. Recovered property or cash is remitted to the Scottish Consolidated Fund.

# RESTREINT UE

Where appropriate, the unit can raise civil proceedings for asset recovery in the Court of Session or civil proceedings for cash forfeiture in the Sheriff Court.

Funding for the Crown Office and Procurator Fiscal Service and the Civil Recovery Unit is provided by the Scottish Government.

All Financial Investigators working in the Civil Recovery Unit have an investigative background. They have all attended a five-day course at the Scottish Police College accrediting them as Financial Investigators. The course entails different units that are examinable on the final day of the course for entrance to the profession.

Forensic Accountants within the unit are members of the Association of Chartered Certified Accountants. They are qualified accountants with the investigative skills used for the analysis of financial information.

## 2.2 Training

The UK has a very elaborate training system on financial investigations, asset recovery and financial crimes. It covers investigative personnel, the prosecution and the judiciary, to differing extents however.

### 2.2.1 Investigative Personnel

The Proceeds of Crime Centre (POCC) at the National Policing Improvement Agency (NPIA) trains and accredits all financial investigators in the UK. The Chief Executive of the NPIA has a statutory duty to train, accredit financial investigators throughout England, Wales, and Northern Ireland and monitor their accreditation. NPIA accreditation is the only recognised accreditation for financial investigators in the UK. Training is delivered in the three main disciplines of financial intelligence, money laundering investigation and asset recovery via a suite of ten courses listed below.

Once the training has been delivered, via a mixture of e-learning and classroom-based courses, the investigators are assessed through the submission of a professional development portfolio before becoming accredited as Financial Investigators.

## RESTREINT UE

The POCC is then responsible for the monitoring of all Financial Investigators' continuous professional development through a series of assessed activities and submissions via the POCC e-learning site and the Financial Investigation Support System (FISS).

Training courses include:

- Prerequisites course;
- Financial Investigation course;
- Confiscation course;
- Money Laundering course;
- Tutor Training course;
- Enhanced Financial Investigation Skills course;
- Senior Appropriate Officer course;
- Proceeds of Crime Management;
- Civil recovery investigation course (has yet to be delivered).

*Prerequisites Course:*

This course is five days long and is for staff that do not have a background in investigation. The course covers the law, powers, and investigation techniques. The majority of UK law enforcement agencies, including regional police forces, are able to deliver this course in-house.

*Financial Investigation Course:*

This course leads to accreditation as a financial investigator. There is a pre-read and an induction day on which trainees must pass a test on knowledge gained on the pre-read. The course is for five days. It covers POCA powers and money laundering investigations and includes practical exercises such as application for a production order.

After the course, trainees have a year in which to complete a personal development portfolio under the supervision of a tutor. This must demonstrate to the NPIA's satisfaction that the trainee has put into practice all the elements required of a financial investigator at his place of work.

*Confiscation Course:*

Covers confiscation in greater depth and includes a case study. It is necessary to enable an accredited financial investigator to apply to the court for a restraint order.

# RESTREINT UE

## *Money Laundering Course:*

Involves studying money laundering investigation in greater depth. It does not give any further powers.

## *Tutor Course:*

This is a one-day event to train potential tutors who will be responsible for overseeing the work of new financial investigators during the period in which they complete their PDP.

## *Enhanced Financial Investigation Course:*

Trainees are taught how to conduct complicated financial investigations, including investigations overseas.

## *Senior Appropriate Officer (SAO) Course:*

This course is for senior officers with responsibility for authorising certain applications under POCA such as restraint orders or customer information orders.

## *Proceeds of Crime Management:*

This is a two-day course for inspectors and chief inspectors who have no experience of financial investigation but who are investigating crime or have line management responsibility for intelligence units or financial investigators. The strategic importance of the course in raising performance in the UK was underlined.

The FISS is a secure website that facilitates the NPIA in the delivery of its statutory objectives under the Proceeds of Crime Act 2002 (as amended). The application provides support to the UK law enforcement community for the purpose of training, accreditation and monitoring of financial investigators.

The site supports the initial training and development of financial investigators through the provision of course-booking facilities, interactive pre-course learning, and recording of the transfer of learning to the workplace through an online Personal Development Portfolio. It provides policy and procedural guidance, case law, templates and other reference material essential to successful day-to-day operational delivery and provides a platform for continuing professional development through the dissemination of regular updates, assessed activities and gateways to further training and qualifications.

## RESTREINT UE

FISS is also the repository for the database of registered financial investigators entitled to access the Financial Intelligence Gateway (FIG). Access to this gateway enables the sharing of sensitive intelligence between members of the regulated sector and financial investigators and financial intelligence officers.

Scotland, as a separate jurisdiction, has its own training system.

The Chief Executive of the NPIA has no statutory authority in Scotland, nor does the training offered by NPIA address the specific legislative provisions of the Proceeds of Crime Act insofar as they relate to Scotland. Scottish officers are required to prepare a confiscation profile in the format required for Scottish confiscation proceedings. Although a number of people working in Scotland have received NPIA training, they require additional training to be able to work in Scotland.

These are the training courses run in Scotland for Financial Intelligence Analysts. The key courses are:

### *Financial Investigation*

This is a 1-day training course held at the Scottish Police College (SPC). It covers the function and role of the Financial Investigation Unit (FIU) in building intelligence, assisting in various types of enquiry, and seizing or confiscating criminal assets.

### *Financial Investigators Course*

The course takes 5 days and is held at the SPC twice a year in March and August. Successful candidates are added to the SOCA/Moneyweb list, which bank staff treat as a list of bona fide financial investigators. Course content builds on the Financial Investigation course, in more detail, and with more time for practical application e.g. practising the decision-making that goes into compiling a financial profile.

### *Court Room Skills for Support Staff*

This is a 1-day event held at the SPC. It aims to familiarise police (civilian) staff with court procedures. It is aimed at a more general audience who are likely to give evidence in routine criminal cases, but nevertheless valuable. The development of a more specialised course for financial intelligence analysts was mooted.

## RESTREINT UE

There are a variety of other courses which financial analysts should be encouraged to attend, such as:

### *Criminal Intelligence Analysis*

This training course takes 10 days and is held at the SPC. It covers the function and role of the Intelligence Analyst in great detail.

### *Intelligence Operatives Course*

The training course takes 5 days. It is held at the SPC. It gives a good grounding in all the aspects of an intelligence bureau or cell, as well as the legislation that empowers investigators, and the nature of the many open and closed intelligence sources.

### *i2 Initial Course*

The training course takes 4 days and is held at the SPC. It gives practice in using i2 Analyst's Notebook to create network association charts and timelines.

### *Crime Pattern Analysis (Stages 1 and 2)*

Two courses of 5 days each, held at the SPC. They allow participants to examine intelligence and other related data to identify crime patterns and trends, and write reports and recommendations based on their observations. Participants must submit a problem profile before attending Stage 2.

Completing the second group of courses enhances the FIA's ability to contribute to the work of the FIU in many ways: e.g. by giving them the ability to produce evidential charts for court.

HMRC has also a specific training programme. All newly appointed operational staff undergo both Enforcement Awareness Core Skills (EACS) and National Anti-Smuggling Programme (NASP) training. EACS is a gateway event for all staff appointed to law enforcement areas of HMRC and includes an awareness and training session on POCA. This is then developed further in the context of NASP events to focus specifically on detection issues: this comprises more in-depth training, including operational deployment with a cash seizure team. The most senior official within HMRC dealing with cash detection has recently quality-assured the financial element of EACS and is satisfied as to the depth and breadth of this training. In addition to the EACS and NASP, officers who are deployed to specialist cash seizure teams receive further in-depth training.

## RESTREINT UE

HMRC regional offices have recently rolled out refresher POCA awareness training to all front-line operational officers to ensure that cash detection and seizure is recognised as a mainstream rather than a specialist activity.

In early 2008 HMRC Criminal Investigation Directorate (CI) developed a new cash-seizure training course which provides UKBA officers with a greater understanding of Proceeds of Crime legislation and an insight into cash civil forfeiture proceedings. By the end of March 2009 this training had been delivered to 102 officers in UKBA. A similar course, adapted for criminal investigators operating inland, has been introduced and was delivered to at least 60 officers during 2009/10. CI and UKBA are exploring opportunities to deliver joint CI/UKBA cash training courses, to improve the understanding of the referral and adoption process.

HMRC has its own Financial National Intelligence Unit (FNIU) to pool financial intelligence information from its offices across the UK. All HMRC FNIU staff receive training in intelligence analysis, and must pass the NPIA Financial Investigators Course. Staff also attend the training course for Money Laundering Regulation (MLR) assurance officers so they have a better understanding of their colleagues' supervisory responsibilities.

HMRC investigators receive financial awareness training as part of their basic course. In addition, HMRC has developed a two-day 'financial up-skilling' course, which all investigators are required to attend. The purpose of the latter is to ensure that POCA issues are given prominence in all investigations and remain in the minds of all investigators. This supports a long-standing policy that all criminal cases should be accompanied by financial enquiries with a view to confiscation. HMRC Criminal Investigation also has a three-person team dedicated to financial training matters who constantly monitor the training contents for accuracy and quality and upgrade the material as necessary. This team has also developed a one-day 'up-skilling' event for investigation managers. This includes an outline of the law, the procedures which are to be followed, and the role of the senior appropriate officer.

HMRC is a national organisation whose Law Enforcement capability requires it to operate within both the Scottish and English-Welsh/Northern Irish criminal justice systems. No specifically Scottish financial training is offered nationally by HMRC other than in relation to the seizure and detention of cash under Part 5, Chapter 3, of the Proceeds of Crime Act. The legislation in this part makes no significant distinction between the jurisdictions and a separate Code of Practice is published by the Scottish Ministers that regulates operational procedure in Scotland.

# RESTREINT UE

The description of training provided above is accurate insofar as all HMRC Officers are trained in England and Wales. Their training is later supplemented by local provision of training specific to the Scottish criminal justice system.

## 2.2.2 Prosecution

In 2002, the CPS produced a confiscation and money laundering training package in conjunction with the Nottingham Law School. This training course is now available to all prosecutors and caseworkers as an e-learning package. The course was initially given to a minimum of two lawyers from each of the 42 CPS Areas. These lawyers formed a national network of POCA lawyer champions and each of them signed a training contract by which they agreed to cascade the training to the lawyers within their Areas. Subsequently, a training package was delivered to CPS caseworkers and a national network of POCA Caseworker champions was also formed. The training provided by the local Area POCA lawyer and caseworker champions has been coordinated and supplemented by the Regional Asset Recovery Team lawyers, who have provided training to the CPS, the police and the Bar. In addition, there have been a number of national conferences attended by CPS POCA lawyer and caseworker champions highlighting topics such as restraint, money laundering and the enforcement of confiscation orders. Workshops will shortly be delivered to nominated enforcement champions from each CPS Area, who will be responsible for the enforcement of those confiscation orders requiring the appointment of a receiver. Training has also been delivered to Area personnel to enable CPS Areas to use the Joint Asset Recovery Database (JARD), so as to ensure that progress on asset recovery can be properly monitored by the Delivery Unit.

The RCPO (England and Wales) provided internal training on confiscation hearings and proceedings in June 2005 dealing with the Criminal Justice Act 1998 and the Drug Trafficking Act 1994.

The RCPO is currently training all of its prosecutors on confiscation, restraint and enforcement under the Proceeds of Crime Act 2002. The RCPO will supplement this with e-learning packages for new lawyers joining the RCPO in early 2007.

Separate training curricula are in place for prosecutors in Scotland.

## RESTREINT UE

Specialist prosecutors (Area Resource Deputes) based throughout Scotland deal with all work relating to Proceeds of Crime under guidance from the National Casework Division, Proceeds of Crime Unit (POCU) in the Crown Office.

Training is given regularly which includes recent developments and legislative changes. Training inputs are also provided to Area training days by members of the POCU staff to raise awareness of POCA matters generally throughout the COPFS. The POCU is a single point of contact for prosecutors and law enforcement agencies for advice and guidance on POCA matters.

In 2009, training was provided to all Area Resource Deputes on the Act of Adjournal (Criminal Procedure Rules Amendment No 3) (Confiscation Proceedings) 2009 which came into force in August 2009 for all High Court cases in Scotland. This training was also extended to all law enforcement agency financial investigation units.

In-house training for National Casework Division staff was provided on the work of all NCD units and more specifically on MTIC fraud and money laundering.

Area Resource Deputes are given specialist training when first appointed and regularly meet at a specific forum for ongoing training and awareness-raising.

### 2.2.3 Judiciary

The Lord Chief Justice (LCJ) is the head of the judiciary and this function includes responsibility for ensuring there is provision of training for judges and magistrates. This responsibility is exercised through the Judicial Studies Board (JSB), an independent body that reports directly to the LCJ. This is to ensure that there is no ministerial influence on judicial training, as part of the general commitment to maintaining judicial independence.

New legislation including that aimed at terrorist and money laundering offences is the subject of Criminal Continuation Seminars attended by all Crown Court judges in a rolling three-year programme. Any significant developments in the law and practice applying to such trials are covered during the seminars and are the subject of Criminal Appeal Office Bulletins published periodically.

## RESTREINT UE

The JSB, with the help of the Inns of Court School of Law, has produced a guide to the Proceeds of Crime Act 2002. This is in the form of a CD-Rom and is also accessible to the judiciary via a private JSB training website (potentially available for assessors on request). The guide contains a step-by-step guide to confiscation orders, and information on money laundering, receivership orders and restraint orders and help on cases with an overseas element. The material was made available as of February 2006.

In Scotland, judicial training is provided by the Judicial Studies Committee which has a similar role to the Judicial Studies Board.

### 2.3 Criminal policy

The joint HM Treasury/Home Office 2007 strategy, "The Financial Challenge to Crime and Terrorism"<sup>1</sup>, outlines the UK government's commitment to making financial tools a 'mainstream' part of the UK's approach to tackling crime and terrorism. The strategy takes a holistic view of the use of financial tools in investigating criminality, including their use in recovering the proceeds of crime, but perhaps more importantly financial investigation's role in tracing the financial 'footprints' of criminality throughout the regulated sector.

In its introduction, the Strategy outlines the reasons for this approach: the Government is "determined to safeguard the security and prosperity of the UK from the threat of organised crime and terrorism. Organised crime causes social and economic harm estimated at £20 billion to communities in Britain each year."

It also clearly explains the Government's understanding of the importance finance and finance-related investigations have for the fight against crime:

"Finance is the lifeblood of these threats. Organised criminals, driven by profit, use the financial system to move money, and launder and disguise it in other types of assets.(...) In the same way that the financial system provides a mechanism for legitimate trade and investment, so it can be abused by organised criminals and terrorists for their own purposes."

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<sup>1</sup> [http://www.hm-treasury.gov.uk/d/financialchallenge\\_crime\\_280207.pdf](http://www.hm-treasury.gov.uk/d/financialchallenge_crime_280207.pdf)

## RESTREINT UE

The document states that "like the use of fingerprints in the 19th century or DNA in the 20th century, financial information is now one of the most powerful investigative and intelligence tools available, the true potential of which is only now being fully understood. And the ability to deny access to the financial system to organised criminals and terrorists presents a new opportunity to weaken their networks".

This approach is reflected in the definition of a financial investigation which means "any investigation into a person or person's financial matters. It may involve some element of asset recovery but may be for other reasons such as a criminal money laundering investigation or other purposes such as tracing missing persons, tracing witnesses and assisting in enhancing the quality of other investigations, i.e. murder, robbery, burglary, kidnap or rape"<sup>1</sup>.

In order to further this over-arching strategic aim and the role of asset recovery in the strategy (as opposed to financial investigation as an investigative tool), the Home Office set out key action points to improve asset recovery performance in the 2007 Asset Recovery Action Plan. The key message of this plan is that the Government "delivered an almost fivefold increase in performance from the last five years". It is also committed "to going further, reaching £250 million by 2009-10."

The plan also presents a general aspiration: "Nobody charged with an acquisitive crime should be leaving the system still benefiting from the proceeds of that crime". This approach is supported by a wide definition of a financial crime derived from the Financial Services and Markets Act of 2000. In the UK, financial crime is the handling of the proceeds of crime, which includes many different crime types where the handling of the proceeds is an integral part of, or immediately adjacent to, the predicate offence, for example, burglary and in Scotland theft by house-breaking or drug dealing. It would also include crimes which are of a financial nature, i.e.: fraud, market abuse and tax evasion.

In July 2009, the Government published a new comprehensive strategy on tackling serious and organised crime, "Extending Our Reach"<sup>2</sup>. The strategy renewed the commitment to the mainstreaming of financial investigation.

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<sup>1</sup> ACPO/NPIA Glossary 2009

<sup>2</sup> <http://www.homeoffice.gov.uk/documents/extending-our-reach/>

## RESTREINT UE

In this document the UK government's objectives were set out as the use of financial tools and measures to:

- prevent crime and terrorism in the first place - by increasing the risk and lowering the reward faced by perpetrators;
- detect the criminal or terrorist abuse of the financial system; and
- disrupt criminal and terrorist activity – to save lives and hold the guilty to account.

The strategy sets out reforms that will be made to ensure that government, law enforcement, business and citizens are equipped with the necessary tools to reduce the harm caused by organised crime. This includes a new focus on the pursuit of criminal finances. The two strategic documents do not apply to Scotland.

The Asset Recovery Board (ARB) was established in order to develop and drive a long-term (10 year) vision for recovering criminal proceeds in support of the wider aim of reducing the size of the criminal economy and to set strategy and targets for recovery of the proceeds of crime. It also oversees performance of agencies.

The Asset Recovery Working Group (ARWG) was established in 2007. It is chaired by the Proceeds of Crime Deputy Director from the Serious Organised Crime Agency. Its meetings take place approximately every eight weeks.

A “Way Forward” paper was produced which set out the vision and aims of the group. Included within the paper was the following Mission Statement:

“To deliver HM Government's asset recovery vision by mainstreaming asset recovery activities, supported by developing innovative techniques, achieving excellence in financial investigation, and implementing enhanced information systems”.

The group has, among others, the following tasks:

- to drive asset recovery performance, working to the ARB;
- to mainstream AR throughout law enforcement;
- to deliver robust management information, including JARD, to inform HM Government and stakeholders;
- to develop excellence in financial investigation and asset recovery training;

## RESTREINT UE

- to promote innovative techniques and tools in asset recovery work; and
- to promote and share good practice in asset recovery.

Following discussions at the annual ARWG Planning Day held in February 2008, the group agreed to adopt the following Strategic Priorities for 2008/09: to drive thinking on Proceeds of Crime issues across the across the UK and internationally and to tackle the hurdles and barriers that impede ARWG's delivery.

The group also has two subgroups responsible for communication and international cooperation. The international cooperation group was established in October 2009. It deals with international aspects of strategies, analyses UK performance, including incoming and outgoing requests, and discusses capacity-building overseas.

The Confiscation Performance and Delivery Board (CPDB) analyses differences in local performance, and identifies, communicates and encourages the adoption of best practice nationally. It is chaired by the Attorney General's Office. It monitors performance reports at local and national level with a view to:

- influencing the pipeline by understanding better the underlying operational dynamics;
- identifying and taking action to remove or minimise barriers to efficiency and effectiveness (as far as possible);
- identifying and taking steps to maximise the enforcement of confiscation orders locally and nationally; and
- improving the ability to produce reliable projections and realistic expectations as to the trajectory.

As mentioned above, linked to this strategy the UK government has set a general all-agency target of £250m (for England, Wales and Northern Ireland) in Treasury receipts from criminal asset recovery in 2009/10. Some agencies have individual targets and geographical regions have set targets this year. These are the Local Criminal Justice Boards comprising Courts, Prosecutors and Police. In 2008-09 the Treasury receipts were £148m, composed as follows:

## RESTREINT UE

Treasury receipts 2008/9

<i>Agency</i>	<i>Cash Forfeiture</i>	<i>Confiscation</i>	<i>Civil Recovery &amp; Taxation</i>	<i>Total</i>
<i>Police/CPS</i>	<i>£28m</i>	<i>£54m</i>	<i>-</i>	<i>£82m</i>
<i>HMRC/RCPO</i>	<i>£10m</i>	<i>£19m</i>	<i>-</i>	<i>£29m</i>
<i>SOCA</i>	<i>£2m</i>	<i>£10m</i>	<i>£17m</i>	<i>£29m</i>
<i>Other</i>	<i>-</i>	<i>£6m</i>	<i>£2m</i>	<i>£8m</i>
<b><i>Total</i></b>	<b><i>£40m</i></b>	<b><i>£89m</i></b>	<b><i>£19m</i></b>	<b><i>£148m</i></b>

Since October 2005 a portion of monies seized has been recycled back to the police. This ‘Asset Recovery Incentive Scheme’ (ARIS), administered by the Home Office, was extended to Prosecutors and the Courts Service from April 2006. Some UK authorities are of the opinion that the ARIS has been particularly effective in driving up the performance of agencies involved as they are entitled to get back up to 50 % of what they recover.

Incentive allocations are based on each agency’s contribution to the total value of remittances from cash forfeiture orders, confiscation orders, and civil recovery and taxation cases.

For example, the CPS benefits under the Home Office’s incentive scheme, receiving one sixth of the amount remitted to the Home Office in respect of enforced confiscation orders obtained by the CPS. Compensation and receivers’ costs are deducted from the recovered amounts before remittance to the Home Office. Funding from the Home Office’s Recovered Assets Incentive Fund (RAIF) has paid for a proportion of the cost of attaching CPS lawyers to RARTs and also for a CPS e-learning package, which includes a money laundering module; and for national conferences and workshops.

The Home Office monitors the use of incentive monies to assess issues of propriety and regularity. It asks all asset recovery agencies (including all police forces) at the end of the financial year to account for their use of incentive payments.

An increased interest in raising public confidence in policing has led central government to launch a new community funding scheme (“Community Cashback”) using recycled criminal money. It is a scheme in England and Wales which gives local people a say in how £4 million of recovered criminal assets should be spent in their communities.

## RESTREINT UE

In Scotland, recovered criminal assets and profits are paid into the Scottish Consolidated Fund, and to bolster public confidence the “Cash Back for Communities” programme uses proceeds of crime money to create diversionary activities designed for young people to increase the opportunities they have to develop their interests and skills through a wide range of partnerships including sport, the arts and business associations.

Moreover, the recently published Scottish strategy, “Letting Our Communities Flourish”<sup>1</sup>, for tackling Serious Organised Crime in Scotland, recognises the importance of combating serious organised crime groups and aims to maximise the use of Proceeds of Crime legislation designed to improve effectiveness in seizing assets from criminals and confiscating their profits. The SCDEA has been set a strategic priority by the Scottish Government to use the provisions in the Proceeds of Crime Act to maximise the identification of assets for restraint and to support recovery of such assets through criminal confiscation and civil recovery.

Scottish authorities estimate that there are a minimum of 360 serious organised crime groups operating in Scotland. Although they undertake various kinds of criminal actions, the Government underlines in the Strategy that "the type of criminal activity committed by serious organised criminals is secondary to their overriding priority – to derive power and profit at any cost to society."

The objectives of the Strategy are the following:

- divert individuals (particularly young people) from engaging in or using the products of serious organised crime;
- disrupt the activities of serious organised crime groups;
- deter through measures to protect communities, businesses and the public sector from serious organised crime.
- detect by boosting capacity and improving coordination to give serious organised criminals no place to hide.

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<sup>1</sup> <http://www.scotland.gov.uk/Resource/Doc/274127/0081989.pdf>

## RESTREINT UE

The Strategy attaches importance to criminal assets stating that "The Proceeds of Crime Act 2002 (POCA) is a very valuable tool in disrupting serious organised criminal activity. There have been many successes, but there is still more scope to use this tool to greater effect in disrupting serious organised crime groups."

In Scotland, for 2008/2009, the total estimated value of assets restrained (POCA 2002) is £27 m (including £555,000 restrained from other jurisdictions). Under previous legislation (Proceeds of Crime (Scotland) Act 1995) about £2,5 m were restrained. The total amount of confiscation orders was about £3,5 m.

The Civil Recovery Unit in Scotland in 2008/9 remitted about £2,8 million, including about £2 million due to cash forfeiture.

The Lord Advocate ordered a review to inspect the arrangements in police forces and the Crown Office and Procurator Fiscal Service (COPFS) for implementing the Proceeds of Crime Act 2002. The report<sup>1</sup> presents the application of the Act and suggests certain improvements for the future. Some of its main findings are quoted in the conclusions of this chapter.

The strategic commitments and policies mentioned above are reflected at operational level. Each Agency involved in investigating criminality is responsible for defining the use of financial tools, including the role and strategy for the recovery of the proceeds of crime, in the context of their own organisational objectives and high-level government strategies and targets.

For example, the police take the view that proceeds recovery is a by-product of crime reduction activity. The Metropolitan Police Service, the largest force, does have an asset deprivation target which includes Treasury receipts, the value of instrumentalities seized in drug cases and compensation paid to crime victims. One of SOCA's five 'strategic imperatives' is to tackle criminal finances and profits, including through asset recovery. Every tasked SOCA operation contains consideration of the financial elements of the case and financial investigation. Asset recovery is seen as a key plank in the suite of powers available to SOCA to reduce the harm to the UK from serious organised crime.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2009/10/26113051/0>

## RESTREINT UE

Individual investigative agencies, for example, each police force, set local priorities. This is done, however, within the UK tripartite system of governance for police forces, sharing responsibility for policing between central government (the Home Office), local government (local Police Authorities) and the Chief Constable appointed. The local police take account of Home Office priorities as set out in the National Community Safety Plan 2008-2011. This gives priority to a number of cross-government Public Service Agreements (PSAs) that require a policing commitment.

In Scotland, the Scottish Government, local police authorities and Chief Constables are involved in setting priorities and producing appropriate implementation plans. The Scottish Government directs overall policy and issues guidelines.

In order to promote the finance-oriented approach, all agencies and government departments have adopted the 'Payback' catch-phrase and logo to encapsulate the disciplines of financial intelligence, financial investigation, anti-money laundering, counter-terrorist finance and asset recovery enforcement. This covers England and Wales and Northern Ireland, but not Scotland.

The main legal powers used by all agencies are contained within the Proceeds of Crime Act 2002. This Act streamlines various payback powers and procedures, defines criminal lifestyle, and creates a civil '*in rem*' recovery regime. The Act was enacted to reinforce the legislation available to recover the financial benefits of crime. The Act extended the scope of criminal activity which could be considered for criminal confiscation from drug-related offences to a broader range of acquisitive or financially motivated criminal activity. Furthermore the previous powers of investigation into financial affairs were also enhanced and the mechanisms for removing the benefits of criminal activity strengthened.

Finally, new substantive offences regarding money laundering were also established.

### 2.4 Conclusions

The UK's criminal policy ensures that proceeds of crime are an integral part of and given prominence in all criminal investigations. The UK's strategy is that financial investigations are foremost in the minds of all investigators and that all criminal investigations should be accompanied by financial enquiries with a view to confiscation.

## RESTREINT UE

The approach is also reflected in appropriate decision-making and advisory structures, such as the Asset Recovery Board and its working bodies. It guarantees that the performance of agencies is overseen and that strategies and targets are discussed on a regular basis. The existing mechanisms facilitate dialogue and general coordination between the services involved.

The strategic importance of criminal assets and financial investigations, combined with extensive training, mainstreaming of available financial investigative tools and a thoughtful public-relations approach ("Payback") deserve to be praised and undoubtedly may serve as inspiration for foreign jurisdictions.

However, the evaluators learned that the number of confiscation orders could still be increased as their application varies between 5 % and 26 % of acquisitive crimes in different regions. Thus the efforts need to be continued.

Moreover, the evaluators are of the opinion that the strategy focusing on financial investigations and criminal assets lacks a well-developed international component, to a large extent neglecting the potential added value of international cooperation.

The "Extending Our Reach" strategic document emphasises that the UK "will work with international partners – the US, EU and others – to ensure the greatest possible collective impact on organised crime abroad" and underlines the need to "tackle criminals who are trying to hide overseas" and to "bring within reach the significant proportion of UK criminals' assets that are thought to be abroad: £562.5 million in 2008." Despite these encouraging statements, the experts found that the UK approach seemed to be very largely focused on the domestic situation. Establishment of the ARWG subgroup dealing with international issues is thus an encouraging and welcome development.

The UK has a very elaborate and well-functioning system of institutions conducting financial investigations and prosecuting financial crimes. Although the law enforcement agencies are fragmented, numerous effective coordination and cooperation mechanisms have been established. For instance, SOCA fosters intelligence gathering, analysis and exchange. A specialised service for specific kinds of crime, the SFO, has been established, combining both prosecutorial and investigative functions.

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Standardised high quality training schemes have been elaborated by the NPIA. ACPO plays an important role in training and strategic coordination of the police forces. A sound case-management system, flagging possible operational overlaps, is in place.

However, as the evaluators understand it, the personnel of the Scottish Crime and Drug Enforcement Agency are not permanent, as the experts are seconded from other services. Currently they are on five-year contracts and on completion of the contract they return to their force. This may result in very experienced and highly trained officers leaving the organisation and taking valued experience with them. A dedicated skilled unit seems to be a necessity when dealing with such complex and sometimes very technical investigations.

The Proceeds of Crime Act 2002 is and remains a hugely beneficial tool and a forward step in the increased performances with regard to financial investigations, asset seizure and recovery. The UK's political will, together with financial and human resources dedicated to the field of financial investigation and asset recovery, has had a positive impact. Awareness and cooperation between the various agencies together with incentives for stakeholders have contributed hugely to UK successes to date. The emphasis on targets and cash payback incentives have no doubt underpinned performances in the fight against financial crime and its criminal proceeds. Although the UK strategy focuses on reducing harm in the community and on crime prevention, it was not made clear to the experts whether the asset recovery successes have indeed had any impact on the levels of harm or crime reduction in the community.

As indicated above, the Lord Advocate ordered an inspection of the practical implementation of the Proceeds of Crime Act 2002 in Scotland. The main findings of the report deserve to be quoted, as they present, in the opinion of the evaluators, a very accurate description of practical problems relating to POCA:

"Beyond the specialist units in both the police service and COPFS there is little evidence that consideration of POCA provisions is a common or mainstream activity for those dealing with lower level crime. At operational levels within police forces and COPFS there is a little awareness of how the provisions of POCA could be invoked to combat a wide range of offending.

## RESTREINT UE

Reliance is placed on specialists to identify POCA opportunities, rather than these being recognised by operational officers and lawyers. In addition, in the main COPFS rely on police and other law enforcement partners to identify POCA opportunities. In a criminal justice system focused on prosecuting and convicting criminals (...) the civil recovery and taxation provisions of the Act have not been fully exploited. (...)

In summary, a lack of mainstream knowledge throughout police forces and COPFS has resulted in the powers contained within the Act not being used to their full potential. Lower level criminals, who may carry out a high volume of acquisitive crime, and whose benefits of crime may be most visible in communities, are not routinely the subject of financial investigation by law enforcement agencies. Moreover, not all appropriate cases (i.e. those where there is insufficient evidence for criminal prosecution but good grounds for civil recovery) are reaching the Civil Recovery Unit, due to the narrow referral route that currently exists. (...) There is far more scope to use POCA powers to redress the financial benefits of crime at all levels across Scotland than is currently recognised."

Regrettably, the report covers only the Scottish jurisdiction. The evaluators suggest that a similar report be drafted for England and Wales in order to assess factual implementation of the Act and analyse the main problems.

Successful application of available legal tools is closely related to the level of training. The UK Authorities have placed special emphasis on providing high quality and up-to-date training packages for both law enforcement agencies and the Crown Prosecution Service involved in the field of financial investigation, asset seizure and confiscation. From perusal of the questionnaire and from the subsequent evaluation visit, it is apparent that the UK has made an effort by dedicating a lot of resources and energy in the area of training and indeed continues to do so. It should also be emphasised that this training should extend to the supervisors of law enforcement authorities as such investigations must be led and encouraged from the top. Leaders in law enforcement agencies must understand and appreciate the importance of financial crime investigations as a necessary tool in the fight against organised crime. The training and accreditation system, as it has been rolled out in the UK, definitely deserves to be mentioned as a fine example of "good practice". The skills acquired through the training trajectory and the content of the programme appear to be of a high standard. What is particularly positive is the built-in monitoring of continued professional development. Investigators are aware that, if these requirements are not met, they will lose their accreditation and the specific competencies it entails.

## RESTREINT UE

During the team's visit to the CPS, it was indicated that prosecutors were receiving further training in the area of case presentation for the benefit of jurors. As cases such as money laundering and financial crime investigations can be extremely complicated for a jury who are very likely to be unfamiliar with the complexities of financial crime, it is important that prosecuting lawyers are provided with the required skills to explain a case to a jury which the jury will ultimately be expected to make a decision on. This leads however to the conclusion that the sophisticated training for investigators and prosecutors does not have a counterpart in the judiciary.

Extensive training needs to continue and cannot be limited to investigators only. Within the law enforcement authorities it should cover medium- and senior- level managers, so that they can fully understand and make use of investigators' skills and powers.

Moreover, the evaluators discovered that there is some confusion among investigators concerning the interpenetration and application of the existing law on money laundering and the need for a predicate offence to be proved. Although the CPS has published appropriate guidelines and explanations, it seems that further training would be advisable so that the application and understanding of certain legal provisions is uniform among prosecutors and investigators.

Although mainstreaming of financial investigations proved to be successful, the evaluators were confronted with contradictory opinions on the incentive scheme as well as the targets for treasury receipts to be achieved. The two solutions undoubtedly bring benefits and foster the use of financial investigative tools. On the other hand, however, there are well-justified opinions that the incentives may adversely affect the ordinary funding scheme and, in combination with the targets, may impact on the priorities of the law enforcement services.

As the UK system, due to its advanced character, is hardly comparable with most other jurisdictions, no final judgment can be made at this stage. Undoubtedly, the policy chosen must take into account the level of development of the system. Incentives, which are inevitable when certain solutions (such as wide application of financial investigations) are promoted and mainstreamed, may not be appropriate or may need to be reshaped at a later stage. In any case the general public, especially communities confronted with significant crime rates, must benefit from asset recovery and the successful fight against crime. Targets for treasury receipts need to be combined with other indicators showing the effectiveness of the fight against crime.

## RESTREINT UE

Moreover, public presentation of the steadily growing targets needs to be balanced by a thorough presentation of achievements and successful cases. Otherwise it may indicate underperformance in the past, which is a misleading and discouraging message. This element of the public relations strategy and general perception needs to be improved.

### 3. Investigation and prosecution

#### 3.1. Available information and databases

##### 3.1.1 Bank accounts

As there is no central database of bank accounts, an investigator makes a credit reference agency check. Credit reference agencies are private companies which provide lenders with information about potential borrowers, which they then use to make lending decisions. The information shared may include information about the person's previous credit history. This reveals the financial relationships of a specific person, including bank accounts, credit cards, and loans held or applied for.

Credit reference agencies hold certain information about most adults in the UK. There are three main agencies of this kind in the UK.

Because information held by a third party is normally held in confidence, the third party requires a request that overrides its duty of confidence to the subject. This is provided by the authorities making a request under section 29(3) or section 35(2) of the Data Protection Act, respectively to “prevent or detect crime” or “in court proceedings”. In every case the request must be necessary and proportionate. The third party can query this with the Office of the Information Commissioner which oversees the usage of the Act.

A bank account can also be identified by way of a Customer Information Order served on a bank or a number of banks in order to identify the existence of a Bank account, POCA section 363 (in Scotland section 397).

This power is rarely used because of the sheer number of financial institutions in the UK; it may be appropriate where the subject's account is believed to exist in a very localised area.

## RESTREINT UE

A judge may, on an application made to him by an appropriate officer, also make an account-monitoring order.

### 3.1.2 Real estate

The main statutory function of Land Registry is to keep a register of title to freehold and leasehold land throughout England and Wales. It contains details of the owners of all land of which ownership has been transferred since 1925. There are 20 million properties registered. Recent transfers will also contain the price of the transfer and particulars of the lawyer handling the conveyance.

Registers of Scotland has a similar role for the Scottish jurisdiction. It is responsible for compiling and maintaining registers relating to property and other legal documents. Its main aim is to record and safeguard rights whilst providing access to information.

### 3.1.3 Companies

Companies House contains the names and addresses of all the directors of companies registered in the UK. There are more than 2.1 million registered companies with 6.8 million registered Directors. More than 300,000 new companies are incorporated each year. The register does not reveal the beneficial owner.

The main functions of Companies House are to incorporate and dissolve limited companies, examine and store company information delivered under the Companies Act and related legislation and to make this information available to the public.

### 3.1.4 Vehicles and Boats

The Driver and Vehicle Licensing Agency maintains the name and address of the registered owner of every vehicle registered in the UK. There were 34.2 million registered vehicles as at the end of 2008.

Registration of boats is not as well defined as it is for vehicles and depends on the type of vessel and the use to which it is put. Ships and boats can be registered abroad and do not necessarily need to be registered in the UK. Those that are registered under the UK Ship Register.

## RESTREINT UE

The UK Ship Register gives definitions for small ships (under 24 metres) and pleasure craft (boats used for sport or pleasure where the owner does not receive money for operating the vessel or carrying passengers). There is actually no requirement to register a small ship or a pleasure craft unless the owner wishes to secure a marine mortgage against the vessel (and so needs to be able to prove 'title') - in which case a Part I registration is required. A Part III registration proves a boat's nationality and is useful when taking a boat abroad.

### 3.2. Financial investigation and use of financial intelligence

In law, financial investigations are carried out in the context of normal criminal investigations, with accredited financial investigators receiving specific powers as designated by legislation. In practice they are carried out by specially trained investigators in parallel with criminal investigators. This is because the UK authorities assume it is too complicated for one person to conduct an evidential investigation towards prosecution whilst at the same time conducting an evidential investigation towards asset confiscation. The UK authorities consider confiscation ineffective unless assets are restrained at the commencement of an investigation. This means that an effective financial investigation begins before the criminal investigation and finishes after the end of that investigation.

Financial investigations are increasingly viewed as a key investigative tool, not only for the purposes of asset recovery, but for the purposes of tracing the 'footprints' left across the system by criminals involved in a variety of different types of criminal behaviour. The idea of mainstreaming financial investigation is about using it against all kinds of crime.

Within SOCA, as part of the tasking process, all operations are required to consider the use of financial investigation, including with a view to asset recovery, as part of the tasking and case review process.

It is possible to continue an investigation into proceeds of crime or more generally its financial aspects, after the proper criminal investigation has been closed or after the conviction. Under the Proceeds of Crime Act 2002 (POCA), UK authorities are able to recover criminal property through civil proceedings even if a criminal investigation has been unsuccessful, if the authorities can prove to the civil standard of proof that the property has been obtained through unlawful conduct.

## RESTREINT UE

It is possible to involve private experts (accountants, financial experts) in order to investigate the proceeds/financial investigations of criminal activities. Financial experts can be engaged by investigative agencies to assist in investigations. In law they are agents of the investigator. In this role they are not independent witnesses. In practice, accountants' evidence is rarely challenged provided that they are members of professional accountancy institutes.

Financial investigations are also conducted in the intelligence phase. Financial intelligence information is considered a vital indicator to initiate a criminal investigation. Financial intelligence gathered by the FIU is widely used. Suspicious Activity Reports (SARs) are of increasing importance as an intelligence tool in a financial investigation. In May 2005 the FIU made available a restricted view of its SAR database named ELMER via "Moneyweb", a government website which is hosted on secure web pages on the police and government networks. All appropriately trained and authorised law enforcement officers can access the database via this site. Through maximum dissemination of SAR data within the law enforcement community, SOCA (with its responsibility for the SAR system) is able to ensure that financial intelligence is available to add value in new investigations and in supporting existing investigations. On the other hand the evaluators were told that certain units, such as the Serious and Economic Crime Department of the Metropolitan Police (MET), do not have access to SARs in real time, as the data are downloaded once a month only.

There are many investigative tools available to law enforcement agents.

A general rule of UK Common Law is that "a constable may ask any anyone anything in order to prevent or detect crime" (Police and Criminal Evidence Act, 1984, Codes of Practice, Notes to Code B.). Because information held by a third party is normally held in confidence, the third party requires a request that overrides their duty of confidence to the subject. This is provided by the authorities making a request under section 29(3) or section 35(2) of the Data Protection Act.

Personal data processed for the prevention or detection of crime, the apprehension or prosecution of offenders, or the assessment or collection of any tax or duty or of any imposition of a similar nature are exempt from some data protection principles.

## RESTREINT UE

Moreover, personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by order of a court. In every case the request must be necessary and proportionate.

POCA provides for the following investigative options, among others:

- customer information order;
- account monitoring order;
- production order;
- order to grant entry;
- search and seizure warrant and
- disclosure order.

The tools in question are applicable to confiscation investigation, which is an investigation into whether a person has benefited from his criminal conduct, or the extent or whereabouts of his benefit from his criminal conduct.

Apart from a credit reference agency check, a bank account can be identified by way of a customer information order served on a bank or a number of banks in order to identify the existence of a bank account. This option is provided for by section 363 POCA (in Scotland Section 397).

A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application. An application for a customer information order may specify a particular financial institution or even all financial institutions. Customer information, in relation to a person and a financial institution, is information on whether the person holds, or has held, an account or accounts at the financial institution.

Only a financial investigator in confiscation and money laundering investigations may apply for the measure. The investigators are police officers, officers of Her Majesty's Revenue and Customs and investigators who are members of the staff of a listed public body who have been trained and accredited by the National Policing Improvement Agency (in Scotland police officers and officers of HMRC).

## RESTREINT UE

Failure to comply with the order constitutes an offence under section 366 of the Proceeds of Crime Act (in Scotland section 400) carrying a maximum sentence of an unlimited fine.

As indicated above, a judge may also, on an application made to him by an appropriate officer, make an account monitoring order (section 370 of POCA, in Scotland section 404). The period stated in an account monitoring order must not exceed 90 days beginning with the day on which the order is made. Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another). The application for an account monitoring order must state that a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property. The person affected does not have to be informed unless court proceedings are commenced against him or the order is against him.

Only a financial investigator in confiscation and money laundering investigations is entitled to apply for the measure. In civil recovery investigations, these are members of the staff of the Serious Organised Crime Agency and, effectively, members of the staff of the main prosecution agencies. In Scotland the Civil Recovery Unit oversees all investigations.

Failure to comply with an account monitoring order is a contempt of court punishable by an unlimited fine or imprisonment.

In accordance with Section 345 of POCA (in Scotland section 380), a judge may, on an application made to him by an appropriate officer, make a production order. It is an order either requiring the person whom the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate officer for him to take away, or requiring that person to give an appropriate officer access to the material, within the period stated in the order.

Section 347 (in Scotland section 382) provides for orders to grant entry. An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

According to Section 352 of POCA (in Scotland section 387) a judge may, on an application made to him by an appropriate officer, issue a search and seizure warrant.

## RESTREINT UE

The application for a search and seizure warrant must state that a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or property specified in the application is subject to a civil recovery investigation.

A search and seizure warrant is a warrant authorising an appropriate person to enter and search the premises specified in the application for the warrant, and to seize and retain any material found there which is likely to be of substantial value to the investigation for the purposes of which the application is made.

Only financial investigators in confiscation, money laundering and detained cash investigations are entitled to apply for the measure. In civil recovery investigations, these are members of the staff of the Serious Organised Crime Agency and, effectively, members of the staff of the main prosecution agencies (in Scotland the Civil Recovery Unit oversees any such investigations).

A detained cash investigation, which is an investigation into the provenance of seized cash which is suspected of being the proceeds of or intended for use in crime. Only the production order and search and seizure warrant are available in such investigations.

A disclosure order compels a person to answer questions, provide information and produce documents (Section 357 of the POCA, in Scotland Section 391). With respect to confiscation investigations, a financial investigator has to direct a prosecutor to make an application (in Scotland a police officer or officer of HMRC make applications directly). In civil recovery investigations, these are members of the staff of the Serious Organised Crime Agency and, effectively, members of the staff of the main prosecution agencies (in Scotland, the Civil Recovery Unit).

The order is then made by a judge of the Crown Court or High Court (in Scotland, the Court of Session) depending on the type of investigation.

A disclosure order is an order to give to any person considered to have relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following: answer questions, either at a time specified in the notice or at once, at a place so specified; provide information specified in the notice, by a time and in a manner so specified; produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

## RESTREINT UE

Failure to comply with a disclosure order is an offence under section 359 of the Proceeds of Crime Act (in Scotland, section 393) carrying a maximum sentence of two years' imprisonment and an unlimited fine.

The person affected does not have to be informed unless court proceedings are commenced against him or the order is against him.

Sections 377 and 410 provide for an obligation on the Secretary of State and Scottish Ministers, respectively, to prepare a code of practice as to the exercise of the powers in question. The codes are not statements of the law.

The authorities underline that the execution or carrying out of the investigative orders may involve significant interference with the privacy of those whose premises are searched and therefore need to be clearly justified before they are used. Investigators should therefore consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases the investigatory orders should be executed courteously and with respect for the persons and property of those concerned.<sup>1</sup>

Sections 32 to 46 of the Crime (International Cooperation) Act 2003 are also relevant. These implement the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters. Countries participating in the 2001 Protocol are obliged to identify, provide information about, and monitor bank accounts at the request of other participating countries, subject to certain restrictions. At the request of a foreign authority, a customer information order is made by a judge that a financial institution must provide such customer information as it has relating to the person specified in the application.

The Act provides UK authorities with tools to gather necessary data abroad. For example, if it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that a person who is subject to an investigation in the United Kingdom into serious criminal conduct holds, or may hold, an account at a bank which is situated in a participating country, and the information which the applicant seeks to obtain is likely to be of substantial value for the purposes of the investigation, the judicial authority may request assistance from a foreign authority.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2009/06/16125018/1>

## RESTREINT UE

The judicial authorities are in England and Wales any judge or justice of the peace, in Scotland any sheriff and in Northern Ireland any judge or resident magistrate.

A similar mechanism is applicable to monitoring banking transactions.

### 3.3. Cooperation with Europol and Eurojust

#### 3.3.1. Cooperation with Europol

UK law enforcement authorities cooperate closely with Europol. From the beginning of 2009 until 30 July 2009 the UK was mainly involved in exchange of information relating to drugs (26 % of information exchanged), fraud and swindling (13 %), illegal immigration (12 %), trafficking in human beings (9 %) and other means of payment (7 %).

Assessment of the position of the UK amongst the Member States liaison desks may be based on figures relating to the number of messages exchanged. The UK is in first position amongst the Member States and third parties for the number of cases initiated, with 906 cases (10 % of the total). It is in third position for overall activity, with 16 158 messages exchanged (7 % of the total).

The UK cooperates closely with Europol's Criminal Assets Bureau and Liaison Officers network, which support the identification of the proceeds of crime, when assets are located outside UK jurisdictional boundaries. It takes the lead in the number of asset-tracing requests, generating over 80 % of these requests. Europol statistics show that in 2007 121 of a total of 134 requests to Europol for assistance in the tracing of assets were made by the UK. Financial Investigators send asset-tracing requests to SOCA, using the Europol Asset-Tracing Request form. SOCA, in turn, forwards them to Europol which facilitates the enquiry.

The UK assumes that the introduction of national EU Asset Recovery Offices may have an impact on the number of requests going through Europol in the future. However, at the moment, national AROs are not electronically linked and therefore do not have a secure option for the exchange of data. Thus, the UK considers Europol a good option for this, as long as the request fits the Europol mandate.

The UK is a member of all financial crime-related Analytical Work Files (AWFs) and the quality and quantity of its contributions are considered to be average or above.

## RESTREINT UE

The Scottish Crime and Drug Enforcement Agency, HMRC and the London Metropolitan Police have separate liaison officers manning the UK Liaison Officers Desk at Europol HQ. In Scotland, each Scottish police force sends requests concerning financial investigations to Europol via SOCA Multilateral in London, unless their query concerns asset identification, in which case it would go from the force to ARO.

There is no Joint Investigation Team (JIT) involving the UK focusing on financial issues operating at the time.

### 3.3.2. Cooperation with Eurojust

The UK authorities are of the opinion that Eurojust's caseload has a very strong fraud element. In 2008, Eurojust provided support in some 1200 cross-border investigation and prosecutions of which more than half were recorded as involving fraud or a financial basis. In 2009, some two thirds of Eurojust cases have been registered under a fraud classification. Typically, Eurojust provides assistance through coordination meetings where investigators and prosecutors from within and outside the European Union come together to resolve tactical and strategic questions. A meeting may need to resolve a conflict of jurisdictions and agree operational coordination of such matters as execution of European Arrest Warrants, house searches etc. About 130 coordination meetings are held each year at Eurojust, with financial investigation elements reflected in the overall caseload. The UK has one of the highest participation rates at such meetings and is involved in about 40 % of them.

In 2008 the UK was the owner of 90 cases at Eurojust and the next year the number rose to 119. Its assistance was requested in 189 and 233 cases respectively.

As far as crimes against property or public goods including fraud are concerned, the UK owned 26 cases in 2008 and 29 in 2009. Respectively, 85 and 100 requests concerning files of that kind were directed to the UK. In 2008 the UK owned 11 cases on money laundering, whereas in 2009 there was one case more. In 2008 the UK was a requested party in 17 cases and in 2009, in 24.

There were 3 illegal trading cases the UK owned in 2008 and 2009. It was a requested party in 17 and 24 cases respectively.

## RESTREINT UE

Eurojust additionally holds tactical and strategic meetings on more general aspects of financial investigations in the EU. An example was one on the enforcement of restraint and confiscation procedures in Spain, where the laundering of proceeds of crime has been of particular concern.

The UK underlines that Eurojust now has a lead role in joint investigation teams within the EU. This includes providing expert advice and assistance on their formation and operation (13 JITs were formed at Eurojust in 2008). Various aspects of fraud and corruption have been the subject of Eurojust-supported JITs. These range from euro-counterfeiting to money laundering, corruption and credit card skimming.

Eurojust will, according to the UK authorities, increase its role as a central point in EU financial investigations. Provisions of the Treaty of Lisbon, including those on the possible establishment of a European Public Prosecutor's Office, were mentioned as indicators for the future growth of Eurojust's role. More generally, new obligations on Member States to ensure that certain types of cross-border investigations are notified to Eurojust will reinforce its position in supporting financial investigations and prosecutions.

Eurojust will also develop its role as the centre for JIT-based financial investigation. This is evidenced by its increasing role in JIT funding and by the fact that the JHA Council decided in 2009 that Eurojust should be the location for the Secretariat of the JIT Expert Network.

### 3.4. Conclusions

The UK system provides investigators with numerous and effective tools to conduct financial investigations. Thanks to the training programmes, the specific powers of financial investigators, the incentives for authorities involved and the general strategy, financial investigations are broadly applied.

However, the Joint Thematic Report on the POCA 2002 for Scotland contains the following finding: "During the inspection it was clear to us that law enforcement agencies were focusing on drug offences and paying less attention to the POCA opportunities in particular in relation to acquisitive crime and more generally for the entire range of offences contained within the Act.

## RESTREINT UE

Even within the reactive casework currently being dealt with, the scope of the Act was not being fully recognised and many offences which ought to attract the attention of financial investigation units were not being highlighted." Although a similar report for the remaining UK jurisdictions is not available, the experts found indicators that the weakness in question may be of a nationwide nature. Thus the process of mainstreaming, although very successful so far, cannot be regarded as finalised and needs to be continued.

Although effective legal tools for investigation and prosecution are in place, certain procedural requirements may hamper the effectiveness of services involved. The current legal system lends itself to protracted hearings in the area of financial crimes which involve substantial costs to the UK exchequer and could have a contrary effect on the fight against financial crime and recoverable assets. For example, the Serious Fraud Office investigates complex frauds etc. referred to it by other law enforcement agencies; the defence in such cases is publicly funded, resulting in a tendency to drag cases on for protracted lengths of time with high costs to the State and possibly eighteen months to two years' unnecessary work for the SFO. Likewise, requests for disclosure of irrelevant material by the defence are a regular delaying tactic, again at substantial cost to the State.

The current procedure raises matters for concern as the experts interviewed reported that it may lead to costly and unnecessary delays.

Investigators in the UK have access to numerous databases for the purpose of criminal investigations. However, since there is no centralised database of bank accounts in the UK, the investigators may only make a check with the credit reference agencies, private firms holding only credit references but not deposit or saving account records. Even though this may be a useful tool for the investigation it is still not considered adequate or complete.

On the other hand, the UK authorities underline that they enjoy a high degree of cooperation between financial investigators and financial institutions.

The role of financial institutions working in cooperation with government was affirmed in the document "The Financial Challenge to Crime and Terrorism", which states that "for it to be successful, the financial challenge to crime and terrorism must involve law-makers, legitimate businesses in the financial sector and law enforcement agencies".

## RESTREINT UE

Mutual relations are said to be cordial and are reinforced by frequent seminars hosted by law enforcement agencies and institutions. There is also a strategic Money Laundering Advisory Committee, chaired by the Home Office and the Treasury, which provides a forum for discussions between the financial sector and law enforcement. In addition, the Suspicious Activity Reports Regime Committee, chaired by SOCA, includes representatives of the financial services sector. This makes the financial sector confident that banking information will be carefully handled because of the existence of a national list of accredited financial investigators who are trained to a high standard.

The SAR regime seems to work well, but some weaknesses have been discovered.

Although the SAR database is available on line to all accredited financial investigators access by certain services (MET) to its content is limited, as the data are downloaded only once a month. This, in the opinion of the experts, may hamper investigations and a timely reaction by law enforcement. Moreover, the evaluators were told that the SAR database was designed for a significantly lower amount of data, which leads to some technical limitations. For example automatic cross-checking of all data is still not possible. The evaluators were informed that a new database is being developed.

The evaluators think that the fact the FIU is a police-based unit, embedded in SOCA, offers a great opportunity to share intelligence and to conduct integrated analysis in a proactive way. The database functionalities are, however, still under development and so is proactive data-sharing at EU level. The team learned that, owing to the number of SARs, the FIU is not able to analyse all reports or even monitor actions undertaken by local authorities who received SARs.

The team was quite disappointed to hear that cross-matching and referencing the SAR database with other crime intelligence would allegedly violate the “principle of confidentiality”. In developing the analytical capacity of the SAR database, this might impede any attempt to introduce a financial intelligence-led policing concept. If the SAR database is to remain a simple repository without any analysis functionalities, it will lose much of its potential. This appears to be a crucial debate, as the UK is developing a new database format. If this rigid attitude towards the “confidentiality of SARs” prevails, it will also make interoperability at EU level much more difficult.

The evaluators have some doubts concerning international cooperation on financial investigations.

## RESTREINT UE

First of all, the actual application of the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU raises numerous questions. Provisions of the Crime (International Cooperation) Act 2003 seem to be of primary importance in this regard. Nevertheless, the evaluators were advised during the evaluation visit that this law, even though it is a 2003 Act, only came into force in 2009 and is not being widely applied in practice.

Regarding Article 1 of the 2001 Protocol and the requirement to be able to assist another MS to identify whether a natural or legal person who is the subject of a criminal investigation holds or controls bank accounts in UK territory and to provide the details of the accounts, it seems that, in practice, this is not possible in the UK. Even though there is the legal basis to do so, both for domestic cases and for Mutual Legal Assistance requests, by obtaining a customer identification order, in practice this investigative power is rarely used. It was a commonly held view that it would be practically impossible to obtain such an order for all banks and bank branches in the UK and that further evidence as to a very localised area or possible specific banks would have to exist before such an order could be obtained. Similarly, in respect of monitoring banking transactions, as required under Article 3 of the 2001 Protocol, the common position both for England and Wales and for Scotland was that Mutual Legal Assistance requests to obtain account monitoring orders cannot be executed.

Regarding other financial information provided for under Article 2 of the 2001 Protocol, such as the identification of the unknown owner of a specific bank account and the identification of operations from and to a specified bank account in a specified period in the past, this kind of assistance can be provided, but only on the basis of a Mutual Legal Assistance request.

Moreover, the evaluators understand that in practice all investigative tools provided for by POCA (such as production orders etc.) are not applicable to non-domestic cases.

Cooperation through Europol and the use made by the UK of products and services offered by Europol to the MS is exemplary. The UK underlines that Europol should be increasingly the UK's gateway for EU financial enquiries, in support of all cases within the Europol mandate. It is considered to be an intelligence-gathering option, prior to a mutual legal assistance intervention.

Though the emphasis lies on the non-financial crime area, UK contributions to Financial AWFs are adequate and the quality is average or slightly above.

## RESTREINT UE

Despite the fact that the Scottish Crime and Drug Enforcement Agency, HMRC and the London Metropolitan Police have separate liaison officers manning the UK Liaison Officers Desk at Europol HQ, communication and information often does not penetrate beyond the UK Europol National Unit, especially with regard to awareness of products and services provided by Europol relating to financial or economic crimes.

Cooperation between the national authorities and Eurojust seemed to be good in all UK jurisdictions. Eurojust was mentioned many times by practitioners interviewed. Contrary to Europol, awareness of the possibilities Eurojust offers to facilitate cooperation between the EU Member States is at a reasonably good level.

### 4. Freezing, recovery in cash, civil recovery and confiscation

#### 4.1. Freezing

##### 4.1.1. At national level

There are no powers currently in the Proceeds of Crime Act to seize assets at the commencement of an investigation. The one power of seizure in confiscation proceedings is to prevent the removal from the jurisdiction property which is subject to a restraint order; this power is rarely used. There are powers in other legislation to seize material, for example under the Police and Criminal Evidence Act 1984 the police can seize anything that is evidence in relation to an offence. These other powers are not concerned about the property being the suspected proceeds of crime even though they may be.

Under Section 40 POCA and parallel provisions for Scotland and Northern Ireland, a restraint order may be applied for where there is reasonable cause to believe that an alleged offender has benefited from his criminal conduct and one of the following conditions is met, namely (1) there is a criminal investigation in relation to the offence, (2) proceedings have not been concluded in relation to an offence, (3) no order was made and reconsideration of that decision is requested, (4) the defendant, whether convicted or not, has absconded or (5) an order has been made but a request for reconsideration of the amounts involved has been made.

The measure is applicable to all crimes where it is possible for an alleged offender to have benefited from his criminal conduct. The measure is in place until discharged by the court. This may be from the start of an investigation through to enforcement of a post-conviction confiscation order.

## RESTREINT UE

A prosecutor or an accredited financial investigator, if authorised by a Senior Appropriate Officer (in Scotland a prosecutor), is competent to apply for the measure.

The application needs to be authorised by a Crown Court Judge (in Scotland a judge of the Court of Session or Sheriff).

The investigating agency serves copies of the restraint order on the specified person and parties who are holding the specified person's assets, e.g. the specified person's bank. Breaches of restraint orders are investigated by the investigating agency and brought to the attention of the Crown Court (in Scotland High Court/Sheriff Court) by prosecutors.

Applications may be made ex-parte in which case the specified person is served with a restraint order when practicable, normally on arrest for the offence being investigated. In Scotland the practice is that the specified person is served with (a copy of) the restraint order as soon as possible after it is granted.

The specified person can apply to the Crown Court (in Scotland, Court of Session/Sheriff Court) for discharge or variation of the order. They are given a copy of the information upon which the restraint order is based, and this may form the basis for an application.

Sections 40 and 41 of POCA (in Scotland Sections 119 and 120) set out provisions for obtaining restraint orders which apply where a criminal investigation has started or criminal proceedings are ongoing and where there is reasonable cause to believe that the defendant has benefited from his criminal conduct. The order is to restrain property, rather than to freeze it, in that the property in question remains in the hands of its owner. Where there are concerns about the preservation of the value of the asset, however, the applicant can make a request to the Court that a management receiver (in Scotland, an administrator) be appointed to take possession of the property and manage it in order to preserve its value pending any eventual granting of a confiscation order. The cost of management is borne by the applicant or from the proceeds of an enforced confiscation order obtained post-conviction. Moreover, if a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from England and Wales. Similar powers exist in Scotland – section 126 of POCA.

## RESTREINT UE

As far as civil recovery is concerned, proceedings for a recovery order may be taken by the enforcement authority in the High Court (the Court of Session in Scotland) against any person who the authority thinks holds recoverable property. If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the application, it must be described in the application in general terms.

Section 246 provides for an interim receiving order. Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for an interim receiving order (whether before or after starting the proceedings).

An interim receiving order is an order for the detention, custody or preservation of property, and the appointment of an interim receiver.

An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

Exclusions may be made when the interim receiving order is made or on an application to vary the order.

An exclusion may, in particular, make provision for the purpose of enabling any person to meet his reasonable living expenses, or to carry on any trade, business, profession or occupation, and may be made subject to conditions.

There are also property freezing orders. These were introduced in the Serious Organised and Police Act 2005. This provided in civil recovery proceedings the ability to apply for a property freezing order as an alternative to an order appointing a receiver, interim receiving order. The Serious Crime Act 2007 introduced the power to be able to appoint a receiver to manage property subject to a property freezing order. This is a different role from that of interim receiver who is an independent person who has investigation powers to further assist the court in civil recovery proceedings. A management receiver overseeing property subject to a property freezing order only has the power to manage that property.

## RESTREINT UE

As in England and Wales, Scotland has statutory provisions enabling applications to be made to the Court of Session to freeze property. These freezing orders are known as Prohibitory Property Orders (PPO) and Interim Administration Orders (IAO). These provisions are contained under sections 256 and 257. Where applications for the orders are made, the court must be satisfied that there is “a good arguable case” that the property is recoverable property (i.e. property obtained through unlawful criminal conduct) or associated property.

If a PPO is granted, this freezes the recoverable or associated property. This enables the Civil Recovery Unit to carry out appropriate investigations.

If an IAO is granted, this likewise freezes the property but an interim administrator is appointed. The administrator will manage the property to which the order relates and carry out investigations to establish if the property to which the order applies is recoverable or associated property (which is a property described in section 245 which is not itself the recoverable property).

### 4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA

Framework Decision 2003/577/JHA has been partially implemented for evidence, but has not yet been implemented for property owing to business priorities. Thus the UK has neither received nor issued any requests in the form outlined in 2003/577/JHA.

The UK underlines however that it does have existing powers to effectively freeze property in response to an overseas request. So, as the UK stated, its authorities can and do successfully assist international partners in restraint, confiscation and asset-sharing matters.

Between April and August 2009 nine incoming requests for restraint were received from EU countries. Eleven outgoing requests were made in the same period.

Around five such requests per year are made by the Scottish authorities and only one or two such requests are received by them.

# RESTREINT UE

## 4.1.2.1 Experience when acting as an issuing State

Any prosecutor has the power to request the freezing of property in another country (sections 74, 141 and 222 of POCA).

The UK would send and receive all requests via the UK Central Authority in the Home Office (UKCA) in London. The UKCA forwards incoming requests to the CPS or another prosecuting authority. Outgoing requests come to the UKCA from individual CPS regions or other prosecuting authorities.

In Scotland, outgoing international letters of request seeking the restraint of funds are issued by the National Casework Division – International Desk, COPFS, to the requested State, via the UKCA in London. In urgent cases, advance copies of the request may be sent via Eurojust/the UK Liaison Magistrate in the requested State.

EJN Atlas or contact points may be used to locate an unknown recipient authority. The authorities in England and Wales are not aware of any practical difficulties in this regard. Likewise in Scotland, such a recipient might be identified by means of the EJN Atlas or input from EJN contact points, or from the UK desk at Eurojust or the UK Liaison Magistrate in the requested State.

If any practical problem arises, the authorities in question write directly to the requesting prosecutors or phone them. Likewise in Scotland, the authorities contact the requesting authority directly by e-mail/phone if they think the requesting authority would be able to deal with the matter in English; otherwise they make contact via the requesting State's Liaison Magistrate in London if there is one, the EJN contact point or Eurojust.

## 4.1.2.2 Experience when acting as an executing State

The UK authorities declare that they accept foreign orders sent electronically as well as by fax or post. All requests are vetted by lawyers on behalf of the Secretary of State for the Home Office (in Scotland this function is performed by lawyers within the National Casework Division, COPFS) to ensure they are appropriate prior to acceding to the request. All requests must be in English or accompanied by an English translation.

## RESTREINT UE

When an order has been received, the Central Authority nominates the court that will consider the freezing order. The court considers the freezing order and decides to execute. In Scotland, the National Casework Division, COPFS, decides on the execution of such requests and obtains the relevant Court orders on behalf of the requesting State. ARO may become involved if work requires to be done to properly identify assets described in the incoming request.

Where an application is made, the court will effectively require that there is a risk of dissipation. Subject to certain conditions, a court may make a restraint order in the event that an external request is received. Under article 7 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (Statutory Instrument 2005 No 3181) (as amended) the court must be satisfied that the relevant property is identified in the external request, that there is reasonable cause to believe that the alleged offender named in the request has benefited from his criminal conduct and either that a criminal investigation has started in the originating country or that proceedings relating to the offence have been started in the originating country.

If the asset in question is cash, a customs officer, constable or accredited financial investigator may seize it, if he has reasonable grounds for suspecting that it is recoverable property or intended for use in unlawful conduct. Such seized cash may not be detained for longer than two years and two days.

The cash seizure/forfeiture scheme is only available in domestic cases. In some circumstances, it is possible to give effect to external orders by way of civil recovery. Property subject to a civil recovery proceeding can be frozen as part of the process of executing the order.

When an IRO (International Receiving Order) is granted a receiver is appointed.

An external request is defined in Section 447 of POCA. It is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request. An external order is an order which:

- (a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
- (b) is for the recovery of specified property or a specified sum of money.

## RESTREINT UE

An external investigation is an investigation by an overseas authority into:

- (a) whether property has been obtained as a result of or in connection with criminal conduct, or
- (b) whether a money laundering offence has been committed.

It may be applied against all property wherever situated and includes:

- (a) money;
- (b) all forms of property, real or personal, heritable or moveable;
- (c) things in action and other intangible or incorporeal property.

When an external order is referred to England and Wales (or Northern Ireland) it is possible for the enforcement authorities to seek a PFO (Property Freezing Order) or IRO in the matter, whilst the court decides whether to register the external order. In order to grant a PFO or IRO in these circumstances, the court must be satisfied that there is a good arguable case that the property is or represents recoverable property.

The UK maintains contact with requesting States in all mutual legal assistance matters. In Scotland the authorities keep the requesting State advised of material developments in the progress of proceedings, usually by e-mail.

### 4.2 Recovery in cash

In accordance with Section 289 of POCA, a customs officer, constable or accredited financial investigator who has reasonable grounds for suspecting that there is on the premises cash:

- (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
- (b) the amount of which is not less than the minimum amount,

he may search for the cash there.

If he has reasonable grounds for suspecting that a person (the suspect) is carrying cash which is recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount, he may exercise the following powers.

He may, so far as he thinks it necessary or expedient, require the suspect to permit a search of any article he has with him, or to permit a search of his person.

## RESTREINT UE

A customs officer, constable or accredited financial investigator exercising the powers may detain the suspect for so long as is necessary for their exercise.

Cash means:

- (a) notes and coins in any currency,
  - (b) postal orders,
  - (c) cheques of any kind, including travellers' cheques,
  - (d) bankers' drafts,
  - (e) bearer bonds and bearer shares,
- found at any place in the United Kingdom.

Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by an order made after consultation with the Scottish Ministers.

Section 294 provides for the seizure of cash and provides that a customs officer or constable may seize any cash or cash part of which he has reasonable grounds for suspecting that it is:

- (a) recoverable property, or
- (b) intended by any person for use in unlawful conduct.

The law does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which suspicion relates, is less than the minimum amount. Under section 303, the minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers. It is currently set at £1000 (Statutory Instrument 2006 No 1699 which came into force on 31 July 2006). It was previously £5000.

The cash may be detained initially for a period of 48 hours. The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the Sheriff. The cash can then be detained for a maximum of two years.

While cash is detained, an application for the forfeiture of the whole or any part of it may be made:

- (a) to a magistrates' court by the Commissioners of Customs and Excise or a constable,
- (b) (in Scotland) to the Sheriff by the Scottish Ministers.

## RESTREINT UE

The court or Sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part:

- (a) is recoverable property, or
- (b) is intended by any person for use in unlawful conduct.

### 4.3 Civil recovery

The purposes of civil recovery, as specified in POCA, are the following is to enable the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,

The powers in question are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

Section 241 defines unlawful conduct as conduct occurring in any part of the United Kingdom if it is unlawful under the criminal law of that part, or conduct which occurs in a country outside the United Kingdom and is unlawful under the criminal law of that country and, if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part.

The court or sheriff must decide on a balance of probabilities, which constitutes a significant difference from the ordinary criminal procedure, whether it is proved that any matters alleged to constitute unlawful conduct have occurred, or that any person intended to use any cash in unlawful conduct.

Section 242 defines property obtained through unlawful conduct. A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

In deciding whether any property was obtained through unlawful conduct:

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

## RESTREINT UE

If the court is satisfied that any property is recoverable, the court must make a recovery order.

Section 266 lists cases where the recovery order cannot be made, such as when the respondent obtained the recoverable property in good faith. Moreover, it is sections 278, 308, 309 and the Proceeds of Crime Act 2002 (Exemptions from Civil Recovery) Order 2003 (SI 2002 No. 336) which lists cases that are excluded from civil recovery.

The court appoints a suitably qualified trustee for civil recovery, who gives effect to a recovery order.

#### 4.4 Confiscation (including Framework Decisions 2005/212/JHA and 2006/783/JHA)

Framework Decision 2006/783/JHA has not yet been implemented. The UK would expect the provisions to closely mirror those which already exist in its domestic law. Full implementation of this Framework Decision is likely to require separate UK legislation. The Home Office advises that detailed preparatory work on this is ongoing. The authorities hope that implementation of this Framework Decision will lead to a speedier, more streamlined system for the mutual recognition of confiscation orders emanating from EU States and bring clarity to the asset-sharing arrangements which should come into play once a foreign confiscation order has been executed.

Moreover, it is possible for a competent authority of a Member State where the Framework Decision has been implemented to issue a confiscation order, together with a certificate, and forward it to the UK.

A confiscation order can be made under Section 6 of POCA in the Crown Court in England and Wales; parallel provisions exist in Scotland and Northern Ireland (in Scotland under section 92, with an order being made in the High Court or the Sheriff Court).

Confiscation can be applied in relation to offences tried in the Crown Court (i.e. serious offences), or offences tried in the Magistrates' Court where the criminal benefit warrants referral to the Crown Court by the prosecutor; so all offences.

## RESTREINT UE

In line with Section 6 of POCA, the court must proceed as follows:

- (a) it must decide whether the defendant has a criminal lifestyle;
- (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
- (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

Criminal lifestyle is defined in Section 75 of POCA (in Scotland section 142).

The following are specific offences or combinations of offences over specified time periods where extended confiscation is applicable. The court can assume that all a person has or has had in the previous six years is the proceeds of crime and can therefore be valued as part of the amount set on the confiscation order:

- Drug trafficking (but not simple possession or cultivation of cannabis);
- Money laundering (but not section 329 – acquisition, use and possession);
- Directing terrorism;
- People trafficking (assisting unlawful immigration, trafficking for sexual exploitation and exploitation);
- Arms trafficking;
- Counterfeiting;
- Intellectual property (copyright);
- Pimping, brothel keeping (under the Sexual Offences Act 1956) and child sex offences (offences under the Sexual Offences Act 2003);
- Blackmail;
- Gang masters (acting as a gang master other than under the authority of a license, possession of false documents etc.)
- Inchoate offences (attempts, conspiracies and incitement in respect of these offences);
- An offence that was committed over a period of at least six months (for example, a fraud offence or a series of thefts) to the value of £5000 or more;

Conduct forming part of a course of criminal activity – this applies when a person is charged with three or more other offences in the current proceedings, in addition to the offence being heard, where the total benefit is £5000 or more; One offence in the current proceedings, and conviction for a minimum of two separate offences in the last six years with a benefit of £5000 or more.

## RESTREINT UE

In Scotland the position is similar to section 142 and Schedule 4 of POCA although the list of offences is slightly different, reflecting different terms for crimes (e.g. extortion instead of blackmail) and different statutory offences (in relation to offences relating to pimps and brothels and trafficking in prostitution).

The Crown Court Judge decides on the confiscation following the application from a prosecutor (in Scotland the Sheriff or judge of the High Court).

Crown Court Confiscation orders are enforced either by the prosecutor or the Magistrates' Court. Prosecutors enforce orders in more serious or complex cases, for example where a restraint order is in place or assets are overseas or hidden. In Scotland orders are enforced by the Scottish Court Service. The prosecutor may have a role in checking compliance and applying for appointment of an administrator if an order is not paid.

The specified person may apply to the Magistrates' Court seeking a variation of the confiscation order claiming that he cannot pay. This should be highly exceptional, given that the Order is made in the Crown Court against the value of specified assets. Victims also have the ability to make representations to the court. In Scotland there are powers for a person to ask the Court to vary the terms of an order.

ARO is not involved in the procedure.

An interesting observation was made in the abovementioned Scottish report on POCA.

The report says a process has been put in place which requires referral of cases to the Civil Recovery Unit only from the National Casework Division. As a result, only those cases reported for prosecution which either fail or are not proceeded with may be reported to the Civil Recovery Unit. There is no direct route for law enforcement agencies to report a case for civil recovery where it is clear that there is insufficient evidence to reach a criminal standard of proof.

In the absence of such a direct route, it is considered that the mindset of law enforcement agencies will inevitably be upon prosecution to the potential exclusion of the civil recovery provisions.

## RESTREINT UE

As far as confiscation is concerned, the establishment of the Joint Asset Recovery Database (JARDB) needs to be mentioned. Information relating to the Proceeds of Crime Act must be loaded onto the database to support the government initiative of 'Taking Profit Out of Crime'. JARDB was established by the Concerted Inter-Agency Criminal Finance Action Group in April 2004 to ensure better day-to-day management of asset recovery. Over 2,500 individuals have access to the system in the various agencies involved in asset recovery. The agencies that use the database are obliged to keep it updated by entering data about the progress of confiscation order enforcement. JARDB records the date the confiscation order was made and the deadline the court sets for the defendant to satisfy the order. Agencies are therefore able to monitor the cases using these dates and are able to prioritise enforcement action accordingly. The data on JARDB is regularly analysed. Any delay in enforcement action is noted and queried with the agency in question.<sup>1</sup> If an agency is not recorded on JARDB as a contributor, it will not receive an incentive payment.

Prosecutors and representatives of Law Enforcement in Scotland use JARDB. The Scottish Asset Recovery Group has a working group, chaired by the Head of National Casework Division, which is tasked with ensuring that JARDB is used in Scotland to maximum effect. The rules about incentivisation do not apply in Scotland.

### 4.5 Conclusions

POCA provides the UK authorities with numerous and very effective tools to address criminal assets. Civil recovery seems to be a highly valuable instrument that may be applied in cases where penal procedure and confiscation are not efficient. The lower level of proof and the fact that the procedure is conducted against assets, not persons, has proved to be very advantageous and efficient.

However, the specific nature of the solution, which is uncommon and not well understood in many EU Member States, poses numerous practical problems in international cooperation as civil recovery orders issued by the UK are not recognised.

Focus on cash supported by specific and tailor-made legal provisions seems to be a very good practice and is said to produce very good results.

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<sup>1</sup> <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/133/13312.htm>

## RESTREINT UE

The lowering of the threshold defining the minimum amount of cash as £1000, whereas in the past the amount was as high as £10 000, is considered a good decision and shows that the UK wants this option to be commonly used against low-level crime, which is a matter of importance for local communities. This solution deserves to be promoted in other jurisdictions.

The recovery and confiscation process in the UK is value-based, which influences factual enforcement. The common position of all the relevant authorities was that the enforcement of confiscation orders has been a major problem and that more efforts should be made towards achieving a higher level of enforcement of the confiscation orders obtained. A possible reason for this could be that not enough assets were restrained at the early stages of investigation to satisfy the confiscation order or even that their value had diminished by the time the confiscation order became enforceable. High costs of receivership to enforce the confiscation were also mentioned. Furthermore, in cases where the assets were located outside the UK in different overseas territories, the expense, the time and the resources needed to trace the assets basically outweighed the value of the order. Actions undertaken by qualified administrators nominated to manage assets in order to enforce confiscation are often very costly, due to the complex nature of managing certain assets, such as real estate or companies.

Moreover, as the evaluators understand it, if the assets are not restrained convicted criminals in practice have the option of either being imprisoned or being deprived of their assets. In order to preserve their wealth, they often choose to serve additional time in prison. As this option may be combined with release on parole from prison, the overall deterrent effect of confiscation may be limited.

The experts interviewed also underlined the limited added value of the Joint Asset Recovery Database (JARD) which is a tool for monitoring the progress of confiscation order enforcement, suggesting that a more comprehensive case-management system for financial investigations would be useful.

International cooperation, especially the formal implementation of the relevant EU legal acts, seems to require more effort.

Framework Decision 2003/577/JHA has been implemented in part, only as far as the freezing of evidence is concerned. The relevant piece of legislation is the Crime (International Cooperation) Act 2003 (CICA (2003)), Chapter 2.

## RESTREINT UE

This law however only came into force in 2009 and it has not yet been used. Nevertheless, this kind of assistance has already been provided via the well-established mutual legal assistance mechanism.

The Framework Decision on the freezing of property has not yet been implemented, even though the deadline for its implementation was 2 August 2005. Thus, there is no law in place enabling the recognition and immediate execution of a property freezing order obtained in another MS as is the objective and as is provided for in Article 5 of the Framework Decision. Nevertheless, the UK has in place a mechanism to effectively freeze property in response to an overseas request. This can be done following a mutual legal assistance request. Part 2, Chapter 1, of POCA 2002 (External Request and Orders) Order 2005 provides for the procedure to be followed when such a request for freezing of property is received in England and Wales and Part 3 when such a request is received in Scotland. In such a case and if the conditions set out in article 7 of the abovementioned law are satisfied, then the Crown Court may make a restraint order prohibiting any specified person from dealing with relevant property which is identified in the external request and specified in the order. Provisions as to the discharge and variation of the Order as well as for the appointment of management receivers and their powers are also included.

Whereas the UK has mechanisms to deal with foreign requests, it would appear that they often have difficulty in freezing/confiscating property and repatriating such property to the requesting State. Issues raised in this regard were the costs involved because of the UK's judicial systems and the necessity to appoint a receiver to manage the assets and conduct investigations. There is also the risk of substantial legal fees being incurred should incorrect or insufficient information be supplied by a requesting State where action has been taken on foot of such information.

Furthermore, owing to the fact that the UK authorities operate under a strategy of incentivisation (not in Scotland) and targets, any property/funds identified following a request by another Member State could be viewed by the various stakeholders in law enforcement within the UK as advantageous in reaching targets and getting cash back. The UK does have asset-sharing agreements with a number of countries.

The Scottish Authorities, on the other hand, appear somewhat more amenable with regard to the registering of external confiscation orders but again do not have any great experience in this regard. Scottish authorities can obtain account monitoring orders or customer information orders for foreign authorities as they do under domestic law, although to date they have not been asked to do so.

## RESTREINT UE

The UK has not fully implemented Framework Decision 2006/783/JHA either. However, as has been stated, the implementation of this Framework Decision and the implementation of FD 2003/577/JHA are considered by the UK as a priority in future new legislation. Irrespective of this, the UK can provide such assistance and does assist other MS in restraining and confiscating proceeds of crime traced in the UK, through the Mutual Legal Assistance mechanism.

The position, as it now stands, regarding the recognition and enforcement of external confiscation orders, is governed by POCA 2002 (External Requests and Orders) Order 2005, Chapter 2, and by section 447 of POCA 2002. Article 21 of POCA 2002 (Ext. Requests and Orders) Order 2005 sets out the conditions which must be satisfied before the Crown Court proceeds with the registration of the external confiscation order (e.g. that the order was made consequent to the conviction and no appeal is pending against either the conviction or the order and that the registration of the order would not be incompatible with any of the Convention rights of any person affected by it).

Furthermore, reference is made in section 447 of POCA 2002 to an “external order” which is defined as an order which is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct and is for the recovery of specified property or a specified sum of money.

It is understood that the above provisions also cover the situation where the confiscation order is for equivalent-value property and not only specific property directly derived from the offence committed by the accused.

Furthermore, as provided in Article 7(2) and (3) of the abovementioned Framework Decision, if the external confiscation order concerns a specific item of property, that order can be registered and enforced in the UK, and the assets confiscated will be realised, obtaining a sum of money corresponding to the value of the property. In addition to that, if the external confiscation order concerns an amount of money and payment is not obtained, then the order can be executed on any realisable equivalent-value property held by the convicted person in the UK.

Even though the UK authorities took the position that they are in favour of asset sharing, no legislative provisions exist governing the disposal of confiscated property as provided for in Art. 16 of the above Framework Decision. Bilateral agreements between the UK and other countries have been signed for this purpose. Asset sharing, however, can also be done in practice on a case by case basis.

## RESTREINT UE

As far as Framework Decision 2005/212/JHA is concerned, extended powers of confiscation, as provided for in Article 3 of the Framework Decision, seem to be covered under POCA 2002, section 10 (for England and Wales) and section 96 (for Scotland), where certain assumptions are to be made by the Court in the event of a criminal lifestyle. Instrumentalities are also liable to confiscation. Even though no such provision is contained in POCA 2002, instrumentalities can be forfeited under the provisions of Part VII, section 143, of the Powers of Criminal Courts (Sentencing) Act 2000.

Furthermore, regarding external requests for the forfeiture of instrumentalities, the Criminal Justice (International Cooperation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005, which came into force on 31 December 2005, aims at the enforcement of forfeiture orders made by a foreign court in respect of anything used or intended for use in connection with the commission of an offence.

### 5. Protection of the financial interests of the EU - available mechanisms, particularly cooperation with OLAF

There is no designated authority or service in the UK to assist OLAF in conducting its on-the-spot checks and controls of economic operators on the basis of Regulation (EC) No 2185/1996.

Although the UK appears to have designated its national Eurojust Member as a competent authority in order to receive information obtained by OLAF during its investigations, it is not clear to OLAF who is the “judicial authority” to which information is to be forwarded pursuant to Article 10(2) of Regulation (EC) No 1073/1999.

The UK does not have a mechanism to ensure that information in respect of criminal cases relating to fraud against the financial interests of the EU and their outcome is communicated to OLAF.

The UK admits that, although there are lines of communication with OLAF in important cases, no formal, comprehensive structure is in place. Moreover, the UK states that OLAF would not deal directly with UK prosecuting authorities, but could pass information to HMRC to be taken forward by the appropriate civil or criminal route. HMRC is said to be the competent authority for customs crime investigations in the UK.

## RESTREINT UE

It was also stated that the Commission cannot take cases against traders for customs offences to court in the UK, whether civil (tribunal) or criminal. However, it would be possible for Commission officials to supply documentation or give evidence if necessary. It is HMRC which has a role in combating customs fraud against EU Own Resources Revenue. HMRC takes forward certain serious cases using national criminal powers, either as a UK initiative or at the request of OLAF, which cannot move cases forward to prosecution.

Certain areas enjoy more structured cooperation. HMRC has established a routine supply of data on cheap white tobacco products to OLAF as well as analytical reports. HMRC and the UK Border Agency input information on seizures, e.g. on tobacco, and from containers, as well as other useful information such as trend data on concealments, using OLAF-run information systems. HMRC recently worked jointly on a cigarette-smuggling case where both OLAF and the UK had information about the same container. The UK offered to carry out a joint investigation but OLAF indicated that its information was that there would be no more shipments and closed the investigation. The UK will conduct an investigation and advise OLAF of the result. HMRC also has ongoing cooperation with OLAF in another cigarette-smuggling case.

For criminal investigations, OLAF can assist in a joint working capacity. OLAF agents would not have legal powers but could be part of the case team. They would not be able to use all HMRC powers but may if specified be able to carry out surveillance etc. The UK is open to this way forward, but no suitable case has arisen recently. In principle however, OLAF always states that it is there to provide a platform for other Member States to cooperate rather than to conduct the investigation itself. It may be able to add some expertise to the process. The UK would normally pursue tobacco fraud as an offence against UK revenue, whereas OLAF's powers are to tackle the customs duty and counterfeiting aspects, which relate to the correct operation of European Customs Code legislation.

OLAF also notices that the UK is very focused on EU Own Resources. Offences against EU Direct Expenditure, for example fraud and corruption in procurement procedures, seem to be of lesser importance.

The UK underlines that there are periodic Joint Customs Operations, involving OLAF, Member States and third countries, but these are not criminal investigations. OLAF has recently assisted HMRC on a tobacco fraud case.

## RESTREINT UE

UK intelligence teams on customs fraud work closely with OLAF colleagues, though we are not aware of any examples of OLAF supplying team members for investigations. HMRC has some experience of Third Pillar Joint Investigation Teams (JITs) with other MS, but - as the UK explains - OLAF is not competent to act in Third Pillar matters.

This assessment is not entirely shared by OLAF, which underlines that, as far it is relevant, OLAF is mentioned in the explanatory report on the EU MLA 2000 Convention with regard to JITs. Furthermore, the possibilities for the Commission to give technical and operational support to Member States' competent authorities during their investigations on fraud, corruption and money laundering are set out in the 2<sup>nd</sup> Protocol to the Convention on the protection of the European Communities' financial interests. Thus the experts are of the opinion that the role of OLAF needs to be explained and promoted among relevant UK authorities.

### 6. Recommendations

#### 6.1. Recommendations to the UK

1. Establishment of additional Regional Asset Recovery Teams needs to be considered in order to ensure complete territorial coverage (see 2.1.1).
2. When updating strategic documents on financial investigations and asset recovery, more attention should be paid to potential profits from international cooperation, especially at EU level. Existing cooperation mechanisms within the framework of Europol, Eurojust and OLAF need to be enhanced (see 2.4 and 3.4).
3. The personnel of the Scottish Crime and Drug Enforcement Agency, especially the experts dealing with financial investigations and asset recovery, should enjoy permanent status (see 2.4).
4. Mechanisms for effective assessment of the fight against crime need to be developed, combining the existing targets for treasury receipts with other indicators, such as overall harm reduction and factual disruption of criminal networks. Measuring the impact of asset recovery on crime is encouraged (see 2.4).
5. A thorough inspection of implementation of the Proceeds of Crime Act should be considered. The Scottish Joint Thematic Report could serve as a model for this review. The findings could inspire further improvements of the law and be used for the promotion of certain UK legal concepts abroad (see 2.4).

## RESTREINT UE

6. More efforts should be made towards achieving a higher level of enforcement of the confiscation orders obtained. More extensive and well-timed application of restraint measures as well as reduction of excessive enforcement costs need to be considered (see 4.5).
7. Training on financial investigations and asset recovery needs to continue and be directed to a larger extent to senior management of law enforcement authorities. Additional extensive training sessions for judges and prosecutors should also be considered so that they are familiar with the complexities of finance-related cases (see 2.4).
8. The SAR system needs to be developed in order to improve access by interested services to the necessary data and to enable cross checking of data to foster intelligence-led policing. International exchange of the data, especially proactive cooperation through Europol, should be further pursued (see 3.2).
9. Steps need to be taken to provide investigators with access to relevant and complete banking data, which cannot be obtained from credit reference agencies, including data on deposits and savings. Establishment of a centralised bank accounts database should be considered (see 3.4).
10. Framework Decisions 2003/577/JHA and 2006/783/JHA and the provisions of the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU need to be fully implemented (see 4.5).
11. Penal policy should be reconsidered in order to limit possibilities for convicted criminals to opt to serve a sentence in lieu of confiscation. The deliberate non-fulfilment of outstanding confiscation orders should have a negative impact on a person's eligibility for release on parole whilst serving a prison sentence (see 4.5).
12. A competent authority needs to be designated to assist OLAF in conducting its on-the-spot checks and controls (see 5).
13. The current incentivisation schemes should be reconsidered as they should not be a substitute for ordinary budgetary funding (see 2.4).
14. The UK Eurojust National Member, the UK Europol National Unit and other competent authorities should promote and explain the potential added value of the relevant EU bodies, including OLAF, for financial investigations. Their analytical capabilities, information and intelligence exchange, available communication channels and means of practical assistance need to be brought to the attention of all stakeholders (see 4.5 and 5).

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The UK is requested to inform the Council Secretariat within 18 months of adoption of this report of the action it has taken on these recommendations. The information will be submitted to, and if necessary discussed by, the MDG.

### 6.2 Recommendations to the European Union, its Member States, institutions and agencies:

1. EU institutions and agencies are invited to support all actions undertaken by the UK in order to implement the recommendations listed above.
2. UK legal measures, which have proved to be highly effective, such as civil recovery, cash forfeiture and POCA investigatory powers need to be thoroughly discussed, explained and promoted at EU level.
3. All EU Member States should take the abovementioned explanations into account in order to consider recognition of foreign non-conviction-based orders.
4. The role and powers of financial investigators as well as their training system need to be presented at EU level and taken into account when common EU standards or training projects are being developed.
5. Measures to mainstream financial investigations, including incentive schemes and the "Payback" campaign, need to be presented as an option and discussed at EU level.
6. In order to facilitate the enforcement of confiscation orders, the EU should enhance possibilities for tracing assets in other Member States. The creation of an EU Confiscation Orders Registry could be considered.

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ANNEX A

## PROGRAMME FOR VISIT

### Monday 18 January 2010

10:00 – 12:00 Home Office – for introduction and legislation,  
14:00 National Policing Improvement Agency – for financial investigator training presentation

### Tuesday 19 January 2010

09:30 – 12:00 Serious Fraud Office  
14:00 Association of Chief Police Officers

### Wednesday 20 January 2010

10:00 – 12:00 Metropolitan Police Service/City of London Police  
14:00 Serious Organised Crime Agency  
Fly to Edinburgh

### Thursday 21 January 2010

All day Scotland meetings hosted by Crown Office and Procurator Fiscal Service  
Fly to London

### Friday 22 January 2010

10:00 – 12:00 Crown Prosecution Service  
12:30 Lunch organised by Home Office  
15:00 – 16:00 Home Office – wash up

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ANNEX B

## LIST OF PERSONS INTERVIEWED

### HOME OFFICE

Jim Bradley, Organised and Financial Crime Unit  
Kenny Bowie, UK Central Authority  
Stephen Goadby, Organised and Financial Crime Unit

### NATIONAL POLICING IMPROVEMENT AGENCY

Steve Wilkinson  
Tristram Hicks

### SERIOUS FRAUD OFFICE

SFO background/rationale:

Linda Heaton, senior lawyer/case manager, Individual and Investment Domain

Investigating and prosecuting serious or complex fraud:

Glynn Powell, senior prosecutor and Head of City and Corporate Domain

Corruption and bribery:

Tony Farries, senior lawyer/ case manager

Anti-Corruption Domain; Proceeds of Crime

Dick Gould, senior investigator, Proceeds of Crime Domain

MLA - Clyde Marklew, investigator, International Assistance Domain.

### ASSOCIATION OF CHIEF POLICE OFFICERS

Chief Constable Mick Creedon  
Detective Superintendent Ian Davidson

### METROPOLITAN POLICE SERVICE

Detective Superintendent Matthew Parkes, Senior Management Team  
Detective Inspector Mark Jennings, Payback Development Unit  
DS Richard Keene, Money Laundering Team

DS Mark Radford, Money Laundering Team  
DS Gary Moncrieff, Money Laundering Team  
DC Roland Thomas, Money Laundering Team

### SERIOUS ORGANISED CRIME AGENCY

Officers from the Proceeds of Crime Department in SOCA including the UK Financial Intelligence Unit (UKFIU).

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## SCOTLAND

The Lord Advocate

Katie Stewart, Head of National Casework Division, Crown Office

Ernie Shippin, Deputy Head of National Casework Division

Sheila Robertson, Principal Depute in charge of International Desk, National Casework Division

Alistair Duncan, Principal Depute in charge of the Proceeds of Crime Unit, National Casework Division

Ruaraidh Macniven, Deputy Head, Civil Recovery Unit, Crown Office

Faye Cook, Senior Depute, Policy Division, Crown Office

Garry Deans, Detective Inspector, Scottish Crime and Drug Enforcement Agency

Kenny Thomson, Detective Sergeant, Scottish Crime and Drug Enforcement Agency

Brian Wright, Detective Inspector, Strathclyde Police

George Burgess, Criminal Law and Licensing Division, Scottish Government

Elizabeth Sadler, Organised Crime Unit, Police Division, Scottish Government

George Dickson, Organised Crime Unit, Police Division, Scottish Government

## CROWN PROSECUTION SERVICE

Alun Milford

Gary Balch

Jeremy Rawlins

Karen Townsend

## CITY OF LONDON POLICE

Stephen Head, City of London Police

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# RESTREINT UE

ANNEX C

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
ACPO	Association of Chief Police Officers
ACPOS	Association of Chief Police Officers in Scotland
AFI	Accredited Financial Investigators
ARB	Asset Recovery Board
ARIS	Asset Recovery Incentive Scheme
ARO	Asset Recovery Office
ARWG	Asset Recovery Working Group
CCP	Chief Crown Prosecutor
CJA	Criminal Justice Act
COPFS	Crown Office and Procurator Fiscal Service
CPDB	Confiscation Performance and Delivery Board
CPS	Crown Prosecution Service
CRU	Civil Recovery Unit
DWP	Department for Work and Pensions
EACS	Enforcement Awareness Core Skills
EC	European Community
EN	Explanatory Note
EU	European Union
FIG	Financial Intelligence Gateway
FISS	Financial Investigation Support System
FIU	Financial Investigation Unit
FNIU	Financial National Intelligence Unit
FSA	Financial Services Authority

## RESTREINT UE

HMICS	Her Majesty's Inspectorate of Constabulary in Scotland
HMRC	Her Majesty's Revenue and Customs
IAO	Interim Administration Orders
IRO	International Receiving Order
IT	Information Technology
JARD	Joint Asset Recovery Database
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
JLS	Justice, Freedom and Security
JSB	Judicial Studies Board
MDG	Multidisciplinary Group on Organised Crime
MET	Metropolitan Police
MLA	Mutual Legal Assistance
MPS	Metropolitan Police Service
MS	Member State
MTIC	Missing Trader Intra-Community (Fraud)
NPIA	National Policing Improvement System
OC	Organised Crime
OCTA	Organised Crime Threat Assessment
OLAF	European Anti-Fraud Office
PFO	Property Freezing Order
POCA	Proceeds of Crime Act of 2002
POCC	Proceeds of Crime Centre
POCDU	Proceeds of Crime Delivery Unit
PPSNI	Public Prosecution Service for Northern Ireland
RAIF	Recovered Assets Incentive Fund

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RART	Regional Asset Recovery Teams
RCPO	Revenue and Customs Prosecution Office
ROCTA	Russian OCTA
SAO	Senior Appropriate Officer
SAR	Suspicious Activities Reports
SARG	Scottish Asset Recovery Group
SCDEA	Scottish Crime and Drug Enforcement Agency
SFO	Serious Fraud Office
SOCA	Serious Organised Crime Agency
SPSA	Scottish Police Services Authority
UK	United Kingdom
UKCA	UK Central Authority

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