



Date **15 April 2015**

Position statement **Confiscation orders**

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## Background

A confiscation order is an order that a convicted defendant pay a certain sum of money, representing the defendant's benefits from crime, to the Crown. Its purpose is to deny a person the benefit of property derived from crime. The defendant can choose to pay the order voluntarily, but if payment is not made, compulsory enforcement action can be taken.

Under the Proceeds of Crime Act 2002, Magistrates' Courts lost the power to make confiscation orders. They had previously had this power for appropriate offences under the Criminal Justice Act 1988. Magistrates continue to have the responsibility for the enforcement of confiscation orders.

## The potential change

Section 97 of the Serious Organised Crime and Police Act 2005 (SOCPA) gave the Secretary of State power to make provision for Magistrates' Courts in England and Wales to impose confiscation fines of up to £10,000. This would have to be done by an affirmative instrument. While section 97 has been brought into force, it only gave the Secretary of State the power to make provision by order. In the intervening nine years, this has not happened.

Briefing notes on the Serious Crime Bill (now the Serious Crime Act 2015) mention that the Government has work in hand on bringing these measures forward, but give no timescales or issues which the Government are considering in order to do so. The Home Office forward planner of secondary legislation mentions a Confiscation Orders (Magistrates' Court) Order 2014, but with no further detail.

## The MA's position

Given that magistrates used to have the power to impose confiscation fines and continue to play a role in non-payment of confiscation orders, the MA can see no reason not to bring the relevant clauses of SOCPA into force.

The Serious Crime Act raises the default sentence for non-payment of orders under £10,000 remains to a maximum of six months – a sentence which falls within magistrates' existing powers. If magistrates can sentence offenders for up to six months, why should they not be able to impose this level of confiscation order? Furthermore, magistrates can already make a forfeiture order for cash under POCA: in effect, the status quo means that they have the power to confiscate ill-gotten gains in cash, but not from back accounts.

## What is the MA doing?

The MA tabled a probing amendment to the Serious Crime Bill to raise this issue and to gain more clarity on the Government's intentions. It would have required the Secretary of State to bring forward secondary legislation to enable magistrates to make confiscation orders, which would then need to be approved by both Houses of Parliament.

In response, the Government confirmed that it was planning to bring forward secondary legislation; that magistrates would be given training; and that they would be able to provide more information this autumn. The MA is not aware of further movement on this issue at this stage and will be following it up.