

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12: Miscellaneous and General

Miscellaneous

Section 448: Tax

603. This section introduces *Schedule 10*.

Schedule 10: Tax

Part 1 – General

604. Sections 75 and 77 of the Taxes Management Act 1970 have the effect that, where the receiver is appointed by the court, certain taxes payable by the person whose property is under receivership may be recovered instead from the receiver. Whilst both the tax and the confiscation legislation is silent on the subject, there is an argument that these sections apply to receivers and administrators appointed under the confiscation and civil recovery legislation. *Schedule 10* provides expressly that these sections do not so apply.

Part 2 – Provisions relating to Part 5

605. This part applies where property vests in the trustee for civil recovery or other person under a recovery order or cash is forfeited under *section 298*.

606. Without special provision, such vesting or forfeiture might count for capital gains purposes as a disposal at market value, and any resulting gains would be chargeable. A charge to income tax or corporation tax might also arise instead.

607. *Paragraph 2* is introductory. It explains terms used in the context of this Part of the Schedule, notably, Part 5 transfer, transferor, transferee and compensating payment both where there is a single interest and multiple interests in the property concerned.

608. *Paragraph 3* of Schedule 10 provides as a general rule that transfers by way of vesting or forfeiture should not be treated as giving rise to chargeable gains. This does not apply to the extent that a compensatory payment is made, for example under *section 272*: in that case tax may be charged by reference to the payment actually made.

609. A similar issue potentially arises where a transfer is made under Part 5 with the benefit of interest accrued but not yet paid. Without special provision, a charge on the transferor would then arise under the Accrued Income Scheme, on top of the amounts recovered or forfeited. *Paragraph 4* provides in effect that a transfer in civil recovery or cash forfeiture proceedings will be disregarded for purposes of the Accrued Income Scheme.

610. *Paragraphs 5 to 8* cover other assets where comparable income tax or corporation tax issues arise. In each case, transfers will not be treated as giving rise to an income tax

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(c.29) which received Royal Assent on 24 July 2002*

charge, except to the extent that a compensatory payment is made to the transferor for what is acquired. The assets concerned are:

- relevant discounted securities;
 - certificates of deposit;
 - material interests in offshore funds; and
 - futures and options.
611. *Paragraph 9* applies the same general rule to transfers that would otherwise give rise to debits or credits taken into account under the loan relationship rules for computing a corporation tax charge.
612. *Paragraph 10* makes it clear the *paragraphs 4 to 9* do not apply where a compensating payment is made to the transferor.
613. *Paragraph 11* covers analogous issues where the property transferred is trading stock of a business. The normal rule is that stock disposed of not by way of trade, or valued on the discontinuance of the trade, is taken into account for tax purposes at market value. These rules are disapplied so that transfers of stock give rise to no profit or loss.
614. *Paragraphs 12 to 29* contain provisions that apply where the assets have qualified for capital allowances. The rules bring into account any compensating payments made, otherwise ensuring the vesting will be tax neutral.
615. *Paragraphs 12 to 17* set out the rules for plant and machinery. *Paragraph 12* provides that, where there is a Part 5 transfer of plant or machinery the disposal value, in the context of this part of the Schedule, to be brought into account is determined by reference to these provisions.
616. *Paragraph 13* provides that, if a compensatory payment is made to the transferor, the disposal value is the amount of that payment. Otherwise it is the amount that will give rise to neither a balancing allowance nor a balancing charge.
617. *Paragraph 14* disapplies the rules in *paragraph 13(2)* if the plant or machinery is in the main pool, or class pool. Instead, the disposal value is that amount which would have given rise to neither a balancing allowance nor a balancing charge had the asset been in a single asset pool, assuming all allowances had been claimed.
618. *Paragraphs 15 and 16* cover the special rules for partnerships. *Paragraph 15* disapplies the rules in *paragraph 13* if the business is carried on in partnership, and a compensating payment is made to at least one, but not all of the partners. In these cases, the disposal value is the sum of any compensating payments plus, for each partner who does not receive a compensating payment, an amount that would give rise to neither balancing allowance nor balancing charge in relation to their share in the asset (the “tax neutral amount”).
619. *Paragraph 16* disapplies the rules in *paragraph 13* if the business is carried on in partnership, and the asset is the property of two or more partners (but not the partnership) and compensating payments are made to at least one, but not all of the owners. In these cases, the disposal value is the sum of any compensating payments plus, for owners to whom no compensating payments are made, the “tax neutral amount”.
620. *Paragraph 17* ensures the general rules for capital allowances will apply as necessary to these provisions, and defines the “tax neutral amount”.
621. *Paragraphs 18 to 21* set out the rules for industrial buildings. *Paragraph 18* provides that a Part 5 transfer of the relevant interest in an industrial building is treated as a balancing event for industrial buildings allowances (IBA) only through these provisions.

622. *Paragraph 19* provides that, if a compensating payment is made to the transferor, that payment is treated as the proceeds from the balancing event. Otherwise the proceeds are deemed to be equal to the residue of qualifying expenditure immediately before the event. Further rules ensure a balancing allowance or balancing charge will not arise even if there were periods of non-qualifying use.
623. *Paragraph 20* disapplies *paragraph 19* if the relevant interest in the industrial building belongs to a partnership and a compensating payment is made to one or more, but not all of the partners. In these cases, the proceeds from the balancing event are the sum of any compensating payments plus, in respect of each partner to whom no such payment is made, his or her share of the residue of qualifying expenditure immediately before the transfer.
624. *Paragraph 21* ensures the general rules for IBA will apply as necessary to these provisions.
625. *Paragraphs 22 to 25* cover the rules for flat conversion. *Paragraph 22* provides that a Part 5 transfer of the relevant interest in a flat is treated as a balancing event for flat conversion allowances (FCA) only through these provisions.
626. *Paragraph 23* provides that, if a compensating payment is made to the transferor, that payment is treated as the proceeds from the balancing event. Otherwise the proceeds are taken to be equal to the residue of qualifying expenditure immediately before the event, so no balancing allowance or balancing charge will arise.
627. *Paragraph 24* disapplies *paragraph 23* if the relevant interest in the flat is held by a partnership and a compensating payment is made to one or more, but not all of the partners. In these cases the proceeds from the balancing event is the sum of any compensating payments plus, in respect of each partner to whom no such payment is made, his or her share of the residue of qualifying expenditure immediately before the transfer.
628. *Paragraph 25* ensures the general rules for FCA will apply as necessary to these provisions.
629. *Paragraphs 26 to 29* cover the rules for research and development. *Paragraph 26* provides that, where there is a Part 5 transfer of an asset representing qualifying research and development expenditure, the disposal value for research and development allowances (RDA) is determined by these provisions.
630. *Paragraph 27* provides that, if a compensating payment is made to the transferor, the disposal value is deemed to be that amount. If there is no compensating payment, the disposal value is nil.
631. *Paragraph 28* disapplies *paragraph 27* if the asset is partnership property and a compensating payment is made to one or more, but not all of the partners. In these cases, the proceeds from the balancing event are the sum of any compensating payments made to the partners.
632. *Paragraph 29* ensures the general rules for RDA will apply as necessary to the provisions in this Schedule.
633. *Paragraphs 30 to 33* apply to employee share schemes. They cover the situations where an employee has acquired shares, or options over shares and that interest is recovered as representing the proceeds of crime. In each case, without special provisions, there would be a charge to income tax at the time of the disposal.
634. *Paragraph 30* deals with share options acquired by an employee that are transferred to the trustee for civil recovery. Where the trustee then exercises the option and acquires the shares, the gain is not to be charged to tax under this provision.

635. *Paragraph 31* relates to shares which are acquired subject to conditions where the charge to tax is deferred from the time of acquisition of the shares to the time the restriction is lifted, or the shares disposed of. The tax charge on the transferor on the market value of the shares at the time of the disposal is removed under this provision.
636. *Paragraph 32* deals with shares that are acquired at an undervalue, so effectively a taxable benefit arises. When the shares are transferred there would normally be a tax charge on the transferor on the amount of the undervalue. This charge is removed under this provision.
637. *Paragraph 33* covers shares that are acquired in a subsidiary company, where there would normally be a tax charge on the transferor on the increase in the value of those shares from the time of acquisition until the time of disposal. This charge is removed under this provision.

Sections 449 & 450: Agency staff: pseudonyms; Pseudonyms: Scotland

638. *Section 449* provides protection for Agency staff when carrying out their duties. A member of staff of the Agency may identify himself by means of a pseudonym whenever it would otherwise be necessary or expedient to provide his name, including when exercising powers under Part 8 of the Act that would require him to be named. *Section 450* relates to Scotland and provides similar protection for persons carrying out civil recovery investigations on behalf of the Scottish Ministers.
639. *Section 449* will mean that the Director – and only the Director – will have the power to direct that Agency staff may identify themselves by means of a pseudonym when they are authorised to do anything for the purposes of the Act. A certificate signed by the Director will be conclusive evidence that the member of staff is entitled to use the pseudonym. Where staff are acting under a pseudonym, they may not be asked any question which is likely to reveal their true identity. If they are asked such a question, they do not have to answer. *Section 450* for Scotland reflects the different arrangements there, where the law enforcement and prosecution authorities will continue to be responsible for confiscation and the Scottish Ministers for civil recovery.

Section 451: Customs and Excise prosecutions

640. *Section 451* provides that the Commissioners of Customs and Excise may bring proceedings for an offence under Part 7 of the Act (money laundering), an offence under *section 342* (prejudicing an investigation) and certain inchoate offences in relation to these offences. The provision reflects that in existing legislation (section 60 of the Drug Trafficking Act 1994, and section 93F of the Criminal Justice Act 1988), except that the range of offences covered has been slightly increased. This means that, in addition to the Part 7 offences (the three principal money laundering offences, failure to disclose and tipping off) or the section 342 (prejudicing an investigation) offence, the provision now covers any attempt, conspiracy or incitement to commit any of the above-mentioned offences, or similarly aiding, abetting, counselling or procuring the commission of any of those offences.
641. It should be noted that this section does not apply to proceedings on indictment in Scotland, where such prosecutions are conducted in the name of the Lord Advocate. Statutory provision for Customs and Excise officers to bring summary prosecutions in Scotland is set out in section 34(1) of the Criminal Law (Consolidation)(Scotland) Act 1995, but in practice these are conducted in the name of the Procurator Fiscal.

Section 452: Crown servants

642. *Section 452* provides that the money laundering offences in Part 7 of the Act and the offence of prejudicing an investigation under *section 342* can be applied, by regulations made by the Secretary of State, to persons in the public service of the Crown. The provision is required because otherwise Crown Servants would not be subject to those

criminal offences in the exercise of their duties as Crown Servants, although areas of Crown business may potentially be vulnerable to money laundering. The provision closely follows the existing legislation set out in section 61(1) of the Drug Trafficking Act 1994 and at section 93G(1) of the Criminal Justice Act 1988 (as amended by the Criminal Justice Act 1993). Under the existing legislation regulations have been made applying the offences to the Director of National Savings and his staff in order to put them in the same position as those in financial service businesses in the private sector.

Section 453: References to financial investigators

643. This section enables the Secretary of State to specify by order a description of the type of accredited financial investigators who may exercise restraint powers under Part 2 or investigation powers under Part 8. The order is subject to annulment in pursuance of a resolution of either House (*section 459(4)*). A system for the accreditation of financial investigators is provided under *section 3* and the purpose of the order-making power is to enable the Secretary of State to limit the use of restraint and investigation powers to those financial investigators who are employed or engaged by law enforcement authorities or are employed or engaged in a law enforcement capacity by Government departments. It will be possible to describe in an order investigators working in specified organisations or Government departments, or investigators who are not below a specified grade. It would thus be possible to designate under the order investigators who may act as senior appropriate officers for the purposes of making an application for a customer information order (*section 369(7)*).

Schedule 11: Amendments

644. *Schedule 11* is introduced by *section 456*. This Schedule contains amendments that need to be made to other legislation as a result of the Act. In some cases, these substantially replicate consequential amendments made in the earlier proceeds of crime legislation. This applies to the amendments to the Rehabilitation of Offenders Act 1974, the Rehabilitation of Offenders (Northern Ireland) Order 1978, the Criminal Justice Act 1982, the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989, the Criminal Justice (International Co-operation) Act 1990 and the Crime (Sentences) Act 1997.
645. In other instances, it has been necessary to make new consequential provision as a result of new material in the Act. These amendments are discussed below, in chronological order of the legislation amended.

Parliamentary Commissioner Act 1967 (c.13)

646. *Paragraph 2(3)* of this schedule brings the taxation functions of the Director of ARA within the remit of the Parliamentary Commissioner for Administration in respect of his consideration of complaints. This places consideration of such matters by the Commissioner on an equal footing with other matters to do with taxation, which remain under the responsibility of the Inland Revenue.

Criminal Appeal Act 1968 (c.19)

647. The consequential amendment in earlier legislation of the Criminal Appeal Act 1968 has been expanded to include a new provision in *sub-paragraph (2)*. This is needed because the Director of the ARA may be involved in certain appeals to the House of Lords under the 1968 Act.

Misuse of Drugs Act 1971 (c.38)

648. The amendment of the Misuse of Drugs Act 1971 is one of a number occasioned by the new approach to money laundering adopted in the Act. Part 7 of the Act establishes a number of new money laundering offences, applicable to benefit from all criminal

conduct. The new offences replace the separate drug money laundering and non-drug money laundering offences in the existing legislation.

649. In the existing legislation, drug money laundering offences are defined as “drug trafficking offences”. The classification of a particular offence as a drug trafficking offence has a number of practical consequences. For example, a confiscation hearing must be held where a person appears for sentence in the Crown Court for a drug trafficking offence. Because there is no longer such a thing, following the changes made by the Act, as a drug money laundering offence, the definition of a drug trafficking offence no longer includes drug money laundering offences.
650. The expression “drug trafficking offence” does not only appear in the confiscation legislation. It also appears, for example, in section 27 of the Misuse of Drugs Act 1971, which empowers the courts to make a forfeiture order following a conviction for “a drug trafficking offence”. Because the definition of a drug trafficking offence, as amended by the Act, will no longer include drug money laundering offences (which will no longer exist), section 27 of the 1971 Act will no longer apply to drug money laundering offences. The consequential amendment of section 27 makes this clear. However, the change is not expected to have any practical effect, as there is other legislation in place which achieves a similar effect to section 27.

Rehabilitation of Offenders Act 1974 (c.53)

651. The amendment of the Rehabilitation of Offenders Act 1974 provides that failure to pay a confiscation order prevents a person from being rehabilitated under the 1974 Act. The amendment is one of a number of provisions in the Act to encourage offenders to pay their confiscation orders. Similar amendment is made to the equivalent Northern Ireland legislation the Rehabilitation of Offenders (Northern Ireland) Order 1978.

Criminal Appeal (Northern Ireland) Act 1980 (c.47)

652. As in England and Wales the Director of the ARA may be involved in appeals to the House of Lords and current Northern Ireland confiscation legislation amends the Criminal Appeal (NI) Act so that confiscation orders attract a right of appeal as if they were part of a sentence. Accordingly similar amendment is made to the Criminal Appeal (Northern Ireland) Act as to the Criminal Appeal Act 1968.

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))

653. These amendments make it clear that civil legal aid funding is available for applications to and in the Crown Court by persons affected by the powers of a receiver, for proceedings related to the seizure, detention and forfeiture of cash or for compensation actions taken subsequent to such proceedings under Chapter 3 Part 5 and for applications made to vary or discharge certain orders made under Part 8 .of this Act.

Civil Jurisdiction and Judgments Act 1982 (c. 27)

654. The amendment of the Civil Jurisdiction and Judgments Act 1982 provides that orders in relation to confiscation made in one part of the UK are not enforced in another part of the UK under the 1982 Act (which establishes a scheme for the mutual enforcement of civil judgments between the three UK jurisdictions). Instead, they are enforced under powers particular to the confiscation legislation (see [section 443](#)).

Civic Government (Scotland) Act 1982 (c.45)

655. The 1982 Act makes provision to deal with property that is in the unlawful possession of persons taken into police custody. Section 86A(2) of that Act provides that property that is subject to suspended forfeiture orders and restraint orders is not covered by these provisions. The amendment extends the exemption in section 86A(2) to property subject

to a restraint order made under Part 3 of the Act. Such property will be dealt with by the restraint order provisions in Part 3.

Criminal Justice Act 1982 (c.48)

656. The amendment of the Criminal Justice Act 1982 provides that persons convicted of the principal money laundering offences in Part 7 of the Act are not eligible for early release from prison under the 1982 Act.

Police and Criminal Evidence Act 1984 (c.60)

657. The amendments of sections 56 and 58 of the Police and Criminal Evidence Act 1984 enable the exercise of an arrested person's rights to be delayed under certain circumstances where this might result in the dissipation of a person's benefit from crime. These consequential amendments of the 1984 Act are similar to those made by the earlier confiscation legislation.
658. By virtue of the amendment of section 116 of the 1984 Act, a drug trafficking offence as defined in paragraph 1 of Schedule 2 to the Act is always a "serious arrestable offence" for the purposes of the 1984 Act. The classification of an offence as a serious arrestable offence makes certain powers available in relation to it which are not available in relation to other offences. Again, the position here is similar to that in earlier legislation.
659. In addition, however, the new principal "all crime" money laundering offences created by the Act are defined as offences which are always serious arrestable offences. At present, the principal drug money laundering offences are always serious arrestable offences but not the principal laundering offences applicable to the proceeds of other crimes.

Bankruptcy (Scotland) Act 1985 (c.66)

660. The amendment of the Bankruptcy (Scotland) Act 1985 makes it clear that the discharge of a bankrupt does not release the bankrupt from the liability to pay a confiscation order.

Insolvency Act 1986 (c. 45)

661. As with its Scottish equivalent above, the amendments of the Insolvency Act 1986 make it clear that the discharge of a bankrupt does not release the bankrupt from the liability to pay a confiscation order.
662. In addition, they make provision ancillary to Part 9 of the Act. As explained in the note on [section 417](#), they are designed to deal with the fact that a bankrupt's estate is assessed at the time the bankruptcy order is made. When property is excluded from a bankrupt's estate, there is currently no way of putting it into the bankrupt's estate if it ceases to be excluded at a later date.
663. The regime set out in Part 9 of the Act provides that where restraint or receivership action is taken before a bankruptcy order is made, the property concerned is excluded from the bankrupt's estate. In the unlikely event that a bankruptcy order is made whilst restraint or receivership action is ongoing and the restraint or receivership action does not result in the confiscation of the property concerned, the effect of the Act in the ordinary course of events would be to return the property to the bankrupt. As a result, creditors would lose out.
664. These amendments have been made to prevent this from happening. They provide that, if property which has been subject to action under the confiscation powers is not ultimately required to satisfy a confiscation order, it vests in the trustee in bankruptcy as part of the bankrupt's estate. This will make the property available for distribution to creditors, rather than being returned to the person who held it.

Criminal Justice Act 1988 (c.33)

665. The main amendment of the Criminal Justice Act 1988 is also a consequence of the replacement of drug and non-drug money laundering offences with new all crime money laundering offences. Under section 151 of the 1988 Act, HM Customs have certain powers to arrest bail absconders. The amendment of section 151 gives Customs the power to arrest bail absconders in connection with a wider range of money laundering activity.

Extradition Act 1989 (c.33)

666. The amendment of the Extradition Act 1989 makes it clear that, in future, the new all-crime money laundering offences created by the Act will implement the United Kingdom's obligations in relation to drug money laundering under the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Police & Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12))

667. The Police and Criminal Evidence (Northern Ireland) Order 1989 provides the police in Northern Ireland with the same powers and duties as those provided in the Police and Criminal Evidence Act 1984. These amendments replicate for Northern Ireland the amendments set out earlier (paragraphs 657-659).

Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (NI 19))

668. The amendments set out at paragraphs 661-664 to the Insolvency Act 1986 are replicated for the equivalent Northern Ireland legislation.

Criminal Justice (International Co-operation) Act 1990 (c. 5)

669. Section 13 of the Criminal Justice (International Co-operation) Act 1990 enables regulations to be made relating to substances useful for the production of controlled drugs. The amendment of section 13(6) of the 1990 Act enables information gained from such regulations to be made available in confiscation proceedings under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002 (whether they follow a drug trafficking conviction or not).

Criminal Justice and Public Order Act 1994 (c.31)

670. This amendment replaces the definition of "legal privilege" for Scotland in the 1994 Act with a reference to the definition in Section 412 of the Act.

Drug Trafficking Act 1994 (c.37)

671. The effect of the amendments of the Drug Trafficking Act 1994 is to keep in force sections 55 and 56 of the 1994 Act, together with their ancillary provisions, which permit the police and HM Customs to obtain production orders and search warrants for the purpose of an investigation into drug trafficking. These powers are used to conduct investigations into drug trafficking offences, with a view to a prosecution, as well as into the proceeds of drug trafficking. Under the Proceeds of Crime Act 2002, there is a new power for the enforcement authorities to obtain a production order and a search warrant for the purposes of an investigation into the proceeds of any criminal conduct, which would include drug trafficking proceeds, but the new power does not cover investigations into drug trafficking offences. It has therefore been decided to keep the existing powers in force.

Proceeds of Crime (Scotland) Act 1995 (c.43)

672. Much of the Proceeds of Crime (Scotland) Act 1995 deals with confiscation of the proceeds of crime and many of its provisions are superseded by the Act. However, Part II of the 1995 Act makes provision for the forfeiture of property used in crime – as opposed to being the proceeds of crime. These provisions are being retained as they have no equivalent in the Act. The amendment therefore removes all the provisions in the 1995 Act dealing with confiscation of the proceeds of crime.

Criminal Procedure (Scotland) Act 1995 (c.46)

673. The amendment substitutes in the Criminal Procedure (Scotland) Act 1995 references to the Act in place of references to the Proceeds of Crime (Scotland) Act 1995.

Proceeds of Crime (Northern Ireland) Order 1996 (SI 1996/1299 (NI 9))

674. The Proceeds of Crime (Northern Ireland) Order 1996 updated and restated the law relating to the confiscation of the proceeds of drug trafficking and other serious crime. Part 4 of the Act largely replaces the existing provisions in Parts II and III of the 1996 Order. Article 49 of the 1996 Order, as amended by the Financial Investigations (Northern Ireland) 2001, introduced additional investigation powers through the appointment by a county court judge of a financial investigator to assist the police or customs in investigations into the proceeds of crime. While retaining those financial investigation powers for criminal confiscation investigations applications will be made to a Crown Court judge, consistent with the process set out at Part 8 of the Act. Financial investigators will be required to be accredited within the meaning given by *section 3(5)* of the Act. Confiscation investigations are defined by reference to *section 341* of the Act.
675. The powers of a financial investigator are found at Schedule 2 to the 1996 Order. The Schedule 2 paragraph 3 power, commonly referred to as the “General Bank Circular” shall cease to have effect as it is largely duplicated by the customer information order introduced at *section 363* of the Act. The Schedule 2 paragraph 3A power is amended to reflect the terminology used elsewhere in the Act to ensure that the question of whether a person has benefited from criminal conduct is decided in accordance with Part 4 of the Act. The amendments ensure that the Director of ARA will have the same powers for criminal confiscation investigations as the other law enforcement authorities in Northern Ireland.
676. Articles 50 and 51 of the 1996 Order are amended to retain, as in England and Wales, the powers for police and customs to obtain production orders and search warrants for the purpose of an investigation into drug trafficking offences. The definition of ‘drug trafficking offence’ is amended to reflect the new approach to money laundering adopted in the Act.

Crime (Sentences) Act 1997 (c. 43)

677. Confiscation orders like fines attract imprisonment in default if they are not paid. Sections 35 and 40 of the Crime (Sentences) Act 1997 enable magistrates’ courts to replace imprisonment in default of payment of a fine with certain non-custodial measures. This power is specifically disapplied where confiscation order enforcement is concerned.

Access to Justice Act 1999 (c.22)

678. These amendments make it clear that Community Legal Service funding (civil public funding) is available for certain proceedings under the Act. They are required, firstly, because Part 2 of the Act transfers restraint and receivership proceedings from the High Court to the Crown Court. High Court proceedings attract civil public funding, but Crown Court proceedings normally do not. Civil public funding is to be available, on

the standard basis, to cover situations where criminal public funding is unavailable and inappropriate. They will make civil public funding available for applications to vary restraint and receivership orders, applications challenging action taken by a receiver, proceedings relating to the distribution of excess funds once a confiscation order has been satisfied, compensation applications under [section 72](#) and [73](#) and applications to vary the investigative orders made under Part 8. In all these cases the recipient of a tainted gift or a third party who is affected by restraint or receivership might need legal funding. In addition, the defendant will not be entitled to criminal legal funding until the institution of proceedings. However, restraint and receivership action can be taken before the institution of proceedings, at the investigative stage. Therefore, the amendments ensure that there is no gap in the funding available to the defendant.

679. The amendments also make it clear that cash forfeiture proceedings under Chapter 3 of Part 5 also attract Community Legal Service funding.

Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

680. By virtue of the amendment of section 110(5) of the Powers of Criminal Courts (Sentencing) Act 2000, those convicted of drug trafficking offences (but not drug money laundering offences, which cease to exist as separate offences following the Act) will continue to be subject to mandatory sentences.

Financial Services and Markets Act 2000 (c.8)

681. *Paragraph 38* provides that financial investigators employed or appointed by the Financial Services Authority and acting as accredited financial investigators under this Act are treated as carrying out functions of the Financial Services Authority. This is necessary in order for their actions to come within the scope of certain provisions of the Financial Services and Markets Act 2000.

Terrorism Act 2000 (c.11)

682. The Act makes certain amendments to Schedule 8 to the Terrorism Act 2000, which is concerned with the rights of persons detained under section 41 of, or Schedule 7 to, that Act (i.e. persons arrested or detained as suspected terrorists under anti-terrorism powers). The amendments in question run in parallel with those made to sections 56 and 58 of the Police and Criminal Evidence Act 1984, as described above. Their basic effect, like the amendments of the 1984 Act, is to enable the exercise of an arrested or detained person's rights to be delayed in certain circumstances where this might result in the dissipation of a person's benefit from crime.

Criminal Justice and Police Act 2001 (c.16)

683. The amendments of the Criminal Justice and Police Act 2001 are consequential on the new seizure powers created by the Act, and are designed to bring those powers within the ambit of the 2001 Act. The 2001 Act lays down new procedures for the handling of material seized by the enforcement authorities which is or includes excluded or special procedure material, as originally defined by the Police and Criminal Evidence Act 1984. Special procedure material means material maintained in confidence, such as banking records.
684. The amendment of section 55 of the 2001 Act makes it clear that the obligation to return excluded or special procedure material envisaged by that section does not include special procedure material seized under the Act (because the Act creates a specific power to seize special procedure material). Similarly, the amendment of section 60 of the 2001 Act makes it clear that the duty to secure seized property which is or includes excluded or special procedure material, as provided for in that section, does not apply to special procedure material seized under the Act. Again, the reason for the amendment is that the Act contains a specific power to seize special procedure material.

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(c.29) which received Royal Assent on 24 July 2002*

685. The amendments of Part 1 of Schedule 1 to the 2001 Act bring the new seizure power in the Act within the ambit of section 50 of the 2001 Act, which provides primarily that persons with seizure powers may seize property which may include property which they are not entitled to seize, so that the latter element may be separated out. The amendment of Part 3 of Schedule 1 brings the new seizure power in the Act within the ambit of section 55 of the 2001 Act (subject to the amendment of section 55 mentioned above).

Section 458: Commencement

686. This section provides that all substantive provisions of the Act will be brought into force by means of commencement orders. These orders will be made by the Secretary of State for those Parts applying wholly or in part to England & Wales and Northern Ireland, and by the Scottish Ministers for Part 3 and the necessary provisions of Part 12 as they apply to Scotland. Parts 5, 8 and 10 contain provisions that are limited to Scotland. The Secretary of State must therefore consult with Scottish Ministers when commencing these provisions.

General

Section 459: Orders and regulations

687. This section provides that subordinate legislation is to be made by statutory instrument and makes provision as to the procedure which should apply to each power under the Act (including where the power is to be exercised by the Scottish Ministers). It allows subordinate legislation to make different provision for different purposes and to include ancillary provision.

Section 461: Extent

688. *Section 461* delineates the geographical extent of the various parts of the Act.