POCA Confiscation: A Practitioner's Guide to post 29 June 2026 Changes

Narita Bahra KC

Schedule 21 of the Crime and Policing Act 2026 came into force on 29 June 2026 (SI 2026/689), with limited exceptions. It is the most significant overhaul of Part 2 POCA since 2003. Here is what bites in practice.

The new touchstone: section 5A

Parliament has, for the first time, stated the purpose of confiscation: to deprive the defendant of their benefit from criminal conduct, so far as within the defendant's means. It binds the court, prosecutors, investigators, appropriate officers and enforcement receivers alike, and it takes precedence over the section 2A(1) general duty.

Expect as defence practitioners to be engaging this provision. It is a statutory hook for the proposition that a technically available figure is not automatically the right one.

Criminal lifestyle: a strategic decision, not a switch

Prosecutors now have discretion over whether the court determines lifestyle under section 6(4). Where it is not invoked, benefit is assessed on particular criminal conduct alone which clearly places a premium on forensic analysis of the actual conduct rather than argument over assumptions.

New subsection 6A requires the court to consider 'all the circumstances' and give appropriate weight to the evidence before applying the assumptions. The safeguard existed; the statutory framing raises the value of putting properly evidenced injustice arguments before the court.

Cutting the other way: the multiple-offence gateway drops from three qualifying offences to two, the definition now captures offences where a benefit was merely intended, and three offences have been added to Schedule 2.

Benefit: the reform with the most teeth

The court may now reduce the value treated as criminal benefit, including to nil, where applying the full statutory value would be unjust. The Home Office examples: temporary or limited control (the money-mule account), and conduct that merely enabled retention of property already owned are illustrative, not exhaustive. This is where the appellate guidance will be built.

Also: hidden assets are on a statutory footing (new section 9A), but the court must consider any alternative explanation advanced. Mixed-funded property now yields benefit only in the criminally funded proportion, with specific mortgage provisions. New valuation rules cover pre-proceedings sales, destroyed cryptoassets and foreign currency.

Procedure: front-loaded

Section 15A replaces postponement with a mandatory timetable set before sentencing concludes: section 16, 17 and 18 deadlines, the hearing date, and any EROC. Sections 15B–15C formalise Early Resolution meetings and hearings, held after evidence is exchanged but before the substantive hearing. Sentence variation extends to 56 days, aligning with the section 385 slip rule.

The practical consequence is blunt: instructions, disclosure and expert evidence must be in hand earlier. Late-arriving banking material will be harder to accommodate against a fixed timetable.

Restraint

Codification rather than reinvention: a seven-factor dissipation checklist, statutory frameworks for legal and living expenses (with pre-restraint standard of living as the benchmark, disregarded where it was criminally derived), delay, and post-conviction review.

The unanswered question for practitioners

The commencement regulations set out no general transitional rule for proceedings already underway on 29 June 2026. Procedural reforms are naturally forward-looking; the widening provisions raise retrospectivity and Article 7 arguments; the defendant-favourable provisions will be pressed in live cases. The real question for practitioners is; do these provisions apply to those who have already commenced criminal proceedings but not been convicted yet? Watch this space……