Twenty-Four Years On:
The Reform of POCA

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The Proceeds of Crime Act 2002 ("POCA") has not been seriously rewritten since it was enacted. Twenty-four years of bolt-ons (Schedule 5 to the Crime and Courts Act 2013, the unexplained wealth order scheme in the Criminal Finances Act 2017, the cryptoasset extensions of 2024, and much else) have produced a Part 2 confiscation regime that practitioners on both sides know is creaking. The Crime and Policing Act 2026[1] finally does something about it. It is the most substantial restructuring of Part 2 since POCA was passed, and it implements the bulk of the Law Commission's 2022 final report on post-conviction confiscation.[2]

It is worth being clear about where the reform comes from. In 2018 the Home Office asked the Law Commission to review confiscation under Part 2. The terms of reference were a catalogue of the regime's known failings: the irregular compensation of victims; the frequent imposition of unrealistic orders; ineffective incentives and sanctions; the tangled interplay between civil and criminal investigation; the sheer complexity of the legislation and the case law it has spawned; the role of restraint; and the insufficiency of the enforcement powers of both the magistrates' courts and the Crown Court.[3] The Commission was also asked to consider alternatives to the value based model, a specialist forum, and new ways of preventing dissipation.

After a consultation paper that itself ran to over 700 pages, the Commission reported on 9 November 2022 with 119 recommendations. Its central methodological choice, endorsed almost unanimously by consultees, was to amend the existing regime rather than repeal and replace it. The 2026 Act follows that choice faithfully.

The scale of the problem the Commission was addressing is eyebrow raising. As at 31 March 2021 the value of outstanding confiscation orders was some £2.35 billion, of which His Majesty's Courts and Tribunals Service considered just 6.1 per cent recoverable. In 2013 the National Audit Office had put the value of orders successfully enforced, as a proportion of estimated criminal proceeds, at 26 pence in every £100.

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1 *Crime and Policing Act 2026* (c. 20), Royal Assent 29 April 2026. See *Crime and Policing Bill*, UK Parliament bill page (Bill 3938), https://bills.parliament.uk/bills/3938; full text at https://www.legislation.gov.uk/ukpga/2026/20/contents.

2 Law Commission, *Confiscation of the proceeds of crime after conviction: a final report* (Law Com No 410, HC 828, 9 November 2022), https://lawcom.gov.uk/project/confiscation-under-part-2-of-the-proceeds-of-crime-act-2002/. The project was launched in 2018 at the request of the Home Office; the terms of reference are set out at paras 1.2–1.3 of the report.

3 Law Com No 410, paras 1.13–1.16. The National Audit Office figure is drawn from *Confiscation Orders* (2013) HC 738, cited in the report at para 1.13.

The Commission's own analysis was that these headline figures are artificial. Much of the debt is legacy debt, inflated in the early years of the regime by targets, and swollen by the treatment of jointly obtained benefit as obtained in full by each participant, the treatment of temporary gains as outright gains, and interest accruing at 8%. The large debt, in other words, is not money that defendants are sitting on - It is a symptom of a regime that calculates orders unrealistically and then cannot enforce them.

The complexity is not merely a matter of impression. Set the Act as enacted against the consolidated text in force today and the growth is stark:

Metric	As enacted (2002)	As amended (2026)	Growth
Pages	325	800	×2.5
Words	142,444	410,452	×2.9
Numbered sections	443	970	x 2.2
Parts	12	12	–
Schedules	12	13	+1

Sources: Act as enacted (2002) and consolidated text in force at the date of writing. Figures are the authors' own and indicative.

The word count is probably the cleanest measure. The Act has very nearly tripled in substance, from roughly 142,000 words to over 410,000. The section count has more than doubled, from 443 to 970, so that over half of the sections in the current Act have no numerical equivalent in the original (the product of wholesale insertions).[4] And yet the number of Parts has not changed. All that growth has been absorbed within the original twelve Part architecture, with only a single new Schedule (7A) added along the way. That is precisely the pattern the Commission identified: a statute that has been extended and re-extended until its operation is opaque even to specialists. The 2026 Act does not change that architecture either. It works within it, but it does so deliberately, and, at last, coherently.

What the Act engages with, and what it leaves aside, is best understood against the Commission's list. It supplies the statutory objective the Commission wanted. It hands the prosecutor discretion over the lifestyle question, codifies hidden assets, simplifies tainted gifts and prioritises victim compensation. It introduces an early resolution process modelled on the family financial remedy pipeline, revises exclusions from restraint orders, redesigns enforcement and builds a mechanism for clearing the backlog of unenforceable orders. What it does not do is adopt the more radical options the Commission canvassed and rejected. It does not replace the value based regime,

[4] These are our own tallies, comparing the Act as enacted in 2002 with the consolidated text in force at the date of writing. The figures are indicative, but the direction of travel is not in doubt.

and it does not create a specialist confiscation court. Nor does it touch the Asset Recovery Incentivisation Scheme (ARIS), which the Commission expressly left to the Home Office. The reform is, in short, exactly the ambitious but conservative package the Commission recommended, *i.e.* a thorough renovation of the existing house rather than a new build.

The substantive confiscation reforms sit in Schedule 21, which amends POCA for England and Wales (Schedules 22 and 23 make parallel provision for Northern Ireland and Scotland).[5] Section 190, which reforms costs in civil recovery, sits in the body of the Act. The commencement position, which was for a time the most important thing to know about the Act, has now largely resolved. What follows is a working map of what has changed, what is about to, and what remains on the shelf.

<u>What is in force and what is not</u>

The Act received Royal Assent on 29 April 2026. Section 190 commenced automatically two months later, on 29 June 2026.[6] More significantly, on that same day the Secretary of State brought the great bulk of Schedule 21 into force by commencement regulations.[7] As matters stand, most of the new regime is in operation.

Five blocks of Schedule 21 were, however, held back and await further commencement regulations. They are worth listing at the outset, because between them they account for a good deal of the day-to-day machinery:

- First, the enforcement architecture (Part 8) – the redesigned default term scale, the enforcement plans, and the concept of the enforcing court – is not in force.[8]

- Secondly, the change to the legal expenses regime in s.41 (paragraph 26, inserting s.41ZA) is not operational. Its substantive limbs await regulations to be made by the Lord Chancellors; only the regulation making power itself has been switched on.[9]

- Thirdly, the new provisional discharge regime for POCA orders (paragraph 17,

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5 Crime and Policing Act 2026, s. 189(1) and Schedule 21. The Northern Ireland and Scotland equivalents are in Schedules 22 (s. 189(2)) and 23 (s. 189(3)) respectively.

6 Crime and Policing Act 2026, s. 255(3)(g) (sections 190 to 192 in force at the end of two months beginning with the day of Royal Assent, i.e. 29 June 2026, as respects England and Wales).

7 The Crime and Policing Act 2026 (Commencement No. 1 and Saving Provision) Regulations 2026 (SI 2026/689), reg. 2(1)(z12) and reg. 2(2). Schedule 21 was brought into force on 29 June 2026 save for paragraphs 6 and 17, Part 8, paragraph 26(1), (2) and (4), and Part 13; paragraph 26(3) was commenced only for the purpose of making regulations.

8 Schedule 21, Part 8, inserting new s. 35A (default terms), new ss. 13ZA–13ZB (enforcement plans) and new s. 35D (the enforcing court). Part 8 is not yet in force: SI 2026/689, reg. 2(1)(z12).

9 Schedule 21, para. 26, inserting new s. 41ZA. The substantive commencement of para. 26(1), (2) and (4) is held back pending the Lord Chancellor's regulations; para. 26(3) is in force only so that those regulations may be made: SI 2026/689, reg. 2(1)(z12) and reg. 2(2).

inserting ss.24A–25) is not in force.[10]

- Fourthly, the equivalent provisional discharge route for orders under the saved pre-POCA legislation (Part 13) is not in force either.[11]

- Fifthly, the rewrite of the recoverable amount provision in s.7 (paragraph 6) awaits commencement, although the closely related hidden assets provision that sits beside it is already live.[12]

Everything else in Schedule 21 (the principal objective, the lifestyle reforms, hidden assets, the just result reduction, tainted gifts, priority orders, compensation directions, the EROC process, restraint (save for legal expenses), management receivers and the consolidated appeal rights) took effect on 29 June 2026. The practical upshot is that the tools for calculating and agreeing realistic orders are now in practitioners' hands, while several of the tools for enforcing them (and for closing out the ones that cannot be enforced) are not yet.

<u>The Statutory Objective</u>

Part 1 inserts a new section 5A into POCA. For the first time, the regime has a statutory objective on its face: to deprive a defendant of their benefit from criminal conduct, so far as within the defendant's means. The duty binds the Crown Court, the prosecutor, the appropriate officers within ss.41A(3) and 47A(1), other investigators, and any receiver appointed under s.48 or s.50. It is justiciable in that each must exercise their power in the way which the court or person considers is best calculated to further the principal objective, and the defendant's means are taken to include any tainted gifts.

The Supreme Court has said for years that this is what POCA is about. *Waya*[13] called it a tough deprivation regime that is not intended to operate by way of fine. What is new is that the policy has become a duty. The principal objective will, in time, do its most important work in three places: (i) in the assessment of proportionality under A1P1 of the ECHR; (ii) in the exercise of any new discretion under the Act, most obviously the just result reduction under the new s.76(8) and the new early resolution framework; and (iii) in the legitimacy of any concession the prosecutor offers at an early resolution meeting. The duty is what authorises the prosecutor to think strategically about which targets to pursue, and how. It is also what permits the court, expressly, to provisionally discharge a confiscation order even where doing so is not

[10] Schedule 21, para. 17, substituting new ss. 24A–25 for the existing ss. 24 and 25. This paragraph is not yet in force: SI 2026/689, reg. 2(1)(z12).

[11] Schedule 21, Part 13 (confiscation orders made under saved legislation: provisional discharge), extending the architecture to orders under s. 1 of the Drug Trafficking Offences Act 1986, s. 71 of the Criminal Justice Act 1988 and s. 2 of the Drug Trafficking Act 1994. Part 13 is not yet in force: SI 2026/689, reg. 2(1)(z12).

[12] Schedule 21, para. 6 (amending s. 7). This paragraph is among those not yet commenced: SI 2026/689, reg. 2(1)(z12).

[13] <u>*R v Waya*</u> [2012] UKSC 51, [2013] 1 AC 294, at [21] (the legislation is intended to be tough; it is not, however, intended to operate by way of fine).

best calculated to further the principal objective (the one place where the Act subordinates deprivation to a higher aim).

Lifestyle Changes (for the better)

Part 2 is the most quietly significant of the substantive reforms; it is fully in force. There are four aspects to highlight.

- **First, whether to engage the criminal lifestyle assumptions is a decision for the prosecutor, not the court.** Section 6(4) is amended so that the Crown Court decides the lifestyle question *only* if asked to do so by the prosecutor. The statement of information must indicate whether the case is one in which the court is asked to decide whether the defendant has a criminal lifestyle.[14] The effect is to put the prosecutor squarely in the driving seat. Lifestyle ceases to be automatic on conviction for a qualifying offence; the prosecutor must make a positive choice and stand by it on the face of the statement. That choice will, in turn, be measured against the new principal objective.

- **Secondly, the 'serious risk of injustice' test is codified.** New s.10(6A) requires the court to consider all the circumstances of the case and to give appropriate weight to any evidence about the serious risk of injustice and to any explanation given by the defendant for being unable to provide evidence that would have shown the assumption to be incorrect. The provision puts the practical question that *Briggs-Price* and *Shabir* wrestled with on a statutory footing for the first time.[15] For defence practitioners, the second limb, the explanation for the absence of evidence, is the more useful, and the one to expect to see argued.

- **Thirdly, the threshold drops from three qualifying offences to two, and "intended to benefit" is added.** Section 75(3) now substitutes two for three qualifying offences, and inserts "or intended to benefit" alongside benefited.[16] The Government accepted the Law Commissions recommendation to add "intended to benefit" to the definition of conduct forming part of a course of criminal activity on the ground that attempts to benefit demonstrate the defendant's intention to have a criminal lifestyle even if they haven't been able to achieve it from that particular offence. Lifestyle is now wider and reaches inchoate benefit. There is a partial saving: the 'intended to benefit' extension does not apply to conduct taking place wholly or partly before commencement, but the reduction from three offences to two does.

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14 Schedule 21, para. 2 (amending s. 6(4) and s. 16). The choice must be recorded on the face of the statement of information: new s. 16(2A).

15 R v Briggs-Price [2009] UKHL 19, [2009] 1 AC 1026; *R v Shabir* [2008] EWCA Crim 1809, [2009] 1 Cr App R (S) 84.

16 Schedule 21, para. 4 (amending s. 75(3)). The extension to inchoate benefit ('or intended to benefit') does not apply to conduct taking place wholly or partly before commencement (para. 4(3)). The reduction from three offences to two is not subject to that saving, and so applies whenever the conduct occurred.

- **Fourthly, the lifestyle offence list expands.** Schedule 2 picks up s.33A of the Sexual Offences Act 1956, and a new paragraph 9C adds two environmental offences: s.33(1)(a) of the Environmental Protection Act 1990 and reg.38(1)(a) of the Environmental Permitting (England and Wales) Regulations 2016.[17] The signal to the Environment Agency is clear. Serious waste permit offending now has a confiscation route, and the lifestyle assumptions to go with it. Expect the Agency to pick up that signal.

The end of the easy Restraint Order?

The restraint order reforms in Part 9 are among the most consequential for day-to-day practice, and, save for the legal expenses exception, they are in force. They require both sides to think in a different way.

Real Risk of Dissipation

Paragraph 25 substitutes s.40(1) and inserts a new s.40(1A)–(1B). A restraint order may now only be made if both a qualifying condition is satisfied and there is a real risk that relevant realisable property will be dissipated unless the Crown Court exercises the s.41 power. The risk of dissipation requirement has been a feature of common law restraint for years.[18] What is new is the statutory list of factors the court must consider *i.e.* the nature of the property; steps already taken with a view to dissipation; the holder's circumstances and character; the nature of the criminal conduct; the amount of suspected benefit; and the stage of the proceedings.

Prosecutors will need to engage with the listed factors rather than relying on a generic risk. For defence practitioners advising in the days between arrest and any without notice restraint hearing, the new s.40(1B) provides a well-defined target for any application to discharge.

Legal Expenses

Paragraph 26 rewrites the legal expenses exception. The old s.41(2A)–(2B) and s.41(5A)–(5B) framework, and the 2008 Legal Expenses Regulations, are swept away. In their place is a new s.41ZA permitting an exception for legal expenses in respect of the offence with which the confiscation proceedings are concerned[19] but limited to expenses reasonably incurred. Any exception for this purpose must specify a total cap, and must be made subject to required conditions prescribed by the regulations to be

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[17] Schedule 21, para. 5, inserting the reference to s. 33A of the Sexual Offences Act 1956 and new paragraph 9C (s. 33(1)(a) Environmental Protection Act 1990; reg. 38(1)(a) Environmental Permitting (England and Wales) Regulations 2016 (SI 2016/1154)).

[18] *Jennings v Crown Prosecution Service* [2005] EWCA Civ 746, [2006] 1 WLR 182; *R v S* [2019] EWCA Crim 1728, [2020] 1 WLR 109. The risk of dissipation requirement has long been a feature of restraint; the 2026 Act puts the requirement, and the factors going to it, on the face of the statute.

[19] *R v Luckhurst* [2022] UKSC 23, [2022] 1 WLR 3818 read the predecessor prohibition in s.41(4) narrowly: it bars the release of restrained funds only for legal expenses relating to the offence itself, not for independent civil proceedings, even where those proceedings arise from the same facts.

published by the Lord Chancellor. (which may restrict who receives released sums, require court assessment of items of expenditure, and limit hourly rates, total remuneration and per item expenditure). Before making them, the Lord Chancellor must consult.

Uniquely among the restraint reforms, this one is not yet operational. Only the regulation making power has been commenced, and the substance of the new exception awaits the regulations. The shape of the new regime will turn entirely on them. Practitioners with restraint cases should monitor the Ministry of Justice consultation closely. The regulations are likely to be the single most heavily lobbied piece of secondary legislation in asset recovery for some years. The headline question is the rate cap. If it tracks the Legal Aid Agency’s criminal rates, the practical effect will be to make defending restraint orders uneconomic for specialist counsel.

Reasonable Living Expenses

Paragraph 27 inserts a new s.41(3A) and a new s.41(11). In making an exception for living expenses the court must, in particular, have regard to the period of the order, the specified person’s applicable standard of living, their means, the value of relevant realisable property in relation to the likely confiscation amount, and the extent to which the expenditure is necessary or desirable to maintain or improve the value of restrained property. Applicable standard of living is the person’s standard immediately before the restraint order or, where there is reasonable cause to believe the standard is artificially elevated by criminal activity, the standard the person would enjoy but for that activity.

This is *Campbell*[20] codified, with a clawback aimed at lifestyle beneficiaries. The codification will be welcomed by both sides; the clawback will be the new battleground. The phrase 'reasonable cause to believe' is doing a lot of work in the new s.41(11), and it is not the threshold that applies to a substantive lifestyle finding. Expect arguments about whether the prosecutor must, in effect, run a mini lifestyle case at the exception hearing.

Delay, Conviction and Ongoing Restraint

Paragraph 28 supplies statutory factors on whether proceedings for the offence have started within a reasonable time, for both s.41(7B)(b) and s.42(7)(a). The factors are modelled on the practical considerations the Crown Court has been working through for years, *i.e.* length of time; reasons for the delay; complexity of the investigation, including any foreign element; complexity of any potential proceedings; the nature of the restraint order; impact on affected persons. The list is now mandatory.

[20] *R v Campbell* [2009] EWCA Crim 2459, [2010] 1 WLR 650, at [25]–[26]. *Campbell* defined reasonable living expenses as the ordinary, recurrent expenses of maintaining the individual in the style of life to which he is reasonably accustomed.

Paragraph 29 inserts a new s.42A on the effect of conviction. When making or varying a restraint order after conviction, the Crown Court must in particular have regard to the fact of conviction and to whether compensation, surcharge, unlawful profit and slavery and trafficking reparation orders have been or are likely to be made. Where a pre-conviction restraint order remains in force at the time of conviction, the court must, without an application, review the appropriateness of any s.41(3) exception by reference to those factors. The review may result in a variation on the court's own motion.

<u>A better approach to Hidden Assets (finally?)</u>

Part 3 includes the single most asked for change on the practitioner's wish list: a statutory hidden assets framework. The new s.9A is engaged where the court finds that benefit exceeds the value of free property plus tainted gifts, and some or all of that excess is a result of property having been hidden by or on behalf of the defendant.[21] Where the section applies, the court must determine the total value of the hidden property. In making that determination the court must, in particular, consider other explanations for the gap, *e.g.* expenditure that may have been met from criminal benefit, or changes in the value of property held by the defendant.

This addresses the longstanding objection that the existing s.9, read with the lifestyle assumptions, produces a benefit/available amount mismatch that the statute does not openly acknowledge. The new s.9A both legitimises the inference and disciplines it. For defence practitioners, the second limb, the duty to consider alternative explanations, will be the practical handle. For prosecutors, the section provides a framework for a calculation that has previously been left to argument.

Three further changes in Part 3 are important, though the first of them awaits commencement.

- **First**, s.7 (recoverable amount) is rewritten. The defendant's "shows" burden becomes "proves" or the court is otherwise satisfied, and the categories of property excluded from the calculation expand to include property restored to victims, property handed to an appropriate officer, seized but unreleased property, and compensation already paid to victims. This paragraph is among those not yet in force.

- **Secondly**, tainted gifts are simplified. A gift is tainted if made at any time after the commission of the offence concerned or, where the particular criminal conduct consists of two or more offences committed at different times, after the earliest of them.[22]

[21] Schedule 21, para. 7, inserting new s. 9A. This provision was commenced on 29 June 2026.

[22] Schedule 21, para. 8 (substituting s. 77(5)). A gift is now tainted if made at any time after the commission of the offence concerned (or, where the particular criminal conduct consists of two or more offences committed at different times, after the earliest).

- **Thirdly**, the new s.76(8) and s.84(3) contain an explicit 'unjust result' reduction where the defendant intended to have only a limited power to control or dispose of the property, held it only temporarily, or is treated as having kept it.[23] The 'unjust result' clause is the statutory equivalent of the proportionality argument that defence practitioners have run, with mixed success, since *Waya*.

Paragraph 10 adds a new s.80A providing a statutory formula for valuing mortgaged land bought with a criminally obtained loan, and addresses sold or destroyed property.[24] The destruction reference will be familiar to practitioners working with the cryptoasset destruction orders under s.51(2)(e) and s.67AA. The section ties valuation back to the figure stated in the order, with currency adjustment.

<u>Priority Orders, Compensation and the Queuing Problem</u>

Two related reforms, both in force, address the 'queuing' problem. Part 4 rewrites s.13(5)–(7) to introduce the priority payment direction. Where a confiscation order is made in the same proceedings as a compensation order, a surcharge order, an unlawful profit order or a slavery and trafficking reparation order, the court must direct that any amount payable under the priority order which remains unpaid is to be paid out of the confiscation recoveries before the State takes its share. Multiple priority orders are paid in chronological order.[25] This is the long-promised fix for the problem of victims being elbowed out of the queue.

Part 5 adds a new s.22A providing for compensation directions. Where the available amount is varied upward under s.22(4), the court may make a supplementary compensation direction to top up an earlier compensation order, or, where no compensation order was made but a victim was known to the court, a fresh compensation direction. Amounts are capped at the original compensatable loss or the statutory maximum, whichever is lower.[26]

<u>Confiscation ADR (or rather, 'FDR for POCA?')</u>

Part 6 introduces two reforms that change the shape of confiscation proceedings, and both are in force.[27] The first is a hard rule on timing. Where the court sentences the

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23 Schedule 21, para. 9, inserting new s. 76(8) and new s. 84(3). The 'unjust result' clause is the statutory analogue of the proportionality argument defence practitioners have run, with mixed success, since *Waya*.

24 Schedule 21, para. 10, inserting new s. 80A (valuation of mortgaged land bought with a criminally obtained loan) and new s. 80(5)–(6); and see s. 79(5) as amended. The 'destruction' reference ties valuation back to the figure stated in the relevant order, with currency adjustment.

25 Schedule 21, Part 4, rewriting s. 13(5)–(7) and introducing the priority payment direction. Multiple priority orders are paid in the order in which they were made.

26 Schedule 21, Part 5, inserting new s. 22A (compensation directions). Amounts are capped at the original compensatable loss or the statutory maximum, whichever is lower.

27 Schedule 21, Part 6. The timing rule and the EROC provisions were commenced on 29 June 2026.

defendant before proceeding under s.6, it must not impose a fine, compensation order, surcharge, unlawful profit order or significant forfeiture or deprivation order until confiscation has been resolved. The court must draw up a timetable for the s.6 proceedings at the sentencing hearing and may vary the sentence within 56 days after confiscation. The Court of Appeal time limit clock starts ticking on the day of variation.

The second reform is more consequential. New ss.15B and 15C introduce the Early Resolution of Confiscation ("EROC") meeting and hearing. Before the court proceeds under s.6(4), the prosecutor and the defendant (or representative) must attend an EROC meeting (remotely in all likelihood), held with a view either to reaching agreement on the s.6 questions (whether an order is required, and if so the amount) or, failing that, narrowing the issues unless the court is satisfied that it will serve no useful purpose to do so. The court may permit any person with an interest in key property to attend, plus an accredited financial investigator. If the meeting reaches agreement, the court may decide the s.6 questions in accordance with it if it believes it is appropriate to do so, under new s.6(7A). If there is no agreement, or the court refuses to make an order in the agreed terms, an EROC hearing follows to plan the next steps.

That is the Crown Court's version of a financial remedy FDR (the Family Court's approach to financial disputes). The analogy is imperfect, but it holds. Expect the EROC to drive earlier disclosure and harder, earlier negotiation, and a body of practice to develop quickly on what "appropriate to do so" means in new s.6(7A) when the court is asked to ratify an agreed order.[28] The provision is not, on its face, a rubber-stamping exercise.

Dealing with the Backlog

Part 7 substitutes a new provisional discharge regime for the existing ss.24 and 25. After the relevant two-year period (two years from the order or its last variation) the Crown Court may, of its own motion or on the application of the prosecutor, the magistrates' designated officer or a s.50 receiver, provisionally discharge a confiscation order in the interests of justice. The court must consider the amount already paid, the proportion of the outstanding sum that is interest, the enforcement steps already taken and reasonably available, and the likely further recovery. This is the mechanism designed to clear the accumulated debt described at the outset. However, it is one of the provisions not yet in force, so for the moment the tool exists on the statute book without being activated.

Two features are worth noting for when it is. The first is the express carve out from the principal objective: the court may discharge even though doing so is not best

[28] New s. 6(7A), inserted by Schedule 21, Part 6. The Law Commission's recommendation was that EROC should not be a rubber stamp: Law Com No 410, ch. 5, Recommendations 16–23.

calculated to further that objective.[29] This is the rare provision in the Act that knowingly subordinates the deprivation objective to a higher aim, here, the interests of justice and the efficient use of court and enforcement resources. The second is the absence of any right of appeal against the decision to discharge, or not to.

Note that provisional discharge does not extinguish the confiscation order. The new s.24B preserves the prosecutor's right to apply under ss.21, 21A, 22 or 23, and the court may revoke the discharge if a variation succeeds, or on a separate application if the interests of justice now require it. Interest that had accrued before discharge becomes payable again on revocation. Section 24C empowers the court to make a financial status order in provisional discharge proceedings.

Part 13 extends the same architecture to confiscation orders made under s.1 of the Drug Trafficking Offences Act 1986, s.71 of the Criminal Justice Act 1988 and s.2 of the Drug Trafficking Act 1994. For practitioners with legacy cases (and there are a *lot* of them) this is the route to closing out orders that have been substantively unenforceable for years. Once in force, the two year clock will run from the day of the order or its last variation. For many of those orders that clock ran out long ago.

<u>Enforcement Plans and the New Default Terms</u>

Part 8 is the largest single block of the reform, and, importantly, it is not yet in force. For the first time, the Crown Court will have power to enforce confiscation orders. A new 'enforcement as fines' architecture is provided by the new s.35A. The new maximum default terms are 6 months for orders of £10,000 or less; 5 years for orders over £10,000 but not more than £500,000; 7 years for orders over £500,000 but not more than £1 million; and 14 years for orders over £1 million. The Secretary of State may amend the table by order.

It is worth correcting what might be a misplaced assumption here. Those figures are not a reduction. They reproduce the scale already in force in s.35(2A), which the Serious Crime Act 2015 introduced in 2015, that Act having itself raised the top of the £500,000–£1 million band from five to seven years, and the over £1 million band from ten to fourteen.[30] The default term figures are, in substance, unchanged. What changes is the architecture around them.

The new s.13ZA requires the court, on making a confiscation order, to prepare an enforcement plan where there are reasonable grounds to believe the defendant might default for any reason, or where the court otherwise thinks it appropriate. The plan

[29] New s. 24A(4), inserted by Schedule 21, para. 17. The interests of justice discretion is expressly permitted to override the principal objective in s. 5A: see new s. 5A(5) and s. 24A.

[30] The current scale in s. 35(2A) POCA (inserted by the Serious Crime Act 2015, s. 10(1), in force 1 June 2015) is: 6 months for £10,000 or less; 5 years for more than £10,000 but not more than £500,000; 7 years for more than £500,000 but not more than £1 million; and 14 years for more than £1 million. New s. 35A reproduces that scale. The 2015 Act had already raised the top of the £500,000–£1 million band from 5 to 7 years, and the over £1 million band from 10 to 14 years.

sets out drafts of one or more orders the enforcing court could make on default. Section 13ZB requires the enforcing court to list a default triggered hearing as soon as practicable after the due date. Section 35D introduces the enforcing court, which the sentencing court must specify on making the order. The enforcing court may be the Crown Court or a magistrates' court, and the designation may change. The defendant has no right of appeal against it.

That is the redesign that matters most in the larger cases. Enforcement under POCA has, since 2002, been restricted to the magistrates' courts treating the order as if it were a fine. The new s.35D framework will allow the Crown Court to keep enforcement where the case demands continuing judicial oversight – *e.g.* complex hidden assets cases, contested s.21A reconsideration applications, cases involving offshore assets requiring continuing receivership. It is hard to overstate how much practical difference that may make. Until Part 8 is commenced, the old s.35 machinery remains.[31]

<u>Management Receivers and Cryptoasset Detention</u>

Part 10, which is in force, extends management receivers, appointed under s.48 and exercising the s.49 powers, to support a further detention order under s.47M.[32] The s.47M regime, part of the Criminal Finances Act 2017 framework for the detention of money, listed assets and cryptoassets, has until now had no statutory management mechanism. The change closes a gap that has, in practice, been negotiated around with ad hoc orders or by reliance on the more familiar restraint receiver principles. Asset tracing practitioners with cryptoasset exposure should note this: it is now possible to seek an integrated detention and management package in the Crown Court.

<u>The Civil Recovery Costs Shield</u>

One reform sits outside Schedule 21 altogether, and outside the confiscation regime proper, but it is the reform that commenced first and it deserves a note. Section 190 inserts a new section 288A into Part 5 of POCA. It is short, but it changes the costs risk of civil recovery work.[33]

The court may not order the enforcement authority to pay the costs of proceedings under Chapter 2 of Part 5 unless one of three conditions is satisfied: (i) the authority acted unreasonably in taking or opposing the proceedings; or (ii) it acted dishonestly or improperly; or (iii) it would be just and reasonable to make such an order – and, for that purpose, it is not to be assumed that it is generally just and reasonable for the

[31] The delay is due to the need to extend the 'Common Platform' for use in the Crown Court

[32] Schedule 21, Part 10, extending management receivers (s. 48, exercising s. 49 powers) to support a further detention order under s. 47M. This Part was commenced on 29 June 2026.

[33] Section 190 inserts new s. 288A into Part 5 of POCA. It applies to civil recovery proceedings under Chapter 2 of Part 5 (in England and Wales, before the High Court), and to any appeal arising out of such proceedings.

unsuccessful party to pay.[34] That last clause is the operative one. It is the *Perinpanathan*[35] principle, from magistrates' court cash forfeiture, and since revisited by the Supreme Court, lifted out and placed at the centre of civil recovery. The default that costs follow the event is removed. The respondent who fights a property freezing order or a recovery order to a contested conclusion, and wins, will normally walk away without a costs order.

There is a transitional carve out. The new regime does not apply to proceedings for a recovery order started before the commencement day, nor to costs incurred in respect of a pre-commencement interim application (but not an interim freezing order made under Part 8) even where the substantive recovery proceedings are issued afterwards.[36] For practitioners advising respondents, the precise sequencing of an interim application against the commencement day will be the line between the old costs regime and the new one.

Two consequences are likely. The first is a disciplining effect on enforcement authorities. The shield in s.288A is not absolute, and the authority that pursues a marginal case unreasonably, or that crosses the dishonesty or impropriety threshold, will still be exposed. The provision is as much a costs led behavioural rule for the authority as it is a shield. The second is that respondents will have to think much harder about whether to litigate to judgment. Some will settle on terms they would previously have resisted, some will fight on principle and few will any longer be able to fund the fight from a confident expectation of recovering inter-partes costs.

Takeaways

There are five practical points for practitioners:

- **First, the bulk of the regime is now live.** Since 29 June 2026, the principal objective, the lifestyle reforms, hidden assets, the just result reduction, tainted gifts, priority orders, compensation directions, EROC, restraint (bar legal expenses) and management receivers are all in force. Practitioners should be applying the new provisions now, not waiting for them.

- **Secondly, EROC changes the shape of proceeds of crime work immediately.** The new ss.15B and 15C will fundamentally alter contested confiscation in the

[34] New s. 288A(1), inserted by s. 190(1). The change does not have retrospective effect: s. 190(2)–(3).

[35] *R (Perinpanathan) v City of Westminster Magistrates' Court* [2010] EWCA Civ 40, [2010] 1 WLR 1508. The principle was later revisited by the Supreme Court in *Competition and Markets Authority v **Flynn** Pharma Ltd* [2022] UKSC 14, [2022] 1 WLR 2972, which held that there is no generally applicable rule that public bodies enjoy protected costs status; whether a chilling effect justifies a no order starting point is for the court or tribunal in question.

[36] Section 190(2)–(3): the new regime does not apply to proceedings for a recovery order started before the commencement day, nor to costs incurred in respect of a pre-commencement interim application (a property freezing order, interim receiving order, prohibitory property order or interim administration order made before the commencement day), even where the substantive recovery proceedings are issued afterwards.

Crown Court. Expect earlier and more extensive demands for disclosure, more concentrated negotiation, and a developing body of practice on what "appropriate to do so" means under new s.6(7A). Those who develop a feel for the EROC early will have a real advantage.

- **Thirdly, watch for the s.41ZA regulations.** The new real risk of dissipation requirement and the reasonable living expenses clawback are live, but the legal expenses regime is not, and its shape will turn entirely on the Lord Chancellor's regulations. The Ministry of Justice consultation should be monitored from the moment it opens. It will be the most heavily lobbied piece of secondary legislation in this area in years.

- **Fourthly, the enforcement and provisional discharge tools are still on the shelf.** Part 8 (default terms, enforcement plans, the enforcing court), the new provisional discharge regime for POCA orders (paragraph 17), and its counterpart for saved legislation orders (Part 13) all await commencement. When they arrive, the two year clock will already have run on much of the legacy 'book'. A provisional discharge audit should be the first thing asset recovery lawyers should do.

- **Fifthly, diarise the civil recovery costs change.** Section 190 has been in force since 29 June 2026. Any civil recovery proceedings issued, and any interim application made, on or after that date fall under the new costs regime. For respondents' counsel the costs risk of fighting to judgment has changed materially; for enforcement authority counsel, the disciplining effect of s.288A(1)(a)–(b) needs to be factored into case selection.

Conclusion

Twenty-four years after POCA was enacted, the centrepiece of the regime, Part 2 confiscation, and the restraint architecture that supports it, have been substantively rewritten, and most of that rewrite is now in force. The reform is faithful to the Law Commission's 2022 report, and it answers the failings the Commission identified. It supplies a justiciable principal objective, real prosecutorial discretion over lifestyle, a statutory footing for hidden assets, priority for victims and a Crown Court FDR, and provides, though not yet in force, the means to clear a backlog of unenforceable orders that has been quietly accumulating since 1986. What it does not do is what the Commission advised against – it neither replaces the value-based model nor builds a specialist court.

The sequencing is the thing to watch. The tools for making and agreeing realistic orders are live. Several of the tools for enforcing them, and for closing out the ones that cannot be enforced, are not. The practitioners who have worked through the new s.5A, s.9A, s.40, the coming s.41ZA and s.35A, and the new s.15B will be the ones ready to use each provision the moment it takes effect. It is worth knowing about them now.

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Annexure 1: The Old Law and the New Law Compared

The following table summarises, at a glance, the principal changes Schedule 21 makes to Part 2 of POCA (together with the s.190 civil recovery costs reform). It is a navigational aid only.[37]

Area	Old law (before 29 June 2026)	New law
Statutory objective	The deprivation purpose comes from case law (*e.g.* Waya).	New s.5A states a justiciable "principal objective": to deprive the defendant of benefit so far as within the defendant's means. Binds court, prosecutor, officers and receivers.
Lifestyle: whether decided	Court must decide the lifestyle question in every qualifying case. Effectively automatic on conviction for a Schedule 2 offence.	Court decides lifestyle only if asked to by the prosecutor (amended s.6(4)). The choice must be recorded in the statement of information (s.16(2A)).
Lifestyle: course of criminal activity trigger	Multiple counts limb requires three or more other offences (s.75(3)(a)). Benefit only.	Reduced to two or more offences; "or intended to benefit" added, so the trigger reaches inchoate benefit (amended s.75(3)). Not retrospective.
Lifestyle: serious risk of injustice	s.10(6)(b); narrowly construed by the courts, in practice confined to preventing double counting.	New s.10(6A) codifies the test: court must weigh all the circumstances, any evidence of injustice, and any explanation for the absence of evidence.
Lifestyle offences (Schedule 2)	Existing list (drug trafficking, money laundering, people trafficking, etc.).	Adds keeping a brothel (s.33A SOA 1956) and two environmental offences (s.33(1)(a) EPA 1990; reg.38(1)(a) EP Regs 2016).
Hidden assets	No statutory framework.	New s.9A: where benefit exceeds free property plus

[37] The tables in these annexures summarise the position and are necessarily compressed; they are not a substitute for reading the statutory text. Section references are to POCA 2002 as amended by Schedule 21 to, and s. 190 of, the Crime and Policing Act 2026. "Old law" means the position immediately before 29 June 2026.

		tainted gifts and the gap is due to hidden property, the court must value it, having considered alternative explanations. (In force.)
Tainted gifts	s.77(5): a gift tainted if made "after the date" the offence was committed.	Substituted s.77(5): tainted if made at any time after the commission of the offence (or, for multiple offences at different times, the earliest). (Not yet in force.)
Recoverable amount: burden	Defendant must show the available amount is less than benefit (s.7(2)).	Amended s.7: defendant "proves or the court is otherwise satisfied"; excluded property expanded (victim restitution, property handed over, seized but unreleased, compensation paid). (Not yet in force.)
"Just result" reduction	No express power. Proportionality arguable under s.6(5) / A1P1 (Waya).	New s.76(8) (with s.84(3)): where the defendant had only limited control, held property temporarily, or is treated as having "kept" it, the court may reduce benefit to a just amount (including zero).
Valuation of mortgaged / lost property	General valuation rules in ss.79–80. No specific formula for criminally financed land.	New s.80A supplies a formula for mortgaged land bought with a criminally obtained loan. New provisions address sold or destroyed property.
Restraint: risk of dissipation	A common law requirement not stated in POCA.	New s.40(1A)–(1B): a real risk of dissipation is a statutory precondition, with a mandatory list of factors the court must weigh. (In force.)
Restraint: legal expenses	Restrained funds may not be released for legal expenses relating to the offence(s) in issue (s.41(4)).	New s.41ZA permits a capped exception for reasonable expenses, subject to "required conditions" in Lord Chancellor regulations. (Not yet

		operational, awaits the regulations.)
Restraint: living expenses	s.41(3); reasonable living expenses governed by case law.	New s.41(3A) and s.41(11) codify the factors and add a clawback where the standard of living is artificially elevated by crime. (In force.)
Priority of compensation	Compensation paid out of confiscation only where the defendant lacks the means to satisfy both (s.13(5)–(6)).	New "priority payment direction" (Part 4): priority orders (compensation, surcharge, unlawful profit, STRO) are paid out of confiscation recoveries first, in all cases. (In force.)
Compensation top-up on variation	No power to increase the compensation element when the available amount is varied upward (s.22).	New s.22A: on an upward variation, the court may make a supplementary or fresh compensation direction, capped at the loss or statutory maximum. (In force.)
Sentencing / confiscation sequencing	Confiscation may be postponed up to two years. Financial and forfeiture orders barred while postponed. 28 day slip rule.	Postponement language replaced by a timetable fixed at the sentence hearing. Slip/variation window extended to 56 days. Financial orders deferred until confiscation resolved. (In force.)
Early resolution	No statutory process.	New ss.15B–15C: a mandatory Early Resolution of Confiscation (EROC) meeting and hearing before the s.6 determination. (In force.)
Provisional discharge (POCA orders)	Narrow discharge only. Small amount outstanding (s.25) or inadequacy on limited grounds (s.24).	New ss.24A–25: broad power to discharge provisionally in the interests of justice after two years, revocable on later variation. (Not yet in force.)
Provisional discharge (legacy orders)	No provisional discharge route for DTOA 1986 / CJA 1988 / DTA 1994 orders.	Part 13 extends the same architecture to saved legislation orders. (Not yet in

		force.)
Default terms of imprisonment	Four band scale in s.35(2A) (SCA 2015): 6 months / 5 / 7 / 14 years.	New s.35A reproduces the same four band scale. The figures are unchanged. What is new is the surrounding enforcement architecture. (Not yet in force.)
Enforcing court	Enforcement defaults to the magistrates' court, treating the order as a fine.	New s.35D: the sentencing court designates an "enforcing court", which may be the Crown Court, allowing it to retain enforcement. (Not yet in force.)
Enforcement plans	No mechanism for advance enforcement planning.	New ss.13ZA–13ZB: enforcement plan on making the order where default is foreseeable; default triggered hearing listed promptly. (Not yet in force.)
Management of s.47M detained assets	No statutory power to appoint a management receiver over assets detained under s.47M.	Part 10 extends management receivers (ss.48–49) to support a further detention order under s.47M. (In force.)
Civil recovery costs	General rule that costs follow the event. Enforcement authority exposed to costs on losing (*c.f.* Perinpanathan in cash cases).	New s.288A: no adverse costs against the enforcement authority in Part 5 Chapter 2 proceedings unless it acted unreasonably, dishonestly or improperly, or it is otherwise just and reasonable. (In force from 29 June 2026.)

Annexure 2: Commencement

The table below sets out when the confiscation provisions of the Crime and Policing Act 2026 came into force, are expected to, or as yet have no commencement date. As at the date of writing only one set of commencement regulations has been made (SI 2026/689). The provisions marked "not yet in force" are to be commenced by regulations in due course and have no appointed date.[38]

In force from 29 June 2026

Provision	What it does	Commencement
s.190 (new s.288A)	Civil recovery costs shield.	29 June 2026 (automatic, s.255(3)(g)).
Sch. 21, Part 1 (s.5A)	Statutory principal objective.	29 June 2026 (SI 2026/689).
Sch. 21, Part 2	Lifestyle: prosecutorial discretion; s.10(6A); two offence trigger; Schedule 2 additions.	29 June 2026.
Sch. 21, Part 3 (except para. 6)	Hidden assets (s.9A); tainted gifts (s.77(5)); just result reduction (ss.76(8), 84(3)); valuation (s.80A).	29 June 2026 (para. 6 excepted, see below).
Sch. 21, Part 4	Priority payment directions.	29 June 2026.
Sch. 21, Part 5	Compensation directions (s.22A).	29 June 2026.
Sch. 21, Part 6 (except para. 17)	Timing/sequencing; EROC meetings and hearings (ss.15B–15C).	29 June 2026 (para. 17 excepted. See below).
Sch. 21, Part 9 (except para. 26(1),(2),(4))	Restraint: risk of dissipation; living expenses; delay; effect of conviction.	29 June 2026 (legal expenses limb excepted, see below).
Sch. 21, Part 10	Management receivers over s.47M detained assets.	29 June 2026.
Sch. 21, Part 11	Consolidated / clarified appeal	29 June 2026.

[38] Commencement is governed by the Crime and Policing Act 2026 (Commencement No. 1 and Saving Provision) Regulations 2026 (SI 2026/689) and, for s. 190 to 192, by s. 255(3)(g) of the Act itself. As at the date of writing, no further commencement regulations have been made, so the provisions listed as "not yet in force" have no appointed date and are to be commenced by regulations in due course.

	rights.	
Sch. 21, Part 12	Consequential and related amendments.	29 June 2026.

<u>Not yet in force: no appointed date</u>

Provision	What it does	Status
Sch. 21, Part 8	Enforcement: default term scale (s.35A); enforcement plans (ss.13ZA–13ZB); enforcing court (s.35D).	Awaiting commencement regulations.
Sch. 21, Part 13	Provisional discharge for saved legislation orders (DTOA 1986, CJA 1988, DTA 1994).	Awaiting commencement regulations.
Sch. 21, para. 6	Recoverable amount rewrite (s.7; s.21 reconsideration).	Awaiting commencement regulations.
Sch. 21, para. 17	Provisional discharge for POCA orders (ss.24A–25).	Awaiting commencement regulations.
Sch. 21, para. 26(1),(2),(4)	Legal expenses exception in restraint (s.41ZA).	Substance awaits Lord Chancellor's regulations; para. 26(3) (regulation making power only) in force from 29 June 2026.