

## SUPPLEMENTARY MEMORANDUM PROCEEDS OF CRIME BILL

The Proceeds of Crime Bill contains a comprehensive package of provisions designed to strengthen and enhance the existing legislation on the confiscation of the proceeds of crime. The Bill is a UK measure covering both devolved and reserved matters. The Bill was introduced at Westminster on 18 October 2001.

On 24 October, Parliament debated and approved the following Sewel motion

“That the Parliament endorses the principle of the Proceeds of Crime Bill and agrees that the provisions in the Bill that relate to devolved matters should be considered by the UK Parliament.”

Part 3 of the Bill sets out provisions for Scotland on the confiscation of the proceeds of crime from accused persons following a criminal conviction. As introduced, Part 3 gave the court (High Court and sheriff court) a discretion on whether or not to impose a confiscation order following conviction (clause 94(1)), whether or not the amount of the order should be the same as or less than the recoverable amount (ie an amount equal to the accused's benefit from his criminal conduct)(clause 94(4)(b)) and, where it decides that the accused has a criminal lifestyle, whether or not to apply the assumptions that all his assets obtained over the previous 6 years were the proceeds of crime and therefore could be confiscated (clause 99(1)). These discretionary provisions followed the existing Scottish law on criminal confiscation. The corresponding confiscation provisions in Part 2 of the Bill for England and Wales place a mandatory requirement on the courts to act in the above circumstances.

During the Second Reading debate Members of Parliament made clear that they would prefer the Scottish provisions in relation to confiscation orders to replicate the English and Welsh provisions to the extent that they should be mandatory.

This matter was drawn to the attention of the Scottish Ministers Responsibility for the matter lies with the Scottish Executive. Given that it was our intention that the Courts should impose confiscation sanctions following a criminal conviction, and the change was therefore of a technical rather than policy nature, the Deputy First Minister, in consultation with the Lord Advocate, agreed to place a mandatory responsibility on the court in the circumstances outlined above. The necessary amendments were tabled on 29 November and debated in the Bill Standing Committee on 6 December when they were approved.

As a result the Bill now provides that the courts in Scotland –

- must in every case where the Crown makes application for a confiscation order consider imposing a confiscation order
- where it imposes a confiscation order, must make it to the total amount of the accused's benefit
- must make the assumptions as to benefit from general criminal conduct, except where this would create a serious risk of injustice

By making these amendments the Scottish Executive is giving a clear signal to the courts and to the criminals our determination to confiscate from convicted criminals the proceeds of their criminal activities.

SCOTTISH EXECUTIVE JUSTICE DEPARTMENT

X December 2001