



Post Office Ltd Internal Information
Criminal Investigation Team

Appendix 2 to P&S 9.1 Proceeds of Crime Act 2002 Enforcement Receivership Orders

Version 2 Final

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Helen Dickinson
Security Operations Team Leader
Post Office Ltd Security
Mobile: **GRO**

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Key Accountabilities

Who is accountable?	What do I have to do?	When do I have to do this?	How do I do this?
All members of Post Office Ltd Security	Ensure you comply with these procedures	Ongoing	As detailed within these procedures

Proceeds of Crime Act 2002 Enforcement Receivership Orders

1. Introduction

- 1.1 The Decision to Appoint an Enforcement Receiver.** Once a Confiscation Order has been granted, application may be made by the Prosecutor to the Court for the appointment of an enforcement receiver. Their role is to realise any property which is subject to that Confiscation Order. They may be appointed by the Court if the three conditions below are satisfied;
- 1.1.1** The Court has made a Confiscation Order;
 - 1.1.2** The Confiscation Order has not been satisfied; and
 - 1.1.3** The Confiscation Order is not subject to appeal.
- 1.2** It is important to note that there is no requirement for time to pay to have expired before an application can be made to appoint an enforcement receiver. In appropriate cases, early applications for the appointment of enforcement receivers should be made to ensure that payment is made before the time to pay expires.
- 1.3** Another factor to consider is the cost of appointing an enforcement receiver. Clearly, if the remuneration and expenses of the receiver are likely to be in excess of the amount that is likely to be realised, a receiver should not be appointed. This may be a particularly pertinent issue in cases where there has been no Restraint Order, as some assets may have been dissipated prior to the appointment of the receiver.
- 1.4** Although the application to Court is made by the prosecutor, once appointed, the receiver is an officer of the Court and may be separately represented on future hearings. Separate representation should only occur where there is a potential conflict between the receiver and the prosecutor: see *Re G, Manning v G* (No. 4) [2003] EWHC Admin 1732.
- 1.5** Fundamentally the process to be followed will depend on whether or not the defendant has been convicted of an offence. Accordingly described in Section 2 below is the process to be followed if the defendant has been convicted; whilst Section 3 details the process to be followed if the defendant has not been convicted and has absconded.

2. Obtaining an Enforcement Receivership Order Following Conviction

- 2.1** Once a defendant is convicted of a criminal offence and confiscation proceedings are appropriate the following process should be followed:
- 2.1.1** The first issue to address is the defendant present for the confiscation process or have they absconded. If they have absconded then enquires to locate them would be appropriate as before a Confiscation Order can be made in the case of an absconded defendant the defendant has to be absent for over 3 months.
 - 2.1.2** Following this the next issue to address is has a Confiscation Order been made? If not one should be obtained following normal processes.
 - 2.1.3** Once a Confiscation Order has been obtained it has to be satisfied. If it is satisfied then the result should be reported on Joint Asset Recovery Database (JARD). This would then end of the process.
 - 2.1.4** If the Confiscation Order is not satisfied the Regional Asset Recovery Team (RART) will enforce it as long as a Restraint Order has **not** been made on the assets or, if a Restraint Order has been made, the assets are immediately recoverable. (Immediately recoverable would include such things as financial products or accounts and pensions).
 - 2.1.5** If a Restraint Order has been made and the assets are not immediately available, such as house, vehicle or other physical goods, then Post Office Ltd Security (POLS), as the prosecutor are responsible for arranging the enforcement of the Confiscation Order.

2.2 Obtaining an Enforcement Receivership Order. The process for obtaining and Enforcement Receivership Order is as follows

2.2.1 A date must be arranged with the Court for an enforcement hearing.

2.2.2 The Accredited Financial Investigator (AFI) should prepare and send to the nominated Enforcement Receiver a 'Nomination Letter' written in accordance with the 'Capewell' Guidelines. The Capewell guidelines are suggested guidelines for the appointment of enforcement receivers. They were issued after a case in the Court of Appeal. An example nomination letter and the Capewell Guidelines are embedded below. The AFI should associate with the nomination letter a brief summary of the case and a schedule of any identified assets.



Example Nomination
Letter.docx



Capewell
Guidelines.pdf

2.2.3 The Enforcement Receiver will then respond by accepting the nomination and providing a Schedule of Costs.

2.2.4 The AFI should then prepare a draft Receivership Order and a draft Witness Statement to support the Receivership Order and serve them on the Court.



Example
Receivership Order .c



Example Witness
Statement.docx

2.2.5 The next step in the process is to attend the Receivership Hearing and obtain a Receivership Order

2.2.6 The AFI will then forward the order to the Receiver.

2.2.7 The Receiver will then enforce the Confiscation Order and allocate the realisable assets in accordance with the Court Orders.

2.2.8 Once the assets have been allocated the AFI should report the results on JARD.

3. Obtaining an Enforcement Receivership Order in cases where the Defendant has Absconded Before Conviction.

3.1 Where the defendant has absconded a period of three months must pass before the prosecution can proceed with the Confiscation case. After three months the issue to address is whether or not Confiscation proceedings are appropriate. Whether or not they are appropriate will depend on the full circumstances of the case. The quality of the evidence and the availability of available assets will all have to be borne in mind. If it is appropriate to proceed with Confiscation the following process should be followed.

3.1.1 Reasonable enquires must be undertaken to try to locate the defendant. Of course it is expected that these reasonable enquiries will be undertaken whilst the period of 3 months is elapsing. If the defendant is located then the financial investigation should continue in accordance with normal processes.

3.1.2 If it is not possible to locate the defendant then consideration should be given as to what Confiscation regime is appropriate. The two options are through the Civil Courts following the Civil Law Regime or through the Criminal Courts following the Criminal Court Regime. If the Civil Court Regime is thought to be appropriate then the case should be referred by the Criminal law Team to Civil Litigation Team to deal. If it is thought that the case should be continued through the Criminal Court then the prosecutor should apply for a Confiscation Order. If a Confiscation Order is obtained then the remainder of the process is the same as the process described in Section 2 above from paragraph 2.1.3 above.

3.1.3 It is worthy of note that if we apply for a Confiscation Order in the absence of the offender as they have absconded then the Court will not grant Post Office Ltd compensation as the defendant has not been convicted. Accordingly we would only qualify for incentivesation money on the sum confiscated after ant receiver's fees have been deducted.

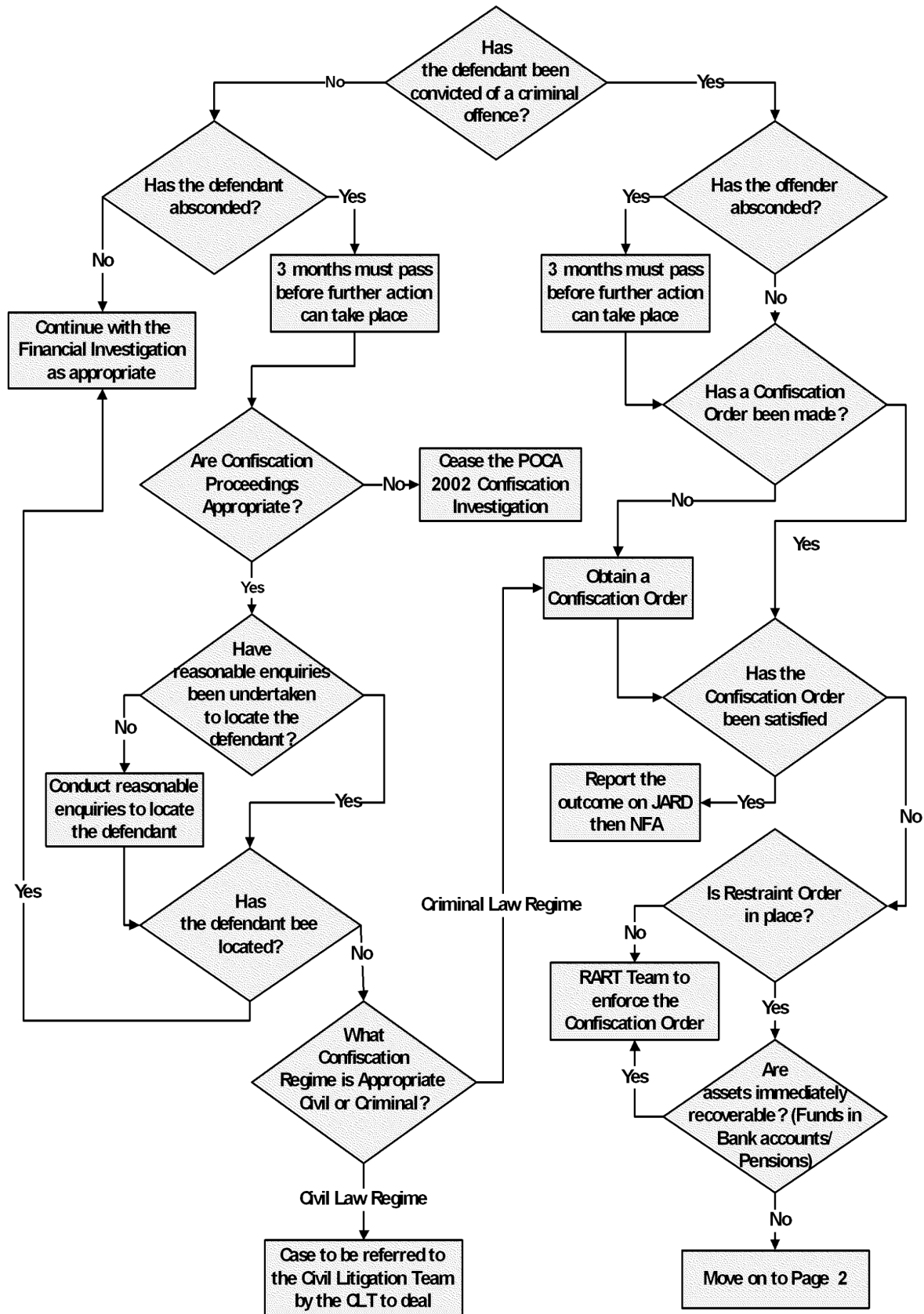
4. Process Maps

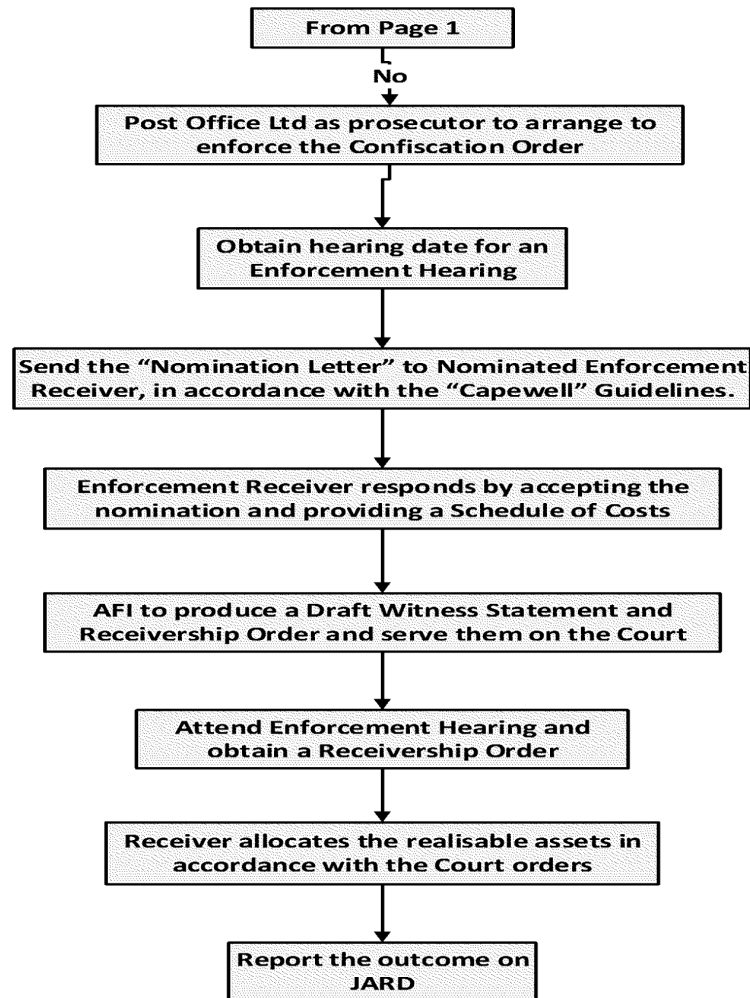
4.1 Below is a Process Map which may be of use as an aide memoir. (Word copy associated for ease of reproduction).



POCA 2002
Obtaining Enforcement

POCA 2002 Obtaining Enforcement Receivership Orders





Change Control

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V1	Document Produced in RM Format
V2	Document produced in POL format. No significant changes

Glossary

Abbreviation or Term	Meaning
POCA 2002	Proceeds of Crime Act 2002
JARD	Joint Asset Recovery Database
RMGS	Royal Mail Group Security
AFI	Accredited Financial Investigator
CLT	Criminal Law Team
POL	Post Office Ltd
POLS	Post Office Ltd Security

Document Summary

If you have any queries please contact:

Helen Dickinson
Accredited Financial Investigator
Post Office Ltd Security
Future Walk
CHESTERFIELD
S49 1PF

Mobile:
E mail

GRO
helen.dickinson@postoffice.co.uk GRO