

# ECONOMIC CRIME AND CORPORATE TRANSPARENCY ACT 2023 STRENGTHENS CRYPTO ASSET RECOVERY POWERS - WILL IT MAKE A DIFFERENCE?

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**Crypto assets have intrinsic appeal to criminals. They are readily available, liquid, largely unregulated and can be moved quickly, making tracing hard.**

The [Economic Crime and Corporate Transparency Act](#) (the Act), which received royal assent on 26 October 2023, introduces new measures to combat economic crime and enhance corporate transparency.

Within the realm of crypto assets, the Act aims to streamline recovery by tackling some of the primary challenges posed by these assets. The Act implements amendments to the [Proceeds of Crime Act 2002](#) (POCA), significantly broadening law enforcement agencies' authority to seize, store, and potentially dispose of or destroy crypto assets linked to criminal activities. The new powers will take effect in 2024.

## **Background: criminal and civil asset recovery powers under POCA**

In essence, POCA encompasses two distinct categories of asset recovery powers. The criminal powers (contained in Parts 2, 3, and 4 of POCA) are employed to impose a debt upon any individual convicted of a crime and found to have profited from their crime. The civil powers (contained in Part 5 of POCA) serve to mandate the direct seizure of identifiable assets deemed to have been acquired through unlawful means or intended for engagement in unlawful activities.

The Act makes significant amendments to both the criminal and the civil powers.

## **Key amendments to the criminal powers under POCA**

The mandatory requirement for an individual's arrest or conviction prior to asset seizure will be removed. Instead, courts will be empowered to order the confiscation of assets in the absence of an arrest.



1. This newly granted authority will encompass all asset types but they may prove especially valuable in the domain of crypto assets. Its application would be particularly effective in scenarios where crypto assets have been identified, strong ties to criminality can be substantiated, but the subject of the investigation resides outside the UK. A prime example would be a fraud syndicate operating from beyond the UK's borders but targeting UK customers.

2. A new provision will be implemented to allow law enforcement officers to recover crypto assets in a manner largely similar to the recovery of tangible property. This involves modifying the search, seizure and detention powers explicitly to grant officers the authority to "regenerate" wallets and transfer assets into a law enforcement-controlled wallet.

3. Magistrates' courts will be empowered to authorise the sale of crypto assets, mirroring their existing authority to sell cash, funds held in bank accounts and other seized personal property.

4. A new provision will allow for the destruction of crypto assets in exceptional circumstances – where the financial gain for the sale of the assets is outweighed by the loss to the public of allowing the continued circulation of funds that could be used for criminal purposes.

## **Key amendments to the civil powers**

The primary objective of the amendments to the civil powers is to introduce a new set of forfeiture powers, enabling law enforcement agencies to recover crypto assets and related items, such as cold wallets, swiftly. These new powers are modelled after the account freezing and forfeiture powers introduced by the [Criminal Finances Act 2017](#).



The headline points are:

1. Law enforcement agencies will be granted the authority to seize and recover crypto assets encountered during the execution of a search warrant. These powers can be exercised in situations where crypto assets are unhosted and not in the custody of a third party. The assets can be seized if the magistrates' court is convinced, on the balance of probabilities, that they are either recoverable property or intended for unlawful activities.
2. Law enforcement agencies will be authorised to recover crypto assets from third parties directly, including crypto asset exchange providers and custodian wallet providers, if the magistrates' court is convinced, on the balance of probabilities, that the assets are recoverable and were intended for unlawful use.
3. Crypto assets that have been detained or frozen in a wallet can be converted to cash pending the outcome of a final forfeiture hearing. This is intended to protect against volatility in the market value of the underlying crypto assets (which are common).
4. Akin to the amendments to the criminal powers detailed above, a provision allowing for the destruction of crypto assets in exceptional circumstances will be introduced – the same balancing test will apply.

To futureproof the new criminal and civil powers, the Act introduces a series of delegated powers to ensure that defined terms, such as "crypto asset", "crypto wallet" and "crypto asset service provider", can be amended and kept up to date as required.

## Will the new powers make a difference?

These modifications expand the scope of situations in which recovery powers can be applied to crypto assets and enable swifter and more frequent asset seizures, effectively preventing their dissipation. This brings POCA into the "crypto age" and is to be welcomed.

However, the effectiveness of the new powers critically hinges on the ability of law enforcement agencies to act quickly and implement the available remedies. That will turn on factors beyond the scope of this briefing, such as resourcing, training and prioritisation.

To deploy their new powers effectively, law enforcement agencies must match the agility and decisiveness of the assets they aim to recover. They will need to invest in blockchain analytical software and train their personnel in blockchain analysis.

It is not certain if law enforcement agencies are willing to prioritise smaller-scale frauds and scams, especially when no apparent fraudulent network is involved. For the new powers to be seen to make a real difference, law enforcement agencies would need to focus on all "players" involved in illicit crypto asset transactions, big or small.

Achieving this is easier in theory than in practice, particularly in an environment where many law enforcement agencies are already stretched. While the UK government has committed £200 million of government funding from FY 2022/23 to FY 2024/25 in its latest [Economic Crime Plan](#), the impact of this investment on the prospects of recovering crypto assets linked to criminal activities remains to be seen.



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