

Week 14: Policy-Making and External Influences

GV311

Edward C Page

Department of Government

A heroic view of policy making



- Policy as an act of creation
- Policy as made by key creators with political skills
- Policy as a product of struggle and conflict

A humdrum view of policy making



- Policy as a long haul
- Policy made with a cast of many (if not thousands)
- Policy as the product of procedure and routine

Why bother with the humdrum?

- To understand policy making
 - In volume, at least, more policy work is closer to humdrum than heroic
 - Even heroic policy making needs the humdrum
- To evaluate proposals for reform
 - Diagnoses emphasising heroic failures
 - Reforms based on faulty understandings of roles

How to present it

- Stages of policy process

- Early (pre-legislative; corresponds to agendas and alternatives)
- Middle (legislative; corresponds to decision making)
- Late (post-legislative; corresponds to implementation)

- Key case (for demonstration purposes)

- “POCA” (Proceeds of Crime Act 2002) to make general points
- Not “typical” (nothing is) but featuring blend of humdrum and (apparent) heroism



RESEARCH PAPER 01/79
29 OCTOBER 2001

Proceeds of Crime Bill

Bill 31 of 2001-2002

The Proceeds of Crime Bill brings together existing and new powers designed to deprive criminals and their associates of money and property connected with or derived from criminal activity. It strengthens and amalgamates existing criminal confiscation powers. It also introduces a new civil power to recover property which has been obtained through criminal conduct, as well as strengthening and extending existing civil forfeiture powers.

It sets up a new Assets Recovery Agency which is to have a central role in crime reduction, and whose powers will include a special power to tax suspected criminal assets.

The Bill is due to be debated on Second Reading on 30 October 2001.

Sally Broadbridge

HOME AFFAIRS SECTION

Christopher Blair (Part II E)

BUSINESS & TRANSPORT SECTION

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Pre-legislation



- The heroic aspects of agenda setting (borrowed from the US esp John Kingdon *Agendas, Alternatives and Public Policy*): policy entrepreneurs
- Heroic aspects
 - Blair agenda of “tough on crime and causes of crime”
 - Performance and Innovation Unit (in-house think tank) report “Recovering the Proceeds of Crime” June 2000
 - Heralded by Straw as Home Secretary and included in 2001 Labour manifesto

BBC NEWS

You are in: **UK Politics**
Monday, 5 March, 2001, 18:12 GMT

Straw targets crime chiefs

Front Page
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Jack Straw: Wants to ensure crime does not pay
New powers allowing police to seize cash and property they believe are the proceeds of criminal activity have been unveiled by Home Secretary Jack Straw.

Pre-legislation



- Host of pre-existing legislation
- Variety of reports: House of Commons Home Affairs Committee 1995; Home Office Police Research Group (1995); Home Office Working Group on Confiscation (passim and 1998); HMIC Scotland (2000)
- Impact of PIU? Attention rather than substance of policy

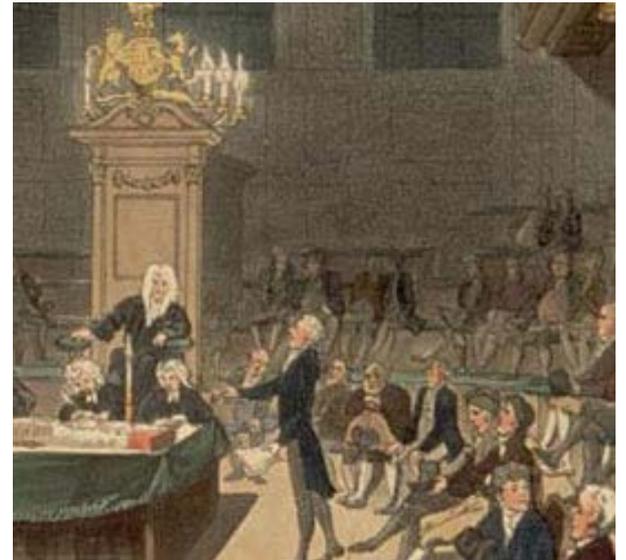
Observations on pre-legislation

- Policies as a mix of old and new
- Difficulty of pinning down exactly how the idea for a “new” policy arose
- Importance of routine processes
- Not that politics is unimportant
 - Signalling as a priority important for resources
 - The significance of electoral politics

Legislation



- Draft bill and lobbying
- Parliamentary stages and divisions
- Defeats and changes



Legislation



- Who writes the stuff?
 - Bill teams
 - Parliamentary Counsel



- Policy development as bureaucratic exercise
 - Key issues settled
 - Logic of the legislation
 - Lobbies and heading off opposition
 - Surprisingly junior level
 - Parliamentary counsel as prospective policy analyst

Observations

- Not to say bureaucrats “out of control”
- Importance of anticipated reactions and other cues
- Tacit or explicit approval for key choices
- Bureaucracy as target for lobbying/briefing

And while we're on legislation

There's always "the regs" (at least 55) and guidance

Draft Order laid before Parliament under section 459(6)(a) of the Proceeds of Crime Act 2002, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

PROCEEDS OF CRIME, ENGLAND AND WALES

The Proceeds of Crime Act 2002 (Investigations: Code of Practice) (England and Wales) Order 2015

Made - - - - 2015

Coming into force - - 1st June 2015

This Order is made in exercise of the powers conferred by sections 377(4) and (8) and 459(2) of the Proceeds of Crime Act 2002(a) ("the Act").

The Secretary of State:

(1) has, in accordance with section 377(8) of the Act, revised the code of practice in relation to England and Wales in connection with the exercise by the Director General of the National Crime Agency, other National Crime Agency officers, officers of Revenue and Customs, immigration

The Proceeds of Crime Act 2002 (Commencement No. 5, Transitional Provisions, Savings and Amendment) Order 2003
The Proceeds of Crime Act 2002 (Recovery from Pension Schemes) Regulations 2003
The Proceeds of Crime Act 2002 (Financial Threshold for Civil Recovery) Order 2003
The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003
The Proceeds of Crime Act 2002 (Crown Servants) Regulations 2003
The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003
The Proceeds of Crime Act 2002 (Failure to Disclose Money Laundering: Specified Training) Order 2003
The Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003

Post Legislation



Implementation as a “top brass” issue

Strategy

Leadership

Organization

Delivery

 HM Government

Cutting Crime, Delivering Justice

A Strategic Plan for Criminal Justice
2004-08

 HM Government

Serious and Organised
Crime Strategy

Post legislation



Range of evaluations of what has gone wrong, latest National Audit Office 2013:

- Attrition rate as assets hard to identify and have to be subject of successful confiscation orders
- As an organizational problem (coordinating, informing, prioritizing)
- As a problem of incentives
- ICT problems



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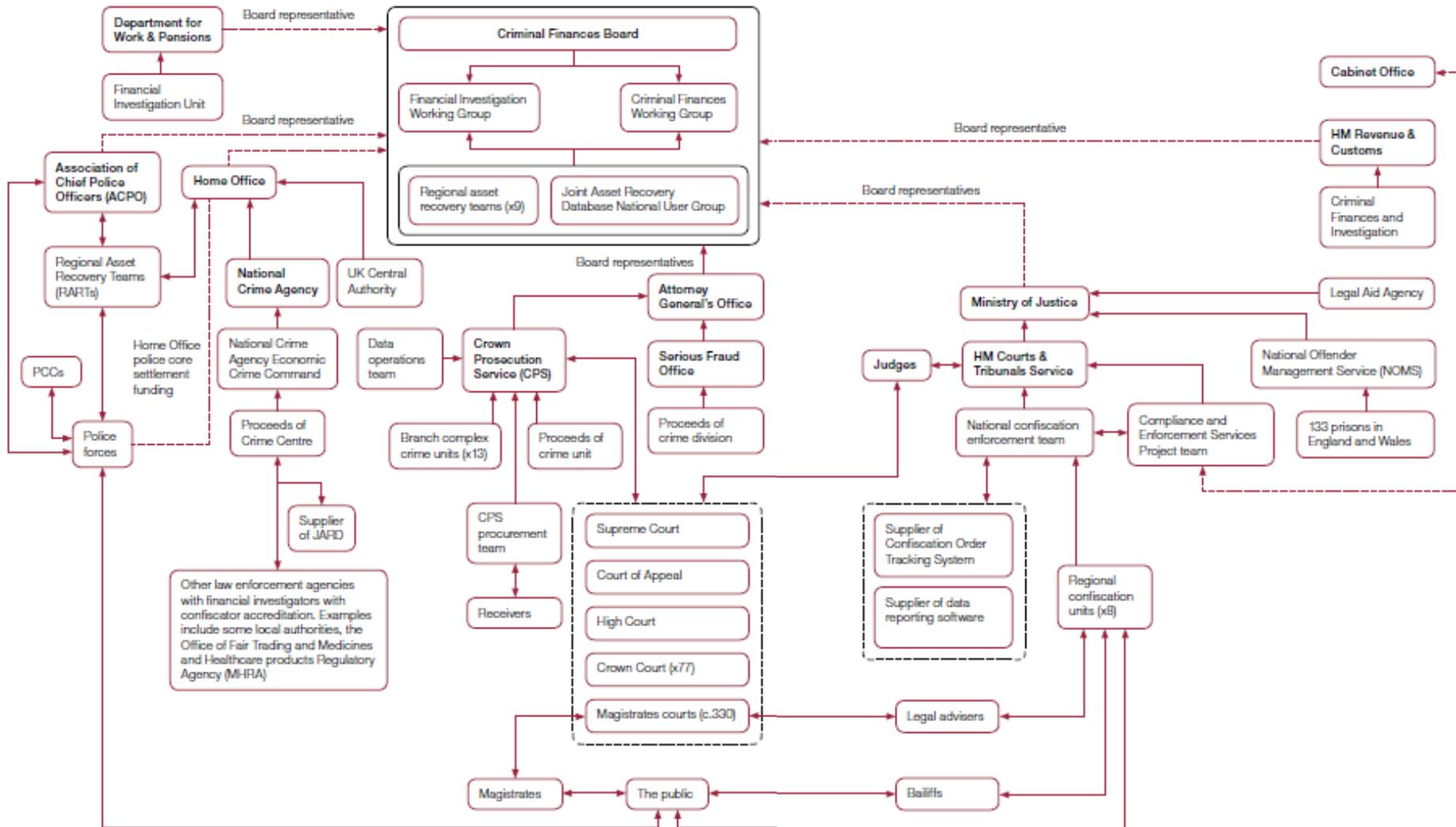
Serious Crime Bill

Bill No 116 of 2014-15

RESEARCH PAPER 14/67 18 December 2014

From NAO Report "Confiscation Orders" 2013

Figure 6
Confiscation order landscape



Source: National Audit Office analysts

From NAO Report “Confiscation Orders” 2013

Figure 11

Confiscation orders imposed by law enforcement agencies since 1987

Law enforcement agency	Number of orders	Assessed benefit (£m)	Current order amount (£m)	Confiscators
Territorial police forces	41,523	5,015	868	900
HM Revenue & Customs	2,623	5,783	571	75
Home Office funded regional asset recovery teams	2,005	1,291	253	68
Department for Work & Pensions	1,421	86	45	38
National Crime Agency	1,361	1,412	207	104
Serious Fraud Office	108	1,678	86	12
Other	2,988	541	104	243
Total	52,029	15,806	2,134	1,440

Notes

- 1 Regional asset recovery teams are multi-agency units set up to investigate money laundering and confiscation cases.
- 2 Other law enforcement agencies include local authorities and Scottish and Northern Irish constabularies.
- 3 Confiscators are specially trained financial investigators, who may also assist or lead on criminal investigation cases, in addition to confiscation work.

Source: National Audit Office analysis of Joint Asset Recovery Database and National Crime Agency data at September 2013

Conclusions

Empirical:

- Policies as mix of heroic and humdrum
- Basic legitimacy requires the intervention of heroes
- Some policies closer to humdrum, others to heroic
- Even the most heroic need the humdrum
- Cannot understand policy without understanding humdrum

Thinking about problems and reform of policy:

- Emphasis on heroic causes of failure (leadership and blunders)
- Looking in the wrong place for remedies
- Failing to identify things that work well