

# Economic Crime and Corporate Transparency Act 2023: Cryptoassets

## What are the changes?

### Civil Recovery Regime

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#### Search, seize and detain

HMRC, the police, the SFO and accredited financial investigators approved by the Secretary of State (known as 'enforcement officers') will have the power to search, seize and detain 'cryptoasset related items'. Cryptoasset related items are any item that contains, or gives information that is likely to assist, in the seizure of cryptoassets which are recoverable property or are intended for use in unlawful conduct. These may include devices storing passwords to access cryptoasset wallets or other forms of cold wallet storage. Prior approval from a judicial officer or senior enforcement officer must be sought before exercising these powers, unless it is not practicable in the circumstances.

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#### Freezing Orders

Enforcement officers will also be able to apply to the Magistrates' Court for freezing orders in respect of cryptoassets held at any UK-connected cryptoasset service provider where they have a reasonable grounds for suspecting that those cryptoassets are recoverable property, or are intended for use in unlawful conduct. These applications can be made without notice where notice may prejudice the recovery of cryptoassets.

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#### Forfeiture

The Magistrates' Court will have the power to order that cryptoassets be forfeited where it is satisfied that the cryptoassets are recoverable property, or are intended for use in unlawful conduct. Forfeited assets can then be converted into fiat or destroyed. Where converted into fiat, the proceeds of realisation (subject to costs) can be paid to the court and made available for victims, creating an alternative route for victims to recover their losses.

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### The Economic Crime and Corporate Transparency Act (the "Act") received Royal Assent on 26 October 2023.

The Act amends the Proceeds of Crime Act 2002 ("POCA") to introduce a raft of new, pro-active measures which aim to tackle the increase in criminal conduct involving cryptoassets. The reforms increase the powers of law enforcement agencies and the courts to search for, seize, freeze, detain, realise and destroy cryptoassets. The cryptoasset provisions in the Act are not yet in force.

How will the Act affect those dealing with digital assets, victims of wrongdoing involving digital assets and the enforcement officers tasked with pursuing the new means powers available?

### Proceeds of Crime Confiscation Proceedings

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The confiscations provisions in POCA are also being extended to ensure that cryptoassets and cryptoassets related items fall within the court's existing powers. These amendments will ensure that the court and, where appropriate, those tasked with realising assets that represent the proceeds of crime will be able to seize, detain, destroy and/or realise cryptoassets and cryptoassets related items.

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## How can TLT help?

### Who needs to know about the changes?

Digital asset exchanges and all financial institutions that deal in cryptoassets will be affected by the changes brought into effect by the Act.

Other entities dealing with, or at risk of being involved with, digital assets should also consider whether existing policies and procedures adequately address the novel risks posed by digital assets and the rapidly changing legislative and regulatory framework in the space.

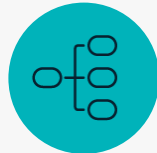
### How can TLT help?

- Implementing or updating compliance policies to reflect the risks posed by digital asset fraud, including the use of digital assets to launder the proceeds of wrongdoing and the theft of digital assets.
- Advising digital asset platforms on implementing or updating policies on handling requests from enforcement officers and responding to orders of from the Court.
- Providing training on the warning signs of digital asset fraud and routes to digital asset recovery.
- Advising enforcement agencies and insolvency practitioners on cases involving digital asset fraud or the dissipation of assets using cryptocurrencies.
- Assisting victims of crime involving digital assets to develop holistic strategies that explore both civil and criminal routes to recovery.

### Why TLT?



Our team includes experts in economic crime, financial services regulation, litigation and insolvency who practice across a broad range of industries and in both the public and private sector.



This cross-disciplinary network allows TLT to assist businesses in all matters relating to digital assets, from implementing or updating policies to ensure they are tailored to address the novel risks posed by digital assets, to advising on specific cases of wrongdoing.

### Get in touch

We will be running a series of events and activities to keep you informed of all developments. Contact us for more details.



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