



Proceeds of Crime (Scotland) Act 1995

1995 CHAPTER 43

PART II

FORFEITURE OF PROPERTY USED IN CRIME

26 Property wrongly forfeited: return or compensation.

- (1) Where the court, on an application being made to it by a person other than the accused—
 - (a) is satisfied by the applicant on the balance of probabilities that in relation to any property forfeited to the Crown or another person under section 24 of this Act or by virtue of an order for forfeiture made under any other enactment he was the owner of, or a person otherwise having an interest in, the property immediately before such forfeiture; and
 - (b) subsection (3) or (4) below is applicable,it shall make an order under subsection (2) below.
- (2) An order under this subsection shall direct the Crown or, as the case may be, the other person, if the applicant—
 - (a) was the owner of the property, to return it to him if reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (5) below; or
 - (b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.
- (3) This subsection applies if the court is not satisfied that—
 - (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order or order for forfeiture was made, he knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and did not take all the steps which were reasonable for him to take to prevent such intended use; or

Changes to legislation: There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 26. (See end of Document for details)

- (b) where the applicant has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, he knew or ought to have known that the property had been intended to be, or had been, so used.
- (4) This subsection applies if the court is satisfied as mentioned in subsection (3) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.
- (5) For the purposes of subsection (2) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.
- (6) An application under subsection (1) shall be made not later than three years after the date on which the property was forfeited as mentioned in subsection (1)(a) above.
- (7) Where, after property has been forfeited by virtue of section 24 of this Act, the prosecutor comes to believe that the person named in the suspended forfeiture order in pursuance of section 21(4) of this Act is not the owner of, or a person otherwise having an interest in, the property concerned, then—
- (a) whether he knows who the true owner was, or who the person truly with the interest was, or not, he shall forthwith notify the court in writing of that belief; and
 - (b) if he does know or reasonably suspects the identity of the person who was the true owner or who truly had the interest, he shall forthwith notify that person in writing that he may be entitled to apply to the court for a direction under this section.
- (8) Where no person has been named in the suspended forfeiture order in pursuance of section 21(4) of this Act or in a variation order under section 25(5) of this Act but, after the property concerned has been forfeited under section 24 of this Act, the prosecutor comes to believe that a person was or might have been the owner of, or otherwise had or might have had an interest in, the property concerned, he shall forthwith notify—
- (a) the court of his belief; and
 - (b) that person in writing that he may be entitled to apply to the court for a direction under this section.
- (9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any ^{F1} . . . order of discharge made, in respect of the offence concerned otherwise than as provided by this section.
- (10) In this section “the court” means the court which made the suspended forfeiture order or order for forfeiture.

Textual Amendments

F1 Words in s. 26(9) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206, [Sch. 2 para. 40\(3\)](#); S.S.I. 2010/413, [art. 2](#), Sch. (with [art. 3](#))

Changes to legislation:

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