



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 2

#### CONFISCATION: ENGLAND AND WALES

##### *Confiscation orders*

### 6 Making of order

- (1) The Crown Court must proceed under this section if the following two conditions are satisfied.
- (2) The first condition is that a defendant falls within any of the following paragraphs—
  - (a) he is convicted of an offence or offences in proceedings before the Crown Court;
  - (b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 4 or 6 of the Sentencing Act;
  - (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).
- (3) The second condition is that—
  - (a) the prosecutor or the Director asks the court to proceed under this section, or
  - (b) the court believes it is appropriate for it to do so.
- (4) The court must proceed as follows—
  - (a) it must decide whether the defendant has a criminal lifestyle;
  - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
  - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

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- (a) decide the recoverable amount, and
  - (b) make an order (a confiscation order) requiring him to pay that amount.
- (6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.
- (7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.
- (8) The first condition is not satisfied if the defendant absconds (but section 27 may apply).
- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

## **7 Recoverable amount**

- (1) The recoverable amount for the purposes of section 6 is an amount equal to the defendant's benefit from the conduct concerned.
- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—
- (a) the available amount, or
  - (b) a nominal amount, if the available amount is nil.
- (3) But if section 6(6) applies the recoverable amount is such amount as—
- (a) the court believes is just, but
  - (b) does not exceed the amount found under subsection (1) or (2) (as the case may be).
- (4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which—
- (a) a recovery order is in force under section 266, or
  - (b) a forfeiture order is in force under section 298(2),
- must be ignored.
- (5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

## **8 Defendant's benefit**

- (1) If the court is proceeding under section 6 this section applies for the purpose of—
- (a) deciding whether the defendant has benefited from conduct, and
  - (b) deciding his benefit from the conduct.
- (2) The court must—
- (a) take account of conduct occurring up to the time it makes its decision;
  - (b) take account of property obtained up to that time.
- (3) Subsection (4) applies if—
- (a) the conduct concerned is general criminal conduct,

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- (b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the defendant, and
  - (c) his benefit for the purposes of that order was benefit from his general criminal conduct.
- (4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.
- (5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
- (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
  - (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (7).
- (6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.
- (7) These are the provisions—
- (a) the Drug Trafficking Offences Act 1986 (c. 32);
  - (b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
  - (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
  - (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  - (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
  - (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
  - (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
  - (h) Part 3 or 4 of this Act.
- (8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

## **9 Available amount**

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
- (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and
  - (b) the total of the values (at that time) of all tainted gifts.
- (2) An obligation has priority if it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
  - (b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.

- (3) “Preferential debts” has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

## **10 Assumptions to be made in case of criminal lifestyle**

- (1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—
- (a) deciding whether he has benefited from his general criminal conduct, and
  - (b) deciding his benefit from the conduct.
- (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—
- (a) as a result of his general criminal conduct, and
  - (b) at the earliest time he appears to have held it.
- (3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—
- (a) as a result of his general criminal conduct, and
  - (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.
- (6) But the court must not make a required assumption in relation to particular property or expenditure if—
- (a) the assumption is shown to be incorrect, or
  - (b) there would be a serious risk of injustice if the assumption were made.
- (7) If the court does not make one or more of the required assumptions it must state its reasons.
- (8) The relevant day is the first day of the period of six years ending with—
- (a) the day when proceedings for the offence concerned were started against the defendant, or
  - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (9) But if a confiscation order mentioned in section 8(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8)—
- (a) the relevant day is the day when the defendant’s benefit was calculated for the purposes of the last such confiscation order;
  - (b) the second assumption does not apply to any property which was held by him on or before the relevant day.
- (10) The date of conviction is—
- (a) the date on which the defendant was convicted of the offence concerned, or
  - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

## **11 Time for payment**

- (1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section.
- (2) If the defendant shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.
- (3) The specified period—
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed six months.
- (4) If within the specified period the defendant applies to the Crown Court for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period.
- (5) The extended period—
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed 12 months.
- (6) An order under subsection (4)—
  - (a) may be made after the end of the specified period, but
  - (b) must not be made after the end of the period of 12 months starting with the day on which the confiscation order is made.
- (7) The court must not make an order under subsection (2) or (4) unless it gives—
  - (a) the prosecutor, or
  - (b) if the Director was appointed as the enforcement authority for the order under section 34, the Director,an opportunity to make representations.

## **12 Interest on unpaid sums**

- (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid.
- (2) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts).
- (3) For the purposes of this section no amount is required to be paid under a confiscation order if—
  - (a) an application has been made under section 11(4),
  - (b) the application has not been determined by the court, and
  - (c) the period of 12 months starting with the day on which the confiscation order was made has not ended.
- (4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

### **13 Effect of order on court's other powers**

- (1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- (2) The court must take account of the confiscation order before—
  - (a) it imposes a fine on the defendant, or
  - (b) it makes an order falling within subsection (3).
- (3) These orders fall within this subsection—
  - (a) an order involving payment by the defendant, other than an order under section 130 of the Sentencing Act (compensation orders);
  - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
  - (c) an order under section 143 of the Sentencing Act (deprivation orders);
  - (d) an order under section 23 of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.
- (5) Subsection (6) applies if—
  - (a) the Crown Court makes both a confiscation order and an order for the payment of compensation under section 130 of the Sentencing Act against the same person in the same proceedings, and
  - (b) the court believes he will not have sufficient means to satisfy both the orders in full.
- (6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.