



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 2

#### CONFISCATION: ENGLAND AND WALES

##### *Reconsideration*

#### **20 No order made: reconsideration of benefit**

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that in proceeding under section 6 the court has decided that—
  - (a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or
  - (b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct.
- <sup>F1</sup>(3) .....
- (4) <sup>F2</sup>... the second condition is that—
  - (a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct,
  - (b) before the end of the period of six years starting with the date of conviction the prosecutor <sup>F3</sup>... applies to the Crown Court to consider the evidence, and
  - (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.
- (5) If this section applies the court—
  - (a) must make a fresh decision under section 6(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);
  - (b) may make a confiscation order under that section.

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**Changes to legislation:** *Proceeds of Crime Act 2002, Section 20 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (6) Subsections (7) to (12) below apply if the court proceeds under section 6 in pursuance of this section.
- (7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) Section 8(2) does not apply, and the rules applying instead are that the court must—
- (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
  - (b) take account of property obtained before that date;
  - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) In section 10—
- (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
  - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
  - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (10) The recoverable amount for the purposes of section 6 is such amount as—
- (a) the court believes is just, but
  - (b) does not exceed the amount found under section 7.
- (11) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 7;
  - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
  - (c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;
  - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under [F4section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code] (compensation orders) [F5;
  - [F6(da) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 [F7or section 42 of that Code] (orders requiring payment of surcharge);]
  - (e) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)].
- (12) If an order for the payment of compensation under [F8section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code][F9, a surcharge under section 161A of the Criminal Justice Act 2003][F10or

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section 42 of the Sentencing Code]<sup>F11</sup> or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013] has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply [<sup>F12</sup>in relation to it].

(13) The date of conviction is the date found by applying section 19(10).

#### Textual Amendments

- F1** S. 20(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 9(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F2** Words in s. 20(4) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 9(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F3** Words in s. 20(4)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 9(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F4** Words in s. 20(11)(d) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(2)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F5** S. 20(11)(e) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 18(2)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F6** S. 20(11)(da) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 24(2)**; S.I. 2015/820, reg. 3(q)(iii)
- F7** Words in s. 20(11)(da) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(2)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F8** Words in s. 20(12) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(3)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F9** Words in s. 20(12) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 24(3)**; S.I. 2015/820, reg. 3(q)(iii)
- F10** Words in s. 20(12) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(3)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F11** Words in s. 20(12) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 18(3)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F12** Words in s. 20(12) inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 17**; S.I. 2015/1476, reg. 2(j)

#### Modifications etc. (not altering text)

- C1** Pt. 2 applied by Terrorism Act 2000 (c. 11), Sch. 8 paras. 8(5A), 34(3A) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7); S.I. 2003/333, art. 2, Sch.)
- C2** Pt. 2 applied by Police and Criminal Evidence Act 1984 (c. 60), ss. 56(5B), 58(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, Sch.)

#### Commencement Information

- I1** S. 20 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)