



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Reconsideration

21 Order made: reconsideration of benefit

- (1) This section applies if—
- (a) a court has made a confiscation order,
 - (b) there is evidence which was not available to the prosecutor ^{F1}... at the relevant time,
 - (c) the prosecutor ^{F2}... believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,
 - (d) before the end of the period of six years starting with the date of conviction the prosecutor ^{F3}... applies to the Crown Court to consider the evidence, and
 - (e) after considering the evidence the court believes it is appropriate for it to proceed under this section.
- (2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply.
- (3) If a 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.
- (4) Section 8(2) does not apply, and the rules applying instead are that the court must—
- (a) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;
 - (b) take account of property obtained up to that time;

Status: Point in time view as at 01/06/2015. This version of this provision has been superseded.

Changes to legislation: Proceeds of Crime Act 2002, Section 21 is up to date with all changes known to be in force on or before 19 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)

- (c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (5) In applying section 8(5) the confiscation order must be ignored.
- (6) In section 10—
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order;
 - (b) the third assumption does not apply with regard to expenditure incurred by him after that time;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.
- (7) If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court—
 - (a) must make a new calculation of the recoverable amount for the purposes of section 6, and
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (8) In applying subsection (7)(a) the court must—
 - (a) take the new calculation of the defendant's benefit;
 - (b) apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
- (9) In applying subsection (7)(b) the court must have regard in particular to—
 - (a) any fine imposed on the defendant for the offence (or any of the offences) concerned;
 - (b) 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;
 - (c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) ^{F4};
 - ^{F5}(ca) [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 (orders requiring payment of surcharge);]
 - (d) 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)].
- (10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) ^{F6}, (ca) ^{F7} or (d)] if a court has made a direction under section 13(6).
- (11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

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(12) The relevant time is—

- (a) when the court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;
- (b) when the court last calculated the defendant's benefit in pursuance of this section, if this section has applied previously.

(13) The relevant amount is—

- (a) the amount found as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;
- (b) the amount last found as the defendant's benefit in pursuance of this section, if this section has applied previously.

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

Textual Amendments

- F1** Words in s. 21(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 10, Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F2** Words in s. 21(1)(c) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 10, Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F3** Words in s. 21(1)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 10, Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F4** S. 21(9)(d) 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. 19\(2\)](#); [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2
- F5** S. 21(9)(ca) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 25\(2\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F6** Words in s. 21(10) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 25\(3\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F7** Words in s. 21(10) 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. 19\(3\)](#); [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2

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. 21 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

Status:

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