



# Coroners and Justice Act 2009

## 2009 CHAPTER 25

### PART 7

#### CRIMINAL MEMOIRS ETC

##### *Exploitation proceeds orders*

#### **155 Exploitation proceeds orders**

- (1) A court may make an exploitation proceeds order in respect of a person if it is satisfied, on the balance of probabilities, that the person—
  - (a) is a qualifying offender, and
  - (b) has obtained exploitation proceeds from a relevant offence.
- (2) An exploitation proceeds order is an order which requires the respondent to pay an amount (“the recoverable amount”) in respect of exploitation proceeds obtained by the respondent from a relevant offence to the enforcement authority which applied for the order.
- (3) A person obtains exploitation proceeds from a relevant offence if the person derives a benefit from—
  - (a) the exploitation of any material pertaining to the relevant offence, or
  - (b) any steps taken or to be taken with a view to such exploitation.
- (4) An exploitation proceeds order must—
  - (a) specify the recoverable amount, and
  - (b) identify the benefits derived by the respondent in respect of which it is made.
- (5) The power conferred by subsection (1) is subject to sections 161 and 163.
- (6) If the recoverable amount required to be paid by the respondent under an exploitation proceeds order (or any part of that amount) is not paid when it is required to be paid, the respondent must pay interest at the appropriate rate on the recoverable amount (or part) for the period for which it remains unpaid.

- (7) Any sum received by an enforcement authority pursuant to an exploitation proceeds order (including any interest under subsection (6)) must be paid—
- (a) if the authority is the Scottish Ministers, into the Scottish Consolidated Fund;
  - (b) in any other case, into the Consolidated Fund.
- (8) In this section—
- “appropriate rate” means—
- (a) in the case of an exploitation proceeds order made by the High Court, the rate for the time being specified in section 17 of the [Judgments Act 1838 \(c. 110\)](#) (interest on civil judgment debts), or
  - (b) in the case of an exploitation proceeds order made by the Court of Session, the rate payable under a decree of the Court of Session;
- “court” means—
- (a) in relation to England and Wales, the High Court in England and Wales;
  - (b) in relation to Scotland, the Court of Session;
  - (c) in relation to Northern Ireland, the High Court in Northern Ireland;
- “the respondent”, in relation to an exploitation proceeds order or an application for such an order, means the person against whom the order is made or sought.

## 156 Qualifying offenders

- (1) In this Part “qualifying offender” means a person who is within subsection (2) or (3) (or both).
- (2) A person is within this subsection if (whether before or after the commencement of this Part) the person—
- (a) has been convicted by a court in the United Kingdom of an offence,
  - (b) has been found not guilty by such a court of an offence by reason of insanity, or
  - (c) has been found by such a court to be under a disability and to have done the act charged in respect of an offence.
- (3) A person is within this subsection if—
- (a) under the law in force in a country outside the United Kingdom (and whether before or after the commencement of this Part)—
    - (i) the person has been convicted of a foreign offence,
    - (ii) a court exercising jurisdiction under that law has made, in respect of a foreign offence, a finding equivalent to a finding that the person was not guilty by reason of insanity, or
    - (iii) such a court has made, in respect of a foreign offence, a finding equivalent to a finding that the person was under a disability and did the act charged in respect of the offence, and
  - (b) the person—
    - (i) is a United Kingdom national,
    - (ii) is resident in the United Kingdom, or
    - (iii) was resident in the United Kingdom at the time the act which constituted the offence was done.
- (4) In subsection (3)—
- “foreign offence” means an act which—

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- (a) constituted an offence under the law in force in the country concerned,
  - (b) at the time it was done, would have constituted an offence if it had been done in any part of the United Kingdom, and
  - (c) would constitute an offence if it were done in any part of the United Kingdom at the time the application for an exploitation proceeds order is made in respect of it;
- “United Kingdom national” means an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the [British Nationality Act 1981 \(c. 61\)](#) is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (5) For the purposes of subsection (4), conduct punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law however it is described in that law.
- (6) In this section a reference to the doing of an act includes a reference to a failure to act.

## **157 Qualifying offenders: service offences**

- (1) In subsection (2) of section 156—
- (a) a reference to a person who has been convicted by a court in the United Kingdom of an offence includes a reference to a person who has been convicted of a UK service offence;
  - (b) a reference to a finding by a court in the United Kingdom in relation to an offence includes a reference to a finding by a UK service court (wherever situated) in relation to a UK service offence.
- (2) In subsection (3) of that section—
- (a) a reference to a foreign offence includes a foreign service offence;
  - (b) a reference to a person who has been convicted of a foreign offence includes a reference to a person who has been found guilty of a foreign service offence in respect of any act done which was the subject of proceedings under the service law of a country outside the United Kingdom;
  - (c) a reference to a finding of a court exercising jurisdiction under the law in force in a country outside the United Kingdom includes a reference to a finding of—
    - (i) a court established under the service law of that country, or
    - (ii) an authority of the country who under the law of the country is empowered to review the proceedings of such a court or to try or investigate charges brought against persons subject to the service law of that country.
- (3) For the purposes of subsection (1) the reference to a person who has been convicted of a UK service offence includes a person in respect of whom there has been—
- (a) under the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#) or the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#), the recording of a finding that a charge in respect of the offence has been proved;
  - (b) under the [Naval Discipline Act 1957 \(c. 53\)](#), a determination that a charge in respect of the offence has been proved, and the recording of a finding of guilt;

- (c) under the [Armed Forces Act 2006 \(c. 52\)](#), the recording of a finding that a charge in respect of the offence has been proved;
- (d) a substitution, by the Summary Appeal Court established under any of the Acts mentioned in paragraphs (a) to (c), of a finding that a charge in respect of the offence has been proved;
- (e) a substitution by the Courts-Martial Appeal Court or the Court Martial Appeal Court of a finding of guilty of the offence.

(4) In this section—

“foreign service offence” means an act which—

- (a) was the subject of proceedings under the service law of a country outside the United Kingdom,
- (b) at the time it was done, would have constituted an offence, or a UK service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty’s forces, and
- (c) would constitute an offence or a UK service offence if it were done in any part of the United Kingdom by a member of Her Majesty’s forces at the time the application for an exploitation proceeds order is made in respect of it;

“Her Majesty’s forces” has the same meaning as in the [Armed Forces Act 2006](#);

“service law”, in relation to a country outside the United Kingdom, means the law governing all or any of the naval, military or air forces of that country;

“UK service offence” means an offence triable by a UK service court;

and a reference to the doing of an act includes a reference to a failure to act.

## 158 Qualifying offenders: supplementary

- (1) In section 7 of the Rehabilitation of Offenders Act [1974 \(c. 53\)](#) (limitations on rehabilitation under the 1974 Act, etc), in subsection (2), at the end add “or
  - (h) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).”
- (2) In Article 8 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 ([S.I. 1978/1908 \(N.I. 27\)](#)) (limitations on rehabilitation under the 1978 Order etc), in paragraph (2), at the end add “or
  - (g) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).”
- (3) For the purposes of this Part, the following provisions do not apply to a conviction for an offence in respect of which an order for an absolute or conditional discharge is made—
  - (a) section 14(1) of the [Powers of Criminal Courts \(Sentencing\) Act 2000 \(c. 6\)](#) (conviction with absolute or conditional discharge deemed not to be a conviction);
  - (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 ([S.I. 1996/3160 \(N.I. 24\)](#)) (conviction with absolute or conditional discharge deemed not to be a conviction);
  - (c) section 247(1) and (2) of the [Criminal Procedure \(Scotland\) Act 1995 \(c. 46\)](#) (effect of probation and absolute discharge);

- (d) section 187(1) of the [Armed Forces Act 2006 \(c. 52\)](#) (conviction with absolute or conditional discharge deemed not to be a conviction);
- (e) paragraph 5(1) of Schedule 5A to the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#) or the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#) or Schedule 4A to the [Naval Discipline Act 1957 \(c. 53\)](#) (conviction with absolute or conditional discharge or community suspension order deemed not to be a conviction).

## 159 Relevant offences

- (1) In this Part “relevant offence”, in relation to a person (“P”), means—
- (a) a serious offence by reason of which P is a qualifying offender,
  - (b) a serious offence which was taken into consideration by a court in determining the sentence imposed on P for an offence by reason of which P is a qualifying offender, or
  - (c) a serious offence committed by another person which is associated with—
    - (i) an offence by reason of which P is a qualifying offender, or
    - (ii) an offence which was taken into consideration by a court in determining the sentence imposed on P for such an offence.
- (2) For this purpose an offence is “serious” if—
- (a) in the case of an offence under the law of England and Wales, it is an offence which, if committed by an adult, is triable only on indictment,
  - (b) in the case of an offence under the law of Scotland, it is an offence triable only on indictment,
  - (c) in the case of an offence under the law of Northern Ireland, it is an offence which, if committed by an adult, is triable only on indictment,
  - (d) in the case of a foreign offence, the act constituting the offence—
    - (i) at the time it was done, would have constituted an offence within paragraph (a), (b) or (c) if it had been done in any part of the United Kingdom, and
    - (ii) would also constitute such an offence if it were done in any part of the United Kingdom at the time the application for an exploitation proceeds order is made in respect of it.
- (3) Two offences are associated with one another if—
- (a) they were committed in the context of the same joint criminal venture, or
  - (b) subsection (4) applies.
- (4) This subsection applies if one of the offences is—
- (a) an offence of inciting the commission of the other offence;
  - (b) an offence of conspiring to commit the other offence;
  - (c) an offence under section 44, 45 or 46 of the [Serious Crime Act 2007 \(c. 27\)](#) (offences relating to encouraging or assisting an offence) in relation to the other offence;
  - (d) an offence of soliciting (however expressed) the commission of the other offence;
  - (e) an offence under section 4 of the [Criminal Law Act 1967 \(c. 58\)](#) (assisting the evasion of arrest and concealment) in relation to the other offence;
  - (f) an offence of perverting the course of justice in connection with the other offence;

- (g) an offence under section 51 of the [Criminal Justice and Public Order Act 1994 \(c. 33\)](#) (intimidation of witnesses and jurors etc) in connection with the other offence.
- (5) In subsection (1)—
- (a) a reference to an offence includes a reference to a UK service offence and a foreign service offence, and
  - (b) the reference to a court includes a reference to a UK service court or a court or authority of the kind mentioned in section 157(2)(c)(i) or (ii).
- (6) Subsection (2) does not apply in relation to a UK service offence or a foreign service offence, and for the purposes of subsection (1) such an offence is “serious” if—
- (a) in the case of a UK service offence—
    - (i) the act constituting the offence is a serious offence within subsection (2)(a),
    - (ii) the act constituting the offence, if done in England and Wales, would be a serious offence within subsection (2)(a), or
    - (iii) the offence is within subsection (7);
  - (b) in the case of a foreign service offence, the act constituting the offence—
    - (i) at the time it was done, would have constituted a serious offence within subsection (2) or an offence within subsection (7) if it had been done in any part of the United Kingdom by a member of Her Majesty’s forces, and
    - (ii) would also constitute such an offence if it were done in any part of the United Kingdom by a member of Her Majesty’s forces at the time the application for an exploitation proceeds order is made in respect of it.
- (7) An offence is within this subsection if it is an offence under—
- (a) section 24(1) of the AA 1955 or of the AFA 1955, section 2(1) of the NDA 1957 or section 2(1) of the AFA 2006 (misconduct on operations),
  - (b) section 25 of the AA 1955 or of the AFA 1955, section 3 of the NDA 1957 or section 1 of the AFA 2006 (assisting an enemy),
  - (c) section 26(1) of the AA 1955 or of the AFA 1955, section 4(1) of the NDA 1957 or section 3 of the AFA 2006 (obstructing operations),
  - (d) section 30(a) or (b) of the AA 1955 or of the AFA 1955, section 5(a) or (b) of the NDA 1957 or section 4(1) or (2) of the AFA 2006 (looting),
  - (e) section 31 of the AA 1955 or of the AFA 1955, section 9 of the NDA 1957 or section 6 of the AFA 2006 (mutiny), or
  - (f) section 32 of the AA 1955 or of the AFA 1955, section 10 of the NDA 1957 or section 7 of the AFA 2006 (failure to suppress mutiny).
- (8) In subsection (4), the offences listed in paragraphs (a) to (g) include—
- (a) any corresponding offence triable by a court exercising jurisdiction in a country outside the United Kingdom,
  - (b) the corresponding offences triable by a UK service court, and
  - (c) any corresponding offence triable by any court or authority of the kind mentioned in section 157(2)(c)(i) or (ii).
- (9) In this section—
- “AA 1955” means the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#);

“act” includes a failure to act (and references to the doing of an act are to be read accordingly);

“AFA 1955” means the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#);

“AFA 2006” means the [Armed Forces Act 2006 \(c. 52\)](#);

“foreign offence” has the same meaning as in section 156;

“foreign service offence”, “Her Majesty’s services” and “UK service offence” have the same meaning as in section 157;

“NDA 1957” means the [Naval Discipline Act 1957 \(c. 53\)](#).

## **160 Deriving a benefit**

- (1) This section applies for the purposes of section 155(3).
- (2) The exploitation may be by any means, including—
  - (a) the publication of any material in written or electronic form;
  - (b) the use of any media from which visual images, words or sounds can be produced;
  - (c) live entertainment, representation or interview.
- (3) A person (“A”) is to be regarded as having derived a benefit if A secures the benefit for another person (“B”) (whether or not A had any legal right to ensure the benefit was so secured or B had any legal entitlement to the benefit).
- (4) It does not matter whether the benefit is derived, or whether the exploitation (or any step taken or to be taken with a view to exploitation) takes place,—
  - (a) within or outside the United Kingdom, or
  - (b) before or after the person who committed the relevant offence is convicted of that offence.
- (5) But—
  - (a) the benefit must be derived after the coming into force of section 155, and
  - (b) where the relevant offence is an offence within section 159(1)(c), the associated offence committed by the respondent must have been committed before the benefit was derived.
- (6) In subsection (4)(b), the reference to conviction of the relevant offence includes a reference to a finding mentioned in section 156(2)(b) or (c) or (3)(a)(ii) or (iii) or 157(2)(b) or (3) in relation to the offence.

## **161 Applications**

- (1) A court may not make an exploitation proceeds order except on the application of an enforcement authority.
- (2) “Enforcement authority” means—
  - (a) in relation to an application to the High Court in England and Wales or to the High Court in Northern Ireland—
    - (i) the Serious Organised Crime Agency, or
    - (ii) a person prescribed or of a description prescribed by order made by the Secretary of State;
  - (b) in relation to an application to the Court of Session, the Scottish Ministers.

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- (3) An enforcement authority (other than the Scottish Ministers) may make such an application only with the consent of—
- (a) in the case of an application to the High Court in England and Wales, the Attorney General;
  - (b) in the case of an application to the High Court in Northern Ireland, the Advocate General for Northern Ireland.
- (4) The Secretary of State may by order make such modifications of any provision made by or under Part 8 of the [Proceeds of Crime Act 2002 \(c. 29\)](#) or any other enactment (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made by an order under subsection (2)(a)(ii).
- (5) In subsection (4) “modification” includes an amendment, addition, revocation or repeal.