



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2 **E+W**

CONFISCATION: ENGLAND AND WALES

VALID FROM 24/03/2003

Confiscation orders

6 Making of order **E+W**

- (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;

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- (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—
 - (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 **E+W**

- (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 **E+W**

- (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;

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- (b) take account of property obtained up to that time.
- (3) Subsection (4) applies if—
 - (a) the conduct concerned is general criminal conduct,
 - (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 **E+W**

- (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—

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- (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 **E+W**

- (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;

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(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 **E+W**

(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 **E+W**

(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

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- (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 **E+W**

- (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.

VALID FROM 24/03/2003

Procedural matters

14 Postponement **E+W**

- (1) The court may—
 - (a) proceed under section 6 before it sentences the defendant for the offence (or any of the offences) concerned, or
 - (b) postpone proceedings under section 6 for a specified period.
- (2) A period of postponement may be extended.

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- (3) A period of postponement (including one as extended) must not end after the permitted period ends.
- (4) But subsection (3) does not apply if there are exceptional circumstances.
- (5) The permitted period is the period of two years starting with the date of conviction.
- (6) But if—
 - (a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and
 - (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (5),the permitted period is that period of three months.
- (7) A postponement or extension may be made—
 - (a) on application by the defendant;
 - (b) on application by the prosecutor or the Director (as the case may be);
 - (c) by the court of its own motion.
- (8) If—
 - (a) proceedings are postponed for a period, and
 - (b) an application to extend the period is made before it ends,the application may be granted even after the period ends.
- (9) 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.
- (10) References to appealing include references to applying under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case).
- (11) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.
- (12) But subsection (11) does not apply if before it made the confiscation order the court—
 - (a) imposed a fine on the defendant;
 - (b) made an order falling within section 13(3);
 - (c) made an order under section 130 of the Sentencing Act (compensation orders).

15 Effect of postponement **E+W**

- (1) If the court postpones proceedings under section 6 it may proceed to sentence the defendant for the offence (or any of the offences) concerned.
- (2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not—
 - (a) impose a fine on him,
 - (b) make an order falling within section 13(3), or

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- (c) make an order for the payment of compensation under section 130 of the Sentencing Act.
- (3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by—
 - (a) imposing a fine on him,
 - (b) making an order falling within section 13(3), or
 - (c) making an order for the payment of compensation under section 130 of the Sentencing Act.
- (4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.
- (5) For the purposes of—
 - (a) section 18(2) of the Criminal Appeal Act 1968 (c. 19) (time limit for notice of appeal or of application for leave to appeal), and
 - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (c. 33) (time limit for notice of application for leave to refer a case under section 36 of that Act),
 the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3).
- (6) If the court proceeds to sentence the defendant under subsection (1), section 6 has effect as if the defendant's 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.
- (7) The postponement period is the period for which proceedings under section 6 are postponed.

16 Statement of information **E+W**

- (1) If the court is proceeding under section 6 in a case where section 6(3)(a) applies, the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders.
- (2) If the court is proceeding under section 6 in a case where section 6(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders.
- (3) If the prosecutor or the Director (as the case may be) believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues—
 - (a) whether the defendant has a criminal lifestyle;
 - (b) whether he has benefited from his general criminal conduct;
 - (c) his benefit from the conduct.
- (4) A statement under subsection (3) must include information the prosecutor or Director believes is relevant—
 - (a) in connection with the making by the court of a required assumption under section 10;
 - (b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.

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- (5) If the prosecutor or the Director (as the case may be) does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues—
 - (a) whether the defendant has benefited from his particular criminal conduct;
 - (b) his benefit from the conduct.
- (6) If the prosecutor or the Director gives the court a statement of information—
 - (a) he may at any time give the court a further statement of information;
 - (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders.
- (7) If the court makes an order under this section it may at any time vary it by making another one.

17 Defendant's response to statement of information **E+W**

- (1) If the prosecutor or the Director gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—
 - (a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and
 - (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.
- (2) If the defendant accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 16(3) or (5) (as the case may be).
- (3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—
 - (a) any allegation in respect of which he has complied with the requirement;
 - (b) any allegation that he has benefited from his general or particular criminal conduct.
- (4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.
- (5) If the court makes an order under this section it may at any time vary it by making another one.
- (6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

18 Provision of information by defendant **E+W**

- (1) This section applies if—
 - (a) the court is proceeding under section 6 in a case where section 6(3)(a) applies, or
 - (b) it is proceeding under section 6 in a case where section 6(3)(b) applies or it is considering whether to proceed.

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- (2) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) Subsection (4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.
- (6) If the prosecutor or the Director (as the case may be) accepts to any extent an allegation made by the defendant—
 - (a) in giving information required by an order under this section, or
 - (b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 9,
 the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (8) If the court makes an order under this section it may at any time vary it by making another one.
- (9) No information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

VALID FROM 24/03/2003

Reconsideration

19 No order made: reconsideration of case E+W

- (1) This section applies if—
 - (a) the first condition in section 6 is satisfied but no court has proceeded under that section,
 - (b) there is evidence which was not available to the prosecutor on the relevant date,
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and
 - (d) after considering the evidence the court believes it is appropriate for it to proceed under section 6.
- (2) If this section applies the court must proceed under section 6, and when it does so subsections (3) to (8) below apply.
- (3) 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

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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 before the relevant date;
 - (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.
- (5) 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 relevant date;
 - (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.
- (6) 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.
- (7) 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 section 130 of the Sentencing Act (compensation orders).
- (8) If an order for the payment of compensation under section 130 of the Sentencing Act has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply.
- (9) The relevant date is—
- (a) if the court made a decision not to proceed under section 6, the date of the decision;
 - (b) if the court did not make such a decision, the date of conviction.
- (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.

20 No order made: reconsideration of benefit E+W

- (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—

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- (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.
- (3) If the court proceeded under section 6 because the Director asked it to, the second condition is that—
- (a) the Director has evidence which was not available to him 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 Director 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.
- (4) If the court proceeded under section 6 because the prosecutor asked it to or because it believed it was appropriate for it to do so, 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 or the Director 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.
- (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—

Status: Point in time view as at 24/02/2003. This version of this part contains provisions that are not valid for this point in time.

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- (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 section 130 of the Sentencing Act (compensation orders).
- (12) If an order for the payment of compensation under section 130 of the Sentencing Act has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply.
- (13) The date of conviction is the date found by applying section 19(10).

21 Order made: reconsideration of benefit E+W

- (1) This section applies if—
- (a) a court has made a confiscation order,
 - (b) there is evidence which was not available to the prosecutor or the Director at the relevant time,
 - (c) the prosecutor or the Director 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 or the Director 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.

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- (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;
 - (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).
- (10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) 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.
- (12) The relevant time is—

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- (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).

22 Order made: reconsideration of available amount **E+W**

- (1) This section applies if—
- (a) a court has made a confiscation order,
 - (b) the amount required to be paid was the amount found under section 7(2), and
 - (c) an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.
- (2) These applicants fall within this subsection—
- (a) the prosecutor;
 - (b) the Director;
 - (c) a receiver appointed under section 50 or 52.
- (3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.
- (4) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—
- (a) it believes is just, but
 - (b) does not exceed the amount found as the defendant's benefit from the conduct concerned.
- (5) In deciding what is just 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).
- (6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) if a court has made a direction under section 13(6).

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- (7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
- (8) The relevant amount is—
 - (a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;
 - (b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.
- (9) The amount found as the defendant’s benefit from the conduct concerned is—
 - (a) the amount so found when the confiscation order was made, or
 - (b) if one or more new calculations of the defendant’s benefit have been made under section 21 the amount found on the occasion of the last such calculation.

23 Inadequacy of available amount: variation of order E+W

- (1) This section applies if—
 - (a) a court has made a confiscation order, and
 - (b) the defendant, or a receiver appointed under section 50 or 52, applies to the Crown Court to vary the order under this section.
- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.
- (4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.
- (5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.
- (6) In subsection (4) “company” means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

24 Inadequacy of available amount: discharge of order E+W

- (1) This section applies if—
 - (a) a court has made a confiscation order,
 - (b) a justices’ chief executive applies to the Crown Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is less than £1,000.

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- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (3) If the court—
 - (a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and
 - (b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,it may discharge the confiscation order.
- (4) The specified reasons are—
 - (a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;
 - (b) any reason specified by the Secretary of State by order.
- (5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).

25 Small amount outstanding: discharge of order **E+W**

- (1) This section applies if—
 - (a) a court has made a confiscation order,
 - (b) a justices' chief executive applies to the Crown Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is £50 or less.
- (2) In such a case the court may discharge the order.
- (3) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).

26 Information **E+W**

- (1) This section applies if—
 - (a) the court proceeds under section 6 in pursuance of section 19 or 20, or
 - (b) the prosecutor or the Director applies under section 21.
- (2) In such a case—
 - (a) the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders;
 - (b) section 16 applies accordingly (with appropriate modifications where the prosecutor or the Director applies under section 21);
 - (c) section 17 applies accordingly;
 - (d) section 18 applies as it applies in the circumstances mentioned in section 18(1).

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VALID FROM 24/03/2003

Defendant absconds

27 Defendant convicted or committed **E+W**

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that a defendant absconds after—
 - (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, or
 - (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 applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications—
 - (a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 6 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
 - (c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 10, 16(4), 17 and 18 must be ignored;
 - (e) sections 19, 20 and 21 must be ignored while the defendant is still an absconder.
- (6) Once the defendant ceases to be an absconder section 19 has effect as if subsection (1) (a) read—
 - “(a) at a time when the first condition in section 27 was satisfied the court did not proceed under section 6.”
- (7) If the court does not believe it is appropriate for it to proceed under this section, once the defendant ceases to be an absconder section 19 has effect as if subsection (1) (b) read—
 - “(b) there is evidence which was not available to the prosecutor or the Director on the relevant date.”

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28 Defendant neither convicted nor acquitted **E+W**

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that—
 - (a) proceedings for an offence or offences are started against a defendant but are not concluded,
 - (b) he absconds, and
 - (c) the period of two years (starting with the day the court believes he absconded) has ended.
- (3) The second condition is that—
 - (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications—
 - (a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 6 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
 - (c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 10, 16(4) and 17 to 20 must be ignored;
 - (e) section 21 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 21 has effect as if references to the date of conviction were to—
 - (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.
- (7) If—
 - (a) the court makes an order under section 6 as applied by this section, and
 - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,section 6 does not apply so far as that conviction is concerned.

29 Variation of order **E+W**

- (1) This section applies if—
 - (a) the court makes a confiscation order under section 6 as applied by section 28,
 - (b) the defendant ceases to be an absconder,
 - (c) he is convicted of an offence (or any of the offences) mentioned in section 28(2)(a),

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- (d) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and
 - (e) before the end of the relevant period he applies to the Crown Court to consider the evidence on which his belief is based.
- (2) If (after considering the evidence) the court concludes that the defendant's belief is well founded—
- (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and
 - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (3) The relevant period is the period of 28 days starting with—
- (a) the date on which the defendant was convicted of the offence mentioned in section 28(2)(a), or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (4) But in a case where section 28(2)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

30 Discharge of order E+W

- (1) Subsection (2) applies if—
- (a) the court makes a confiscation order under section 6 as applied by section 28,
 - (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and
 - (c) he applies to the Crown Court to discharge the order.
- (2) In such a case the court must discharge the order.
- (3) Subsection (4) applies if—
- (a) the court makes a confiscation order under section 6 as applied by section 28,
 - (b) the defendant ceases to be an absconder,
 - (c) subsection (1)(b) does not apply, and
 - (d) he applies to the Crown Court to discharge the order.
- (4) In such a case the court may discharge the order if it finds that—
- (a) there has been undue delay in continuing the proceedings mentioned in section 28(2), or
 - (b) the prosecutor does not intend to proceed with the prosecution.
- (5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

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VALID FROM 24/03/2003

Appeals

31 Appeal by prosecutor or Director **E+W**

- (1) If the Crown Court makes a confiscation order the prosecutor or the Director may appeal to the Court of Appeal in respect of the order.
- (2) If the Crown Court decides not to make a confiscation order the prosecutor or the Director may appeal to the Court of Appeal against the decision.
- (3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 19, 20, 27 or 28.

32 Court's powers on appeal **E+W**

- (1) On an appeal under section 31(1) the Court of Appeal may confirm, quash or vary the confiscation order.
- (2) On an appeal under section 31(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—
 - (a) itself proceed under section 6 (ignoring subsections (1) to (3)), or
 - (b) direct the Crown Court to proceed afresh under section 6.
- (3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.
- (4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must—
 - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
 - (b) have regard to 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, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 9.
- (5) If the Court of Appeal proceeds under section 6 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply.
- (6) 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.
- (7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders)—
 - (a) the court must have regard to it, and
 - (b) section 13(5) and (6) above do not apply.
- (8) Section 8(2) does not apply, and the rules applying instead are that the court must—

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- (a) take account of conduct occurring before the relevant date;
 - (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 relevant date;
 - (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) Section 26 applies as it applies in the circumstances mentioned in subsection (1) of that section.
- (11) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

33 Appeal to House of Lords **E+W**

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 31.
- (2) An appeal under this section lies at the instance of—
 - (a) the defendant or the prosecutor (if the prosecutor appealed under section 31);
 - (b) the defendant or the Director (if the Director appealed under section 31).
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the House of Lords may confirm, quash or vary the order.
- (4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the House of Lords may—
 - (a) confirm the decision, or
 - (b) direct the Crown Court to proceed afresh under section 6 if it believes the decision was wrong.
- (5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the House of Lords may make.
- (6) If a court varies a confiscation order under this section or makes a confiscation order in pursuance of a direction under this section it must—
 - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
 - (b) have regard to 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, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 9.
- (7) If the Crown Court proceeds afresh under section 6 in pursuance of a direction under this section subsections (8) to (12) apply.

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- (8) 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.
- (9) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders)—
 - (a) the Crown Court must have regard to it, and
 - (b) section 13(5) and (6) above do not apply.
- (10) Section 8(2) does not apply, and the rules applying instead are that the Crown Court must—
 - (a) take account of conduct occurring before the relevant date;
 - (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.
- (11) 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 relevant date;
 - (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.
- (12) Section 26 applies as it applies in the circumstances mentioned in subsection (1) of that section.
- (13) The relevant date is—
 - (a) in a case where the Crown Court made a confiscation order which was quashed by the Court of Appeal, the date on which the Crown Court made the order;
 - (b) in any other case, the date on which the Crown Court decided not to make a confiscation order.

VALID FROM 24/03/2003

Enforcement authority

34 Enforcement authority **E+W**

- (1) Subsection (2) applies if a court makes a confiscation order and any of the following paragraphs applies—
 - (a) the court proceeded under section 6 after being asked to do so by the Director;
 - (b) the court proceeded under section 6 by virtue of an application by the Director under section 19, 20, 27 or 28;

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- (c) the court proceeded under section 6 as a result of an appeal by the Director under section 31(2) or 33;
 - (d) before the court made the order the Director applied to the court to appoint him as the enforcement authority for the order.
- (2) In any such case the court must appoint the Director as the enforcement authority for the order.

VALID FROM 24/03/2003

Enforcement as fines etc

35 Director not appointed as enforcement authority E+W

- (1) This section applies if a court—
 - (a) makes a confiscation order, and
 - (b) does not appoint the Director as the enforcement authority for the order.
- (2) Sections 139(2) to (4) and (9) and 140(1) to (4) of the Sentencing Act (functions of court as to fines and enforcing fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.
- (3) In the application of Part 3 of the Magistrates' Courts Act 1980 (c. 43) to an amount payable under a confiscation order—
 - (a) ignore section 75 of that Act (power to dispense with immediate payment);
 - (b) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines) of that Act;
 - (c) in section 87 of that Act ignore subsection (3) (inquiry into means).

36 Director appointed as enforcement authority E+W

- (1) This section applies if a court—
 - (a) makes a confiscation order, and
 - (b) appoints the Director as the enforcement authority for the order.
- (2) Section 139(2) to (4) and (9) of the Sentencing Act (functions of court as to fines) applies as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.

37 Director's application for enforcement E+W

- (1) If the Director believes that the conditions set out in subsection (2) are satisfied he may make an ex parte application to the Crown Court for the issue of a summons against the defendant.
- (2) The conditions are that—
 - (a) a confiscation order has been made;
 - (b) the Director has been appointed as the enforcement authority for the order;

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- (c) because of the defendant's wilful refusal or culpable neglect the order is not satisfied;
 - (d) the order is not subject to appeal;
 - (e) the Director has done all that is practicable (apart from this section) to enforce the order.
- (3) If it appears to the Crown Court that the conditions are satisfied it may issue a summons ordering the defendant to appear before the court at the time and place specified in the summons.
- (4) If the defendant fails to appear before the Crown Court in pursuance of the summons the court may issue a warrant for his arrest.
- (5) If—
- (a) the defendant appears before the Crown Court in pursuance of the summons or of a warrant issued under subsection (4), and
 - (b) the court is satisfied that the conditions set out in subsection (2) are satisfied, it may issue a warrant committing the defendant to prison or detention for default in payment of the amount ordered to be paid by the confiscation order.
- (6) Subsection (7) applies if the amount remaining to be paid under the confiscation order when the warrant under subsection (5) is issued is less than the amount ordered to be paid.
- (7) In such a case the court must substitute for the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act such term as bears to the original term the same proportion as the amount remaining to be paid bears to the amount ordered to be paid.
- (8) Subsections (9) and (10) apply if—
- (a) the defendant has been committed to prison or detention in pursuance of a warrant issued under subsection (5), and
 - (b) a payment is made in respect of some or all of the amount remaining to be paid under the confiscation order.
- (9) If the payment is for the whole amount remaining to be paid the defendant must be released unless he is in custody for another reason.
- (10) If the payment is for less than that amount, the period of commitment is reduced so that it bears to the term fixed under section 139(2) of the Sentencing Act the same proportion as the amount remaining to be paid bears to the amount ordered to be paid.

38 Provisions about imprisonment or detention **E+W**

- (1) Subsection (2) applies if—
- (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and
 - (b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).
- (2) In such a case the term of imprisonment or of detention under section 108 of the Sentencing Act (detention of persons aged 18 to 20 for default) to be served in default

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of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above.

- (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences).
- (4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—
 - (a) any sentence suspended under section 118(1) of the Sentencing Act which has not taken effect at the time the warrant is issued;
 - (b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (c. 45) (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison;
 - (c) any term of imprisonment or detention fixed under section 139(2) of the Sentencing Act (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued at that time.
- (5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned.

39 Reconsideration etc: variation of prison term E+W

- (1) Subsection (2) applies if—
 - (a) a court varies a confiscation order under section 21, 22, 23, 29, 32 or 33,
 - (b) the effect of the variation is to vary the maximum period applicable in relation to the order under section 139(4) of the Sentencing Act, and
 - (c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act.
- (2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under section 139(2) of the Sentencing Act in place of the term previously fixed.
- (3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.
- (4) In such a case the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under section 139(2) of the Sentencing Act.
- (5) If the effect of section 12 is to increase the maximum period applicable in relation to a confiscation order under section 139(4) of the Sentencing Act, on the application of the appropriate person the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 139(2) of that Act.
- (6) The appropriate person is—

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- (a) the Director, if he was appointed as the enforcement authority for the order under section 34;
- (b) the prosecutor, in any other case.

VALID FROM 24/03/2003

Restraint orders

40 Conditions for exercise of powers **E+W**

- (1) The Crown Court may exercise the powers conferred by section 41 if any of the following conditions is satisfied.
- (2) The first condition is that—
 - (a) a criminal investigation has been started in England and Wales with regard to an offence, and
 - (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.
- (3) The second condition is that—
 - (a) proceedings for an offence have been started in England and Wales and not concluded, and
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (4) The third condition is that—
 - (a) an application by the prosecutor or the Director has been made under section 19, 20, 27 or 28 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (5) The fourth condition is that—
 - (a) an application by the prosecutor or the Director has been made under section 21 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).
- (6) The fifth condition is that—
 - (a) an application by the prosecutor or the Director has been made under section 22 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (7) The second condition is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the proceedings, or

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(b) the prosecutor does not intend to proceed.

(8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—

- (a) there has been undue delay in continuing the application, or
- (b) the prosecutor or the Director (as the case may be) does not intend to proceed.

(9) If the first condition is satisfied—

- (a) references in this Part to the defendant are to the alleged offender;
- (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;
- (c) section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

41 Restraint orders **E+W**

(1) If any condition set out in section 40 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.

(2) A restraint order may provide that it applies—

- (a) to all realisable property held by the specified person whether or not the property is described in the order;
- (b) to realisable property transferred to the specified person after the order is made.

(3) A restraint order may be made subject to exceptions, and an exception may in particular—

- (a) make provision for reasonable living expenses and reasonable legal expenses;
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
- (c) be made subject to conditions.

(4) But an exception to a restraint order must not make provision for any legal expenses which—

- (a) relate to an offence which falls within subsection (5), and
- (b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

- (a) the offence mentioned in section 40(2) or (3), if the first or second condition (as the case may be) is satisfied;
- (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

(6) Subsection (7) applies if—

- (a) a court makes a restraint order, and
- (b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).

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- (7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- (8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (9) Dealing with property includes removing it from England and Wales.

42 Application, discharge and variation E+W

- (1) A restraint order—
 - (a) may be made only on an application by an applicant falling within subsection (2);
 - (b) may be made on an ex parte application to a judge in chambers.
- (2) These applicants fall within this subsection—
 - (a) the prosecutor;
 - (b) the Director;
 - (c) an accredited financial investigator.
- (3) An application to discharge or vary a restraint order or an order under section 41(7) may be made to the Crown Court by—
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) Subsections (5) to (7) apply to an application under subsection (3).
- (5) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (6) If the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).
- (7) If the condition in section 40 which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

43 Appeal to Court of Appeal E+W

- (1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

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- (2) If an application is made under section 42(3) in relation to a restraint order or an order under section 41(7) the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application—
- (a) the person who applied for the order;
 - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may—
- (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

44 Appeal to House of Lords **E+W**

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 43.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the House of Lords may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

45 Seizure **E+W**

- (1) If a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from England and Wales.
- (2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.

46 Hearsay evidence **E+W**

- (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).
- (2) Sections 2 to 4 of the Civil Evidence Act 1995 (c. 38) apply in relation to restraint proceedings as those sections apply in relation to civil proceedings.
- (3) Restraint proceedings are proceedings—
 - (a) for a restraint order;
 - (b) for the discharge or variation of a restraint order;
 - (c) on an appeal under section 43 or 44.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

47 Supplementary **E+W**

- (1) The registration Acts—

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- (a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;
 - (b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions.
- (2) The registration Acts are—
- (a) the Land Registration Act 1925 (c. 21);
 - (b) the Land Charges Act 1972 (c. 61);
 - (c) the Land Registration Act 2002 (c. 9).
- (3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a restraint order.
- (4) The person applying for a restraint order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—
- (a) the application relates, or
 - (b) a restraint order made in pursuance of the application relates.

Modifications etc. (not altering text)

- C1 S. 47 extended (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **7(1)**

VALID FROM 24/03/2003

Management receivers

48 Appointment **E+W**

- (1) Subsection (2) applies if—
- (a) the Crown Court makes a restraint order, and
 - (b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).
- (2) The Crown Court may by order appoint a receiver in respect of any realisable property to which the restraint order applies.

49 Powers **E+W**

- (1) If the court appoints a receiver under section 48 it may act under this section on the application of the person who applied for the restraint order.
- (2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies—
- (a) power to take possession of the property;
 - (b) power to manage or otherwise deal with the property;

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- (c) power to start, carry on or defend any legal proceedings in respect of the property;
 - (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
- (a) search for or inspect anything authorised by the court;
 - (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
- (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not—
- (a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

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- (10) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

Modifications etc. (not altering text)

- C2** S. 49(6) excluded (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(3)**

VALID FROM 24/03/2003

Enforcement receivers

50 Appointment **E+W**

- (1) This section applies if—
- (a) a confiscation order is made,
 - (b) it is not satisfied, and
 - (c) it is not subject to appeal.
- (2) On the application of the prosecutor the Crown Court may by order appoint a receiver in respect of realisable property.

51 Powers **E+W**

- (1) If the court appoints a receiver under section 50 it may act under this section on the application of the prosecutor.
- (2) The court may by order confer on the receiver the following powers in relation to the realisable property—
- (a) power to take possession of the property;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise the property, in such manner as the court may specify;
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
- (a) search for or inspect anything authorised by the court;
 - (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
- (a) hold property;

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- (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not—
- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (10) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

Modifications etc. (not altering text)

- C3** S. 51(6) excluded (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(3)**

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VALID FROM 24/03/2003

Director's receivers

52 Appointment **E+W**

- (1) This section applies if—
 - (a) a confiscation order is made, and
 - (b) the Director is appointed as the enforcement authority for the order under section 34.
- (2) But this section does not apply if—
 - (a) the confiscation order was made by the Court of Appeal, and
 - (b) when the Crown Court comes to proceed under this section the confiscation order has been satisfied.
- (3) If this section applies the Crown Court must make an order for the appointment of a receiver in respect of realisable property.
- (4) An order under subsection (3)—
 - (a) must confer power on the Director to nominate the person who is to be the receiver, and
 - (b) takes effect when the Director nominates that person.
- (5) The Director must not nominate a person under subsection (4) unless at the time he does so the confiscation order—
 - (a) is not satisfied, and
 - (b) is not subject to appeal.
- (6) A person nominated to be the receiver under subsection (4) may be—
 - (a) a member of the staff of the Agency;
 - (b) a person providing services under arrangements made by the Director.
- (7) If this section applies section 50 does not apply.

53 Powers **E+W**

- (1) If the court makes an order for the appointment of a receiver under section 52 it may act under this section on the application of the Director.
- (2) The court may by order confer on the receiver the following powers in relation to the realisable property—
 - (a) power to take possession of the property;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise the property, in such manner as the court may specify;
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
 - (a) search for or inspect anything authorised by the court;

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- (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
- (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not—
- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (10) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

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Modifications etc. (not altering text)

- C4 S. 53(6) excluded (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(3)**

VALID FROM 24/03/2003

Application of sums

54 Enforcement receivers **E+W**

- (1) This section applies to sums which are in the hands of a receiver appointed under section 50 if they are—
 - (a) the proceeds of the realisation of property under section 51;
 - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.
- (2) The sums must be applied as follows—
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—
 - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
 - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is—
 - (a) the property represented by the proceeds mentioned in subsection (1)(a);
 - (b) the sums mentioned in subsection (1)(b).
- (6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the appropriate justices' chief executive on account of the amount payable under the order.
- (7) The appropriate justices' chief executive is the one for the magistrates' court responsible for enforcing the confiscation order as if the amount ordered to be paid were a fine.

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55 Sums received by justices' chief executive **E+W**

- (1) This section applies if a justices' chief executive receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 54 or otherwise).
- (2) The chief executive's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
 - (a) are payable under this subsection by virtue of section 432, but
 - (b) are not already paid under section 54(2)(a).
- (4) If the justices' chief executive received the sums under section 54 he must next apply them—
 - (a) first, in payment of the remuneration and expenses of a receiver appointed under section 48, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 49(2)(d);
 - (b) second, in payment of the remuneration and expenses of the receiver appointed under section 50.
- (5) If a direction was made under section 13(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the justices' chief executive must next apply the sums in payment of that amount.
- (6) If any amount remains after the justices' chief executive makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of section 60 of the Justices of the Peace Act 1997 (c. 25) (application of fines etc) as if it were a fine imposed by a magistrates' court.
- (7) Subsection (4) does not apply if the receiver is a member of the staff of the Crown Prosecution Service or of the Commissioners of Customs and Excise; and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere.

56 Director's receivers **E+W**

- (1) This section applies to sums which are in the hands of a receiver appointed under section 52 if they are—
 - (a) the proceeds of the realisation of property under section 53;
 - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.
- (2) The sums must be applied as follows—
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order by being paid to the Director on account of the amount payable under it.

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- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—
 - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
 - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is—
 - (a) the property represented by the proceeds mentioned in subsection (1)(a);
 - (b) the sums mentioned in subsection (1)(b).

57 Sums received by Director **E+W**

- (1) This section applies if the Director receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 56 or otherwise).
- (2) The Director's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
 - (a) are payable under this subsection by virtue of section 432, but
 - (b) are not already paid under section 56(2)(a).
- (4) If the Director received the sums under section 56 he must next apply them—
 - (a) first, in payment of the remuneration and expenses of a receiver appointed under section 48, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 49(2)(d);
 - (b) second, in payment of the remuneration and expenses of the receiver appointed under section 52.
- (5) If a direction was made under section 13(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the Director must next apply the sums in payment of that amount.
- (6) Subsection (4) does not apply if the receiver is a member of the staff of the Agency or a person providing services under arrangements made by the Director.

VALID FROM 24/03/2003

Restrictions

58 Restraint orders **E+W**

- (1) Subsections (2) to (4) apply if a court makes a restraint order.

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- (2) No distress may be levied against any realisable property to which the order applies except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (3) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (5) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
 - (a) the applicant for the restraint order, and
 - (b) any receiver appointed in respect of the property under section 48, 50 or 52.

59 Enforcement receivers **E+W**

- (1) Subsections (2) to (4) apply if a court makes an order under section 50 appointing a receiver in respect of any realisable property.
- (2) No distress may be levied against the property except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (5) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 50 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
 - (a) the prosecutor, and
 - (b) the receiver (if the order under section 50 has been made).

60 Director's receivers **E+W**

- (1) Subsections (2) to (4) apply if—
 - (a) the Crown Court has made an order under section 52 for the appointment of a receiver in respect of any realisable property, and
 - (b) the order has taken effect.

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- (2) No distress may be levied against the property except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (3) If the order is for the appointment of a receiver in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (5) If a court (whether the Crown Court or any other court) in which proceedings are pending in respect of any property is satisfied that an order under section 52 for the appointment of a receiver in respect of the property has taken effect, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
 - (a) the Director, and
 - (b) the receiver.

VALID FROM 24/03/2003

Receivers: further provisions

61 Protection E+W

If a receiver appointed under section 48, 50 or 52—

- (a) takes action in relation to property which is not realisable property,
- (b) would be entitled to take the action if it were realisable property, and
- (c) believes on reasonable grounds that he is entitled to take the action,

he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

62 Further applications E+W

- (1) This section applies to a receiver appointed under section 48, 50 or 52.
- (2) The receiver may apply to the Crown Court for an order giving directions as to the exercise of his powers.
- (3) The following persons may apply to the Crown Court—
 - (a) any person affected by action taken by the receiver;
 - (b) any person who may be affected by action the receiver proposes to take.
- (4) On an application under this section the court may make such order as it believes is appropriate.

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63 Discharge and variation **E+W**

- (1) The following persons may apply to the Crown Court to vary or discharge an order made under any of sections 48 to 53—
 - (a) the receiver;
 - (b) the person who applied for the order or (if the order was made under section 52 or 53) the Director;
 - (c) any person affected by the order.
- (2) On an application under this section the court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (3) But in the case of an order under section 48 or 49—
 - (a) if the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be);
 - (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

64 Management receivers: discharge **E+W**

- (1) This section applies if—
 - (a) a receiver stands appointed under section 48 in respect of realisable property (the management receiver), and
 - (b) the court appoints a receiver under section 50 or makes an order for the appointment of a receiver under section 52.
- (2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 49.
- (3) But in a case where the court makes an order under section 52 its order under subsection (2) above does not take effect until the order under section 52 takes effect.
- (4) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 49(2)(d).
- (5) If the management receiver complies with an order under subsection (2) he is discharged—
 - (a) from his appointment under section 48;
 - (b) from any obligation under this Act arising from his appointment.
- (6) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

65 Appeal to Court of Appeal **E+W**

- (1) If on an application for an order under any of sections 48 to 51 or section 53 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

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- (2) If the court makes an order under any of sections 48 to 51 or section 53, the following persons may appeal to the Court of Appeal in respect of the court's decision—
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (3) If on an application for an order under section 62 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (4) If the court makes an order under section 62, the following persons may appeal to the Court of Appeal in respect of the court's decision—
 - (a) the person who applied for the order;
 - (b) any person affected by the order;
 - (c) the receiver.
- (5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 63—
 - (a) the person who applied for the order in respect of which the application was made or (if the order was made under section 52 or 53) the Director;
 - (b) any person affected by the court's decision;
 - (c) the receiver.
- (6) On an appeal under this section the Court of Appeal may—
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

66 Appeal to House of Lords **E+W**

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 65.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the House of Lords may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

VALID FROM 24/03/2003

Seized money

67 Seized money **E+W**

- (1) This section applies to money which—
 - (a) is held by a person, and
 - (b) is held in an account maintained by him with a bank or a building society.
- (2) This section also applies to money which is held by a person and which—

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- (a) has been seized by a constable under section 19 of the Police and Criminal Evidence Act 1984 (c. 60) (general power of seizure etc), and
 - (b) is held in an account maintained by a police force with a bank or a building society.
- (3) This section also applies to money which is held by a person and which—
- (a) has been seized by a customs officer under section 19 of the 1984 Act as applied by order made under section 114(2) of that Act, and
 - (b) is held in an account maintained by the Commissioners of Customs and Excise with a bank or a building society.
- (4) This section applies if the following conditions are satisfied—
- (a) a restraint order has effect in relation to money to which this section applies;
 - (b) a confiscation order is made against the person by whom the money is held;
 - (c) the Director has not been appointed as the enforcement authority for the confiscation order;
 - (d) a receiver has not been appointed under section 50 in relation to the money;
 - (e) any period allowed under section 11 for payment of the amount ordered to be paid under the confiscation order has ended.
- (5) In such a case a magistrates’ court may order the bank or building society to pay the money to the justices’ chief executive for the court on account of the amount payable under the confiscation order.
- (6) If a bank or building society fails to comply with an order under subsection (5)—
- (a) the magistrates’ court may order it to pay an amount not exceeding £5,000, and
 - (b) for the purposes of the Magistrates’ Courts Act 1980 (c. 43) the sum is to be treated as adjudged to be paid by a conviction of the court.
- (7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)(a).
- (8) For the purposes of this section—
- (a) a bank is a deposit-taking business within the meaning of the Banking Act 1987 (c. 22);
 - (b) “building society” has the same meaning as in the Building Societies Act 1986 (c. 53).

VALID FROM 24/03/2003

Financial investigators

68 Applications and appeals **E+W**

- (1) Subsections (2) and (3) apply to—
- (a) an application under section 41, 42, 48, 49 or 63;
 - (b) an appeal under section 43, 44, 65 or 66.

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- (2) An accredited financial investigator must not make such an application or bring such an appeal unless he falls within subsection (3).
- (3) An accredited financial investigator falls within this subsection if he is one of the following or is authorised for the purposes of this section by one of the following—
 - (a) a police officer who is not below the rank of superintendent,
 - (b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank,
 - (c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 453.
- (4) If such an application is made or appeal brought by an accredited financial investigator any subsequent step in the application or appeal or any further application or appeal relating to the same matter may be taken, made or brought by a different accredited financial investigator who falls within subsection (3).
- (5) If—
 - (a) an application for a restraint order is made by an accredited financial investigator, and
 - (b) a court is required under section 58(6) to give the applicant for the order an opportunity to be heard,the court may give the opportunity to a different accredited financial investigator who falls within subsection (3).

VALID FROM 24/03/2003

Exercise of powers

69 Powers of court and receiver E+W

- (1) This section applies to—
 - (a) the powers conferred on a court by sections 41 to 60 and sections 62 to 67;
 - (b) the powers of a receiver appointed under section 48, 50 or 52.
- (2) The powers—
 - (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;
 - (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
 - (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following rules—

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- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

VALID FROM 24/03/2003

Committal

70 Committal by magistrates' court E+W

- (1) This section applies if—
- (a) a defendant is convicted of an offence by a magistrates' court, and
 - (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 6.
- (2) In such a case the magistrates' court—
- (a) must commit the defendant to the Crown Court in respect of the offence, and
 - (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).
- (3) An offence falls within this subsection if—
- (a) the defendant has been convicted of it by the magistrates' court or any other court, and
 - (b) the magistrates' court has power to deal with him in respect of it.
- (4) If a committal is made under this section in respect of an offence or offences—
- (a) section 6 applies accordingly, and
 - (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 71.
- (5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under section 3(2) of the Sentencing Act (offences triable either way) the court must state whether it would have done so.
- (6) A committal under this section may be in custody or on bail.

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71 Sentencing by Crown Court **E+W**

- (1) If a defendant is committed to the Crown Court under section 70 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 6).
- (2) In the case of an offence in respect of which the magistrates' court has stated under section 70(5) that it would have committed the defendant for sentence, the Crown Court—
 - (a) must inquire into the circumstances of the case, and
 - (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.
- (3) In the case of any other offence the Crown Court—
 - (a) must inquire into the circumstances of the case, and
 - (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

VALID FROM 24/03/2003

Compensation

72 Serious default **E+W**

- (1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.
- (2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.
- (3) The first condition is also satisfied if proceedings for an offence are started against a person and—
 - (a) they do not result in his conviction for the offence, or
 - (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.
- (4) If subsection (2) applies the second condition is that—
 - (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
 - (b) the investigation would not have continued if the default had not occurred.
- (5) If subsection (3) applies the second condition is that—
 - (a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and
 - (b) the proceedings would not have been started or continued if the default had not occurred.
- (6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.

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- (7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.
- (8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.
- (9) Compensation under this section is payable to the applicant and—
 - (a) if the person in default was or was acting as a member of a police force, the compensation is payable out of the police fund from which the expenses of that force are met;
 - (b) if the person in default was a member of the Crown Prosecution Service or was acting on its behalf, the compensation is payable by the Director of Public Prosecutions;
 - (c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;
 - (d) if the person in default was a customs officer, the compensation is payable by the Commissioners of Customs and Excise;
 - (e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.

73 Order varied or discharged **E+W**

- (1) This section applies if—
 - (a) the court varies a confiscation order under section 29 or discharges one under section 30, and
 - (b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.
- (2) The court may order the payment of such compensation as it believes is just.
- (3) Compensation under this section is payable—
 - (a) to the applicant;
 - (b) by the Lord Chancellor.

VALID FROM 24/03/2003

Enforcement abroad

74 Enforcement abroad **E+W**

- (1) This section applies if—
 - (a) any of the conditions in section 40 is satisfied,
 - (b) the prosecutor or the Director believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
 - (c) the prosecutor or the Director (as the case may be) sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.

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- (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.
- (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—
 - (a) any person is prohibited from dealing with realisable property;
 - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.
- (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.
- (6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.
- (7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—
 - (a) that property has been realised in pursuance of a request under subsection (3),
 - (b) the date of realisation, and
 - (c) the proceeds of realisation.
- (8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

VALID FROM 24/03/2003

Interpretation

75 Criminal lifestyle **E+W**

- (1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.
- (2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—
 - (a) it is specified in Schedule 2;
 - (b) it constitutes conduct forming part of a course of criminal activity;
 - (c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.
- (3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

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- (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
 - (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.
- (4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.
- (5) Relevant benefit for the purposes of subsection (2)(b) is—
- (a) benefit from conduct which constitutes the offence;
 - (b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;
 - (c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).
- (6) Relevant benefit for the purposes of subsection (2)(c) is—
- (a) benefit from conduct which constitutes the offence;
 - (b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).
- (7) The Secretary of State may by order amend Schedule 2.
- (8) The Secretary of State may by order vary the amount for the time being specified in subsection (4).

76 **Conduct and benefit** E+W

- (1) Criminal conduct is conduct which—
- (a) constitutes an offence in England and Wales, or
 - (b) would constitute such an offence if it occurred in England and Wales.
- (2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—
- (a) whether conduct occurred before or after the passing of this Act;
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.
- (3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs—
- (a) conduct which constitutes the offence or offences concerned;
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;
 - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.

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- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

77 Tainted gifts **E+W**

- (1) Subsections (2) and (3) apply if—
 - (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
 - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the relevant day.
- (3) A gift is also tainted if it was made by the defendant at any time and was of property—
 - (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
 - (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.
- (4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.
- (5) A gift is tainted if it was made by the defendant at any time after—
 - (a) the date on which the offence concerned was committed, or
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.
- (7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (9) 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.

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78 Gifts and their recipients **E+W**

- (1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.
- (2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
 - (a) whose numerator is the difference between the two values mentioned in subsection (1), and
 - (b) whose denominator is the value of the property at the time of the transfer.
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

79 Value: the basic rule **E+W**

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person.
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).
- (4) The provisions are—
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (5) This section has effect subject to sections 80 and 81.

80 Value of property obtained from conduct **E+W**

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.
- (2) The value of the property at the material time is the greater of the following—
 - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (3).
- (3) The property found under this subsection is as follows—
 - (a) if the person holds the property obtained, the property found under this subsection is that property;
 - (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;

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(c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 79.

81 Value of tainted gifts **E+W**

(1) The value at any time (the material time) of a tainted gift is the greater of the following—

- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
- (b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is as follows—

- (a) if the recipient holds the property given, the property found under this subsection is that property;
- (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
- (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 79.

82 Free property **E+W**

Property is free unless an order is in force in respect of it under any of these provisions—

- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
- (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);
- (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);
- (d) section 143 of the Sentencing Act (deprivation orders);
- (e) section 23 or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);
- (f) section 246, 266, 295(2) or 298(2) of this Act.

83 Realisable property **E+W**

Realisable property is—

- (a) any free property held by the defendant;
- (b) any free property held by the recipient of a tainted gift.

84 Property: general provisions **E+W**

(1) Property is all property wherever situated and includes—

- (a) money;

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- (b) all forms of real or personal property;
 - (c) things in action and other intangible or incorporeal property.
- (2) The following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to property vested in his trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) or liquidator;
 - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
 - (f) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
 - (g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
 - (h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

85 Proceedings **E+W**

- (1) Proceedings for an offence are started—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (c. 43) in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) in a case falling within subsection (2)(b) of that section (preferment by Court of Appeal or High Court judge).
- (2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.
- (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.
- (4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned.
- (5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded—
- (a) when the order is satisfied or discharged, or
 - (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

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- (6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply—
- (a) if an application for leave to appeal under section 31(2) is refused, the proceedings are concluded when the decision to refuse is made;
 - (b) if the time for applying for leave to appeal under section 31(2) expires without an application being made, the proceedings are concluded when the time expires;
 - (c) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and an application for leave to appeal under section 33 is refused, the proceedings are concluded when the decision to refuse is made;
 - (d) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 33 expires without an application being made, the proceedings are concluded when the time expires;
 - (e) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 33 the House of Lords confirms the Court of Appeal's decision, the proceedings are concluded when the House of Lords confirms the decision;
 - (f) if on appeal under section 31(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision;
 - (g) if on appeal under section 33 the House of Lords directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision.
- (7) In applying subsection (6) any power to extend the time for making an application for leave to appeal must be ignored.
- (8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

86 Applications **E+W**

- (1) An application under section 19, 20, 27 or 28 is concluded—
- (a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.
- (2) An application under section 21 or 22 is concluded—
- (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
 - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is

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quashed and there is no further possibility of an appeal against the decision to quash the order;

- (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

87 Confiscation orders **E+W**

- (1) A confiscation order is satisfied when no amount is due under it.
- (2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored.

88 Other interpretative provisions **E+W**

- (1) A reference to the offence (or offences) concerned must be construed in accordance with section 6(9).
- (2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
- (3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).
- (4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.
- (5) The Sentencing Act is the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
- (6) The following paragraphs apply to references to orders—
- (a) a confiscation order is an order under section 6;
- (b) a restraint order is an order under section 41.
- (7) Sections 75 to 87 and this section apply for the purposes of this Part.

General

89 Procedure on appeal to the Court of Appeal **E+W**

- (1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.
- (2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (distribution of business between civil and criminal divisions) the criminal division of the Court of Appeal is the division—
- (a) to which an appeal to that Court under this Part is to lie, and
- (b) which is to exercise that Court's jurisdiction under this Part.
- (3) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (c. 19) (subject to any specified modifications).

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Commencement Information

I1 S. 89 in force for certain purposes at 30.12.2002 by [S.I. 2002/3015](#), [art. 2](#), [Sch.](#)

90 Procedure on appeal to the House of Lords **E+W**

- (1) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal) does not prevent an appeal to the House of Lords under this Part.
- (2) In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Commencement Information

I2 S. 90 in force for certain purposes (30.12.2002) by [S.I. 2002/3015](#), [art. 2](#), [Sch.](#)

VALID FROM 24/03/2003

91 Crown Court Rules **E+W**

In relation to—

- (a) proceedings under this Part, or
- (b) receivers appointed under this Part,

Crown Court Rules may make provision corresponding to provision in Civil Procedure Rules.

Status:

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