



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Appeals

31 Appeal by prosecutor [^{F1}etc]^{F2}...

- (1) If the Crown Court makes a confiscation order the prosecutor ^{F3}... 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 ^{F4}... 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 [^{F5}10A,] 19, 20, 27 or 28.
- [^{F6}(4) An appeal lies to the Court of Appeal against a determination, under section 10A, of the extent of the defendant's interest in property.
- (5) An appeal under subsection (4) lies at the instance of—
 - (a) the prosecutor;
 - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.
- (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.
- (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.
- (8) An appeal does not lie under subsection (4) where—
 - (a) the Court of Appeal believes that an application under section 50 is to be made by the prosecutor for the appointment of a receiver,

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- (b) such an application has been made but has not yet been determined, or
- (c) a receiver has been appointed under section 50.]

Textual Amendments

- F1** Word in s. 31 heading inserted (1.6.2015) by **Serious Crime Act 2015 (c. 9)**, s. 88(1), **Sch. 4 para. 27(2)**; S.I. 2015/820, reg. 3(q)(iii)
- F2** Words in s. 31 heading repealed (1.4.2008) by **Serious Crime Act 2007 (c. 27)**, s. 94(1), Sch. 8 para. 16(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F3** Words in s. 31(1) repealed (1.4.2008) by **Serious Crime Act 2007 (c. 27)**, s. 94(1), Sch. 8 para. 16(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F4** Words in s. 31(2) repealed (1.4.2008) by **Serious Crime Act 2007 (c. 27)**, s. 94(1), Sch. 8 para. 16(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F5** Word in s. 31(3) inserted (1.6.2015) by **Serious Crime Act 2015 (c. 9)**, s. 88(1), **Sch. 4 para. 27(3)**; S.I. 2015/820, reg. 3(q)(iii)
- F6** S. 31(4)-(8) inserted (1.6.2015) by **Serious Crime Act 2015 (c. 9)**, **ss. 3(1)**, 88(1); S.I. 2015/820, reg. 3(a)

Modifications etc. (not altering text)

- C1** Pt. 2 applied by **Terrorism Act 2000 (c. 11)**, Sch. 8 paras. 8(5A), **34(3A)** (as substituted (24.3.2003) by **Proceeds of Crime Act 2002 (c. 29)**, s. 458(1), **Sch. 11 para. 39(2)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7); S.I. 2003/333, art. 2, **Sch.**)
- C2** Pt. 2 applied by **Police and Criminal Evidence Act 1984 (c. 60)**, **ss. 56(5B)**, 58(8B) (as substituted (24.3.2003) by **Proceeds of Crime Act 2002 (c. 29)**, s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, **Sch.**)
- C3** Pt. 2 applied (with modifications) (1.6.2015) by **The Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015 (S.I. 2015/868)**, regs. 1, **5** (with reg. 4)

Commencement Information

- I1** S. 31 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

32 Court's powers on appeal

- (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.
- [^{F7}(2A) On an appeal under section 31(4) the Court of Appeal may—
 - (a) confirm the determination, or
 - (b) make such order as it believes is appropriate.]
- (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;

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- (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) [^{F8}, section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge)] [^{F9} or section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)]—
- (a) the court must have regard to it, and
- (b) section 13(5) and (6) above do not apply [^{F10} in relation to it].
- (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 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.

Textual Amendments

- F7** S. 32(2A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 3(2)**, 88(1); S.I. 2015/820, reg. 3(a)
- F8** Words in s. 32(7) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 28**; S.I. 2015/820, reg. 3(q)(iii)
- F9** Words in s. 32(7) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, **Sch. para. 20**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F10** Words in s. 32(7)(b) inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\)](#), s. 61(1), **Sch. 5 para. 18**; S.I. 2015/1476, reg. 2(j)

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Commencement Information

I2 S. 32 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

33 Appeal to ^[F11]Supreme Court

- (1) An appeal lies to the ^[F12]Supreme Court] from a decision of the Court of Appeal on an appeal under section 31.
- ^[F13](2) An appeal under this section lies at the instance of—
 - (a) the defendant or the prosecutor (except where paragraph (b) applies);
 - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 31(4), any person who was a party to those proceedings.]
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the ^[F14]Supreme Court] may confirm, quash or vary the order.
- ^[F15](3A) On an appeal under this section from a decision under section 32(2A) the Supreme Court may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.]
- (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 ^[F14]Supreme Court] 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 ^[F14]Supreme Court] 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.
- (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) ^[F16], section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge) ^[F17] or section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)]—

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- (a) the Crown Court must have regard to it, and
 - (b) section 13(5) and (6) above do not apply [^{F18}in relation to it].
- (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.

Textual Amendments

- F11** Words in s. 33 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(2\)](#); S.I. 2009/1604, art. 2(d)
- F12** Words in s. 33(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(2\)](#); S.I. 2009/1604, art. 2(d)
- F13** S. 33(2) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 3\(3\)\(a\)](#), 88(1); S.I. 2015/820, reg. 3(a)
- F14** Words in s. 33(3)-(5) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(2\)](#); S.I. 2009/1604, art. 2(d)
- F15** S. 33(3A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 3\(3\)\(b\)](#), 88(1); S.I. 2015/820, reg. 3(a)
- F16** Words in s. 33(9) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), s. 88\(1\), Sch. 4 para. 29](#); S.I. 2015/820, reg. 3(q)(iii)
- F17** Words in s. 33(9) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\), s. 12, Sch. para. 21](#); S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F18** Words in s. 33(9)(b) inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\), s. 61\(1\), Sch. 5 para. 19](#); S.I. 2015/1476, reg. 2(j)

Commencement Information

- I3** S. 33 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

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