



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 2

#### CONFISCATION: ENGLAND AND WALES

##### *Restraint orders*

#### **40 Conditions for exercise of powers**

- (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—

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- (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
  - (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**

- (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—

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- (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).
- (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**

- (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.

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- (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**

- (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.
- (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**

- (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**

- (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**

- (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**

- (1) The registration Acts—
- (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.