



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 3

#### CONFISCATION: SCOTLAND

##### *Confiscation orders*

#### **94 Accused's benefit**

- (1) If the court is acting under section 92 this section applies for the purpose of—
  - (a) deciding whether the accused has benefited from conduct, and
  - (b) deciding his benefit from the conduct.
- (2) The court must take account of—
  - (a) conduct occurring up to the time it makes its decision;
  - (b) 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 accused, 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 accused;

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*Status: This is the original version (as it was originally enacted).*

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- (b) the amount ordered to be paid under each confiscation order previously made against him under—
  - (i) the Drug Trafficking Offences Act 1986 (c. 32);
  - (ii) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
  - (iii) Part 6 of the Criminal Justice Act 1988 (c. 33);
  - (iv) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I.17));
  - (v) Part 1 of the Drug Trafficking Act 1994 (c. 37);
  - (vi) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
  - (vii) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/ 1299 (N.I.9)); or
  - (viii) Part 2 or 4 of this Act.
- (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) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (5)(b) 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.