



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART VI **U.K.**

#### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

##### **Modifications etc. (not altering text)**

- C1** Part VI (ss. 71 to 103) modified: (29.12.1991) by [S.I. 1991/2873](#), art. 3(2), [Sch. 2](#); and (1.9.1995) by [S.I. 1995/1968](#), art. 2(1)
- C2** Part VI (ss. 71 to 103) applied (1.11.1995) by [1995 c. 11](#), s. 15(3); [S.I. 1995/2650](#), art. 2

#### **71 Confiscation orders.** **E+W**

[<sup>F1</sup>(1) Where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of an offence of a relevant description, it shall be the duty of the court—

- (a) if the prosecutor has given written notice to the court that he considers that it would be appropriate for the court to proceed under this section, or
- (b) if the court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed,

to act as follows before sentencing or otherwise dealing with the offender in respect of that offence or any other relevant criminal conduct.

(1A) The court shall first determine whether the offender has benefited from any relevant criminal conduct.

(1B) Subject to subsection (1C) below, if the court determines that the offender has benefited from any relevant criminal conduct, it shall then—

- (a) determine in accordance with subsection (6) below the amount to be recovered in his case by virtue of this section, and
- (b) make an order under this section ordering the offender to pay that amount.

*Status: Point in time view as at 24/02/2003.*

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- (1C) If, in a case falling within subsection (1B) above, the court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—
  - (a) the court shall have a power, instead of a duty, to make an order under this section;
  - (b) subsection (6) below shall not apply for determining the amount to be recovered in that case by virtue of this section; and
  - (c) where the court makes an order in exercise of that power, the sum required to be paid under that order shall be of such amount, not exceeding the amount which (but for paragraph (b) above) would apply by virtue of subsection (6) below, as the court thinks fit.
  
- (1D) In this Part of this Act “relevant criminal conduct”, in relation to a person convicted of an offence in any proceedings before a court, means (subject to section 72AA(6) below) that offence taken together with any other offences of a relevant description which are either—
  - (a) offences of which he is convicted in the same proceedings, or
  - (b) offences which the court will be taking into consideration in determining his sentence for the offence in question.
  
- (1E) For the purposes of this Part of this Act an offence is an offence of a relevant description—
  - (a) in the case of an offence of which a person is convicted in any proceedings before the Crown Court or which is or will be taken into consideration by the Crown Court in determining any sentence, if it is an offence to which this Part of this Act applies; and
  - (b) in the case of an offence of which a person is convicted in any proceedings before a magistrates’ court or which is or will be taken into consideration by a magistrates’ court in determining any sentence, if it is an offence listed in Schedule 4 to this Act.]
  
- (4) For the purposes of this Part of this Act a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.
  
- (5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Part of this Act as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.
  
- (6) [<sup>F2</sup>Subject to subsection (1C) above]the sum which an order made by a court under this section requires an offender to pay must be at least the minimum amount, but must not exceed—
  - (a) the benefit in respect of which it is made; or
  - (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,
 whichever is the less.

<sup>F3</sup>(7) .....

[<sup>F4</sup>(7A) The standard of proof required to determine any question arising under this Part of this Act as to—

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- (a) whether a person has benefited [<sup>F5</sup>from any offence][<sup>F6</sup>or];
  - <sup>F7</sup>(b) .....
  - (c) the amount to be recovered in his case <sup>F8</sup> . . . ,
- shall be that applicable in civil proceedings.

<sup>F9</sup>(8) .....

(9) In this Part of this Act—

- (a) an order made by a court under this section is referred to as a “confiscation order”;
- (b) “drug trafficking offence” has the same meaning as in the [<sup>F10</sup>Drug Trafficking Act 1994];
- (c) references to an offence to which this Part of this Act applies are references to any offence which—
  - (i) is listed in Schedule 4 to this Act; or
  - (ii) if not so listed, is an indictable offence, other than a drug trafficking offence [<sup>F11</sup>or an offence under any of sections 15 to 18 of the Terrorism Act 2000] ; and
- (d) a person against whom proceedings have been instituted for an offence to which this Part of this Act applies is referred to (whether or not he has been convicted) as “the defendant”.

[<sup>F12</sup>(9A) Where an offender is committed by a magistrates’ court for sentence under [<sup>F13</sup>section 3, 4 or 6 of the Powers of Criminal Courts (Sentencing) Act 2000]], this section and sections 72 to 74C below shall have effect as if the offender had been convicted of the offence in the proceedings before the Crown Court and not in the proceedings before the magistrates’ court.

[<sup>F14</sup>(10) Subsection (9) above is subject to section 93E below.]

#### Textual Amendments

- F1** S. 71(1)(1A)-(1E) substituted for s. 71(1)-(3) (1.11.1995) by 1995 c. 11, s. 1(2) (with s. 16(5)); S.I. 1995/2650, art. 2
- F2** Words in s. 71(6) inserted (1.11.1995) by 1995 c. 11, s. 1(3) (with s. 16(5)); S.I. 1995/2650, art. 2
- F3** S. 71(7) repealed (1.11.1995) by 1995 c. 11, ss. 1(4), 15(4), Sch. 2 (with s. 16(5)); S.I. 1995/2650, art. 2
- F4** S. 71(7A) inserted (3.2.1995) by 1993 c. 36, ss. 27; S.I. 1995/43, art. 2 Sch.
- F5** Words in s. 71(7A)(a) substituted (1.11.1995) by 1995 c. 11, 1(5)(a) (with s. 16(5)); S.I. 1995/2650, art. 2
- F6** Word in s. 71(7A)(a) inserted (1.11.1995) by 1995 c. 11, s. 1(5)(a) (with s. 16(5)); S.I. 1995/2650, art. 2
- F7** S. 71(7A)(b) repealed (1.11.1995) by 1995 c. 11, ss. 1(5)(b), 15(4), Sch. 2 (with s. 16(5)); S.I. 1995/2650, art. 2
- F8** Words in s. 71(7A)(c) repealed (1.11.1995) by 1995 c. 11, ss. 1(5)(c), 15(4), Sch. 2 (with s. 16(5)); S.I. 1995/2650, art. 2
- F9** S. 71(8) repealed (1.11.1995) by 1995 c. 11, ss. 1(4), 15(4), Sch. 2 (with s. 16(5)); S.I. 1995/2650, art. 2
- F10** Words in s. 71(9)(b) substituted (3.2.1995) by 1994 c. 37, ss. 65, 69(2), Sch. 1 para. 21
- F11** Words in s. 71(9)(c)(ii) substituted (19.2.2001) by 2000 c. 11, s. 125(1), Sch. 15 para. 6(2); S.I. 2001/421, art. 2
- F12** S. 71(9A) inserted (30.9.1998) by 1998 c. 37, ss. 83, 120(1), Sch. 9 para. 8; S.I. 1998/2327, art. 2

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- F13** Words in s. 71(9A) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 105**  
**F14** S. 71(10) inserted (3.2.1995) by 1993 c. 36, ss. 27; S.I. 1995/43, **art. 2 Sch.**

## 72 Making of confiscation orders. **E+W**

- <sup>F15</sup>(1) .....
- <sup>F15</sup>(2) .....
- <sup>F15</sup>(3) .....
- <sup>F15</sup>(4) .....

(5) Where a court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, other than an order under [<sup>F16</sup>section 130 of the Powers of Criminal Courts (Sentencing) Act 2000] (compensation orders); or
- (c) making any order under—
  - (i) section 27 of the <sup>M1</sup>Misuse of Drugs Act 1971 (forfeiture orders); or
  - (ii) [<sup>F17</sup>section 143 of the Powers of Criminal Courts (Sentencing) Act 2000] (deprivation orders),

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Part of this Act applies.

(7) Where—

- (a) a court makes both a confiscation order and an order for the payment of compensation under [<sup>F18</sup>section 130 of the Powers of Criminal Courts (Sentencing) Act 2000] against the same person in the same proceedings; and
- (b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

### Textual Amendments

- F15** S. 72(1)-(4) repealed (1.11.1995) by 1995 c. 11, s. 15(1)(4), **Sch. 1 para. 1, Sch. 2**; S.I. 1995/2650, **art. 2**
- F16** Words in s. 72(5)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 106(2)(a)**
- F17** Words in s. 72(5)(c)(ii) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 106(2)(b)**
- F18** Words in s. 72(7)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 106(3)**

### Marginal Citations

- M1** 1971 c. 38.

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**[72A]** <sup>F19</sup>**Postponed determinations.** **E+W**

- (1) Where a court is acting under section 71 above but considers that it requires further information before—
  - (a) determining whether the defendant has benefited [<sup>F20</sup>from any relevant criminal conduct][<sup>F21</sup>or];
  - <sup>F22</sup>(b) .....
  - (c) determining the amount to be recovered in his case <sup>F23</sup> . . . ,it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.
- (2) More than one postponement may be made under subsection (1) above in relation to the same case.
- (3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) above which—
  - (a) by itself; or
  - (b) where there have been one or more previous postponements under subsection (1) above or (4) below, when taken together with the earlier specified period or periods,exceeds six months beginning with the date of conviction.
- (4) Where the defendant appeals against his conviction, the court may, on that account—
  - (a) postpone making any of the determinations mentioned in subsection (1) above for such period as it may specify; or
  - (b) where it has already exercised its powers under this section to postpone, extend the specified period.
- (5) A postponement or extension under subsection (1) or (4) above may be made—
  - (a) on application by the defendant or the prosecutor; or
  - (b) by the court of its own motion.
- (6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) above shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.
- (7) Where the court exercises its power under subsection (1) or (4) above, it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.
- <sup>F24</sup>(8) Where the court has so proceeded—
  - (a) subsection (1) of section 71 above shall have effect as if the words from “before sentencing” onwards were omitted;
  - (b) that section shall further have effect as if references to an offence that will be taken into consideration in determining any sentence included references to an offence that has been so taken into account; and
  - (c) section 72(5) above shall have effect as if after “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.]
- (9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned at any time during the specified period, the court shall not—

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- (a) impose any fine on him; or
- (b) make any such order as is mentioned in section 72(5)(b) or (c) above.

[<sup>F25</sup>(9A) Where the court has sentenced the defendant under subsection (7) above during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 72(5)(b) or (c) above so long as it does so within a period corresponding to that allowed by [<sup>F26</sup>section 155(1) or (2) of the Powers of Criminal Courts (Sentencing) Act 2000]] (time allowed for varying a sentence) but beginning with the end of the specified period.

(10) In this section, references to an appeal include references to an application under section 111 of the <sup>M2</sup>Magistrates' Courts Act 1980 (statement of case by magistrates' court).

(11) In this section “the date of conviction” means—

- (a) the date on which the defendant was convicted of the offence concerned, or
- (b) where he was convicted in the same proceedings, but on different dates, of two or more offences which [<sup>F27</sup>are comprised in relevant criminal conduct], the date of the latest of those convictions.

#### Textual Amendments

- F19** S. 72A inserted (3.2.1995) by 1993 c. 36, s. 28; S.I. 1995/43, art. 2
- F20** Words in s. 72A(1)(a) substituted (1.11.1995) by 1995 c. 11, s. 15(1), Sch. 1 para. 2(2)(a); S.I. 1995/2650, art. 2
- F21** Word in s. 72A(1)(a) inserted (1.11.1995) by 1995 c. 11, s. 15(1), Sch. 1 para. 2(2)(a); S.I. 1995/2650, art. 2
- F22** S. 72A(1)(b) repealed (1.11.1995) by 1995 c. 11, s. 15(1)(4), Sch. 1 para. 2(2)(b), Sch. 2; S.I. 1995/2650, art. 2
- F23** Words in s. 72A(1)(c) repealed (1.11.1995) by 1995 c. 11, s. 15(1)(4), Sch. 1 para. 2(2)(c), Sch. 2; S.I. 1995/2650, art. 2
- F24** S. 72A(8) substituted (1.11.1995) by 1995 c. 11, s. 15(1), Sch. 1 para. 2(3); S.I. 1995/2650, art. 2
- F25** S. 72A(9A) inserted (3.2.1995) by 1995 c. 11, s. 168(1), Sch. 9 para. 36; S.I. 1995/127, art. 2, Sch. 1 Appendix A
- F26** Words in s. 72A(9A) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 107
- F27** Words in s. 72A(11)(b) substituted (1.11.1995) by 1995 c. 11, s. 15(1), Sch. 1 para. 2(4); S.I. 1995/2650, art. 2

#### Marginal Citations

- M2** 1980 c. 43.

### [72AA <sup>F28</sup>Confiscation relating to a course of criminal conduct. **E+W**

- (1) This section applies in a case where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of a qualifying offence which is an offence of a relevant description, if—
- (a) the prosecutor gives written notice for the purposes of subsection (1)(a) of section 71 above;
  - (b) that notice contains a declaration that it is the prosecutor's opinion that the case is one in which it is appropriate for the provisions of this section to be applied; and
  - (c) the offender—

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- (i) is convicted in those proceedings of at least two qualifying offences (including the offence in question); or
    - (ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.
- (2) In this section “qualifying offence”, in relation to proceedings before the Crown Court or a magistrates’ court, means any offence in relation to which all the following conditions are satisfied, that is to say—
  - (a) it is an offence to which this Part of this Act applies;
  - (b) it is an offence which was committed after the commencement of section 2 of the Proceeds of Crime Act 1995; and
  - (c) that court is satisfied that it is an offence from which the defendant has benefited.
- (3) When proceeding under section 71 above in pursuance of the notice mentioned in subsection (1)(a) above, the court may, if it thinks fit, determine that (subject to subsection (5) below) the assumptions specified in subsection (4) below are to be made for the purpose—
  - (a) of determining whether the defendant has benefited from relevant criminal conduct; and
  - (b) if he has, of assessing the value of the defendant’s benefit from such conduct.
- (4) Those assumptions are—
  - (a) that any property appearing to the court—
    - (i) to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question, or
    - (ii) to have been transferred to him at any time since the beginning of the relevant period,  
was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Part of this Act applies;
  - (b) that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences to which this Part of this Act applies; and
  - (c) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.
- (5) Where the court has determined that the assumptions specified in subsection (4) above are to be made in any case it shall not in that case make any such assumption in relation to any particular property or expenditure if—
  - (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant’s case;
  - (b) that assumption, so far as it so relates, is shown to be correct in relation to an offence the defendant’s benefit from which has been the subject of a previous confiscation order; or
  - (c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant’s case if the assumption were to be made in relation to that property or expenditure.
- (6) Where the assumptions specified in subsection (4) above are made in any case, the offences from which, in accordance with those assumptions, the defendant is assumed

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to have benefited shall be treated as if they were comprised, for the purposes of this Part of this Act, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(7) In this section “the date of conviction” means—

- (a) in a case not falling within paragraph (b) below, the date on which the defendant is convicted of the offence in question, or
- (b) where he is convicted of that offence and one or more other offences in the proceedings in question and those convictions are not all on the same date, the date of the latest of those convictions; and

“the relevant period” means the period of six years ending when the proceedings in question were instituted against the defendant.]

#### Textual Amendments

**F28** S. 72AA inserted (1.11.1995) by 1995 c. 11, s.2; S.I. 1995/2650, art.2

### 73 Statements, etc. relevant to making confiscation orders. **E+W**

[<sup>F29</sup>(1) Subsection (1A) below applies in a case where a person has been convicted of an offence of a relevant description if—

- (a) the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above; or
- (b) the court is proceeding in pursuance of subsection (1)(b) of that section and requires a statement under this section from the prosecutor.

(1A) Where this subsection applies, the prosecutor shall, within such period as the court may direct, tender to the court a statement as to any matters relevant—

- (a) to determining whether the defendant has benefited from any relevant criminal conduct; or
- (b) to an assessment of the value of the defendant’s benefit from that conduct;

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of subsection (1)(b) of section 72AA above, that statement shall also set out all such information available to the prosecutor as may be relevant for the purposes of subsections (4) and (5)(b) or (c) of that section.

(1B) Where a statement is tendered to the court under this section—

- (a) the prosecutor may at any time tender to the court a further statement as to the matters mentioned in subsection (1A) above; and
- (b) the court may at any time require the prosecutor to tender a further such statement within such period as it may direct.

(1C) Where—

- (a) any statement has been tendered to any court by the prosecutor under this section, and
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purpose of determining whether the defendant has benefited from any relevant criminal conduct or of assessing the value of the defendant’s benefit from such conduct, treat his acceptance as conclusive of the matters to which it relates.]

(2) Where—



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- (a) a statement is tendered [<sup>F30</sup>by the prosecutor under this section], and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

- (3) If the defendant fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from—
  - (a) any allegation in respect of which he has complied with the requirement; and
  - (b) any allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.

<sup>F31</sup>(4) .....

- (5) An allegation may be accepted or a matter indicated for the purposes of this section either—
  - (a) orally before the court; or
  - (b) in writing in accordance with rules of court.

- (6) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from [<sup>F32</sup>any relevant criminal conduct.]

[<sup>F33</sup>(7) Where the court has given a direction under this section, it may at any time vary the direction by giving a further direction.]

**Textual Amendments**

- F29** S. 73(1)(1A)-(1C) substituted (1.11.1995) by 1995 c. 11, s. 3(1); S.I. 1995/2650, art.2
- F30** Words in s. 73(2)(a) substituted (1.11.1995) by 1995 c. 11, s. 3(2); S.I. 1995/2650, art.2
- F31** S. 73(4) repealed (1.11.1995) by 1995 c. 11, s. 15(4), Sch.2; S.I. 1995/2650, art.2
- F32** Words in s. 73(6) substituted (1.11.1995) by 1995 c. 11, s. 3(3); S.I. 1995/2650, art.2
- F33** S. 73(7) inserted (1.11.1995) by 1995 c. 11, s. 3(4); S.I. 1995/2650, art.2

**[73A <sup>F34</sup>Provision of information by defendant. E+W]**

- (1) This section applies in a case where a person has been convicted of an offence of a relevant description if—
  - (a) the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above; or
  - (b) the court is proceeding in pursuance of subsection (1)(b) of that section or is considering whether so to proceed.

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- (2) For the purpose of obtaining information to assist it in carrying out its functions under this Part of this Act, the court may at any time order the defendant to give it such information as may be specified in the order.
- (3) An order under subsection (2) above may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.
- (4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3) above.
- (5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.
- (6) Where the prosecutor accepts to any extent any allegation made by the defendant—
  - (a) in giving to the court information required by an order under this section, or
  - (b) in any other statement tendered to the court for the purposes of this Part of this Act,
 the court may treat that acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.]

#### Textual Amendments

**F34** S. 73A inserted (1.11.1995) by 1995 c. 11, s.4; S.I. 1995/2650, art.2

#### 74 Definition of principal terms used. **E+W**

- (1) In this Part of this Act, “realisable property” means, subject to subsection (2) below—
  - (a) any property held by the defendant; and
  - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act.
- (2) Property is not realisable property if—
  - (a) an order under [<sup>F35</sup>section 143 of the Powers of Criminal Courts (Sentencing) Act 2000] (deprivation orders);
  - (b) an order under section 27 of the <sup>M3</sup>Misuse of Drugs Act 1971 (forfeiture orders); <sup>F36</sup>
  - (c) an order under section 223 or 436 of the <sup>M4</sup>Criminal Procedure (Scotland) Act 1975 (forfeiture of property) [<sup>F37</sup>or [<sup>F37</sup>Part II of the Proceeds of Crime (Scotland) Act 1995]](suspended forfeiture orders)[<sup>F38</sup>, <sup>F39</sup> . . .]
  - [<sup>F40</sup>(d) an order under section 23 of the Terrorism Act 2000 (forfeiture orders), or]
  - (e) . . . . .
 is in force in respect of the property.
- (3) For the purposes of this Part of this Act the amount that might be realised at the time a confiscation order is made is—
  - (a) the total of the values at that time of all the realisable property held by the defendant, less

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- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this Part of this Act.
- (4) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—
- (a) where any other person holds an interest in the property, is—
- (i) the market value of the first-mentioned person’s beneficial interest in the property, less
- (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.
- (5) References in this Part of this Act to the value at any time (referred to in subsection (6) below as “the material time”) of any property obtained by a person as a result of or in connection with the commission of an offence are references to—
- (a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) below applies, the value there mentioned, whichever is the greater.
- (6) If at the material time he holds—
- (a) the property which he obtained (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,
- the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above, so far as it so represents the property which he obtained, but disregarding any charging order.
- (7) Subject to subsection (12) below, references in this Part of this Act to the value at any time (referred to in subsection (8) below as “the material time”) of a gift caught by this Part of this Act are references to—
- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (8) below applies, the value there mentioned, whichever is the greater.
- (8) Subject to subsection (12) below, if at the material time he holds—
- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;
- the value referred to in subsection (7) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding any charging order.
- (9) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—

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- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
  - (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the <sup>M5</sup>Insolvency Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.
- (10) A gift (including a gift made before the commencement of this Part of this Act) is caught by this Part of this Act if—
- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
  - (b) the court considers it appropriate in all the circumstances to take the gift into account.
- (11) The reference in subsection (10) above to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.
- (12) For the purposes of this Part of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
  - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

#### Textual Amendments

- F35** Words in s. 74(2)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 108**
- F36** Word repealed by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 25(1), **Sch. 8 para. 10(3)**
- F37** Words in s. 74(2)(c) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 69(2)**
- F38** S. 74(2)(d) the word “; or” immediately preceding it inserted by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 25(1), **Sch. 8 para. 10(3)**
- F39** The word “ orrdquo;in s. 74(2)(c) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. I para. 1, **Sch. 2 Pt. I**
- F40** S. 74(2)(d) substituted (19.2.2001) by 2000 c. 11, s. 125(1), **Sch. 15 para. 6(3); S.I. 2001/421, art. 2**

#### Marginal Citations

- M3** 1971 c. 38.  
**M4** 1975 c. 21.  
**M5** 1986 c. 45.

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*[<sup>F41</sup>Review and revision of certain questions and determinations]*

**Textual Amendments**

**F41** S. 74A (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, s. 5; S.I. 1995/2650, art.2

**[<sup>F42</sup>74A Review of cases where proceeds of crime not assessed. E+W]**

- (1) This section applies in any case where—
  - (a) a person has been convicted, in any proceedings before the Crown Court or a magistrates' court, of an offence of a relevant description;
  - (b) the prosecutor did not give written notice for the purposes of subsection (1) (a) of section 71 above; and
  - (c) a determination was made for the purposes of subsection (1)(b) of that section not to proceed under that section or no determination was made for those purposes.
- (2) If the prosecutor has evidence—
  - (a) which, at the date of conviction or, if later, when any determination not to proceed under section 71 above was made, was not available to the prosecutor (and, accordingly, was not considered by the court); but
  - (b) which the prosecutor believes would have led the court to determine, if—
    - (i) the prosecutor had given written notice for the purposes of subsection (1)(a) of that section, and
    - (ii) the evidence had been considered by the court,that the defendant had benefited from relevant criminal conduct,  
the prosecutor may apply to the relevant court for it to consider the evidence.
- (3) If, having considered the evidence, the relevant court is satisfied that it is appropriate to do so, it shall proceed under section 71 above as if it were doing so before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, and section 72A above shall apply accordingly.
- (4) In considering whether it is appropriate to proceed under section 71 above in accordance with subsection (3) above, the court shall have regard to all the circumstances of the case.
- (5) Where, having decided in pursuance of subsection (3) above to proceed under section 71 above, the relevant court determines that the defendant did benefit from relevant criminal conduct—
  - (a) subsection (1B)(b) of that section shall not apply and subsection (6) of that section shall not apply for determining the amount to be recovered in that case;
  - (b) that court shall have a power, instead of a duty, to make a confiscation order; and
  - (c) if the court makes an order in exercise of that power, the sum required to be paid by that order shall be of such amount, not exceeding the amount which (but for paragraph (a) above) would apply by virtue of subsection (6) of that section, as the court thinks fit.

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- (6) In considering the circumstances of any case either under subsection (4) above or for the purposes of subsection (5)(b) and (c) above, the relevant court shall have regard, in particular, to—
- (a) any fine imposed on the defendant in respect of any relevant criminal conduct; and
  - (b) any order made in connection with any such conduct under [F43 section 130 of the Powers of Criminal Courts (Sentencing) Act 2000]] (compensation orders).
- (7) In making any determination under or for the purposes of this section the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the time when he was sentenced or otherwise dealt with in the case in question.
- (8) Where an application under this section contains such a declaration as is mentioned in paragraph (b) of subsection (1) of section 72AA above, that section shall apply (subject to subsection (9) below) in the case of any determination on the application as if it were a determination in a case in which the requirements of paragraphs (a) and (b) of that subsection had been satisfied.
- (9) For the purposes of any determination to which section 72AA above applies by virtue of subsection (8) above, none of the assumptions specified in subsection (4) of that section shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.
- (10) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.
- (11) Sections 73 and 73A above shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above, but as if the reference in section 73(1A) to a declaration made for the purposes of subsection (1)(b) of section 72AA above were a reference to a declaration for the purposes of subsection (8) above.
- (12) In this section—
- “the date of conviction” means—
- (a) in a case not falling within paragraph (b) below, the date on which the defendant was convicted of the offence in question, or
  - (b) where he was convicted of that offence and one or more other offences in the same proceedings and those convictions were not all on the same date, the date of the latest of those convictions;
- and
- “the relevant court” means—
- (a) where the defendant was convicted in proceedings before the Crown Court, that Court; and
  - (b) where he was convicted in proceedings before a magistrates’ court, any magistrates’ court for the same area.

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#### Textual Amendments

- F42** S. 74A (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, s. 5; S.I. 1995/2650, art. 2
- F43** Words in s. 74A(6)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 109

#### [74B] <sup>F44</sup>Revision of assessment of proceeds of crime. **E+W**

- (1) This section applies where in any case there has been a determination under subsection (1A) of section 71 above (“the original determination”) that the defendant in that case had not benefited from any relevant criminal conduct.
- (2) If the prosecutor has evidence—
  - (a) which was not considered by the court which made the original determination, but
  - (b) which the prosecutor believes would have led that court (if it had been considered) to determine that the defendant had benefited from relevant criminal conduct,the prosecutor may apply to the relevant court for it to consider that evidence.
- (3) If, having considered the evidence, the relevant court is satisfied that (if that evidence had been available to it) it would have determined that the defendant had benefited from relevant criminal conduct, that court—
  - (a) shall proceed, as if it were proceeding under section 71 above before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct—
    - (i) to make a fresh determination of whether the defendant has benefited from any relevant criminal conduct; and
    - (ii) then to make such a determination as is mentioned in subsection (1B) (a) of that section;
  - and
  - (b) subject to subsection (4) below, shall have a power, after making those determinations, to make an order requiring the payment of such sum as it thinks fit;and an order under paragraph (b) above shall be deemed for all purposes to be a confiscation order.
- (4) The court shall not, in exercise of the power conferred by paragraph (b) of subsection (3) above, make any order for the payment of a sum which is more than the amount determined in pursuance of paragraph (a)(ii) of that subsection.
- (5) In making any determination under or for the purposes of subsection (3) above the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.
- (6) Where, in a case in which section 72AA above does not otherwise apply, an application under this section contains such a declaration as is mentioned in paragraph (b) of subsection (1) of that section, that section shall apply (subject to subsection (7) below) in the case of any determination on the application as if it were a determination in a

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case in which the requirements of paragraphs (a) and (b) of that subsection had been satisfied.

- (7) For the purposes of any determination under or for the purposes of subsection (3) above to which section 72AA above applies, none of the assumptions specified in subsection (4) of that section shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.
- (8) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.
- (9) Section 72A above shall apply where the court is acting under this section as it applies where the court is acting under section 71 above.
- (10) Sections 73 and 73A above shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above but—
- (a) as if the reference in section 73(1A) to a declaration made for the purposes of subsection (1)(b) of section 72AA above included a reference to a declaration for the purposes of subsection (6) above; and
  - (b) as if any reference in section 73(6) to the time the confiscation order is made were a reference to the time the order is made on that application.
- (11) In this section—
- “the date of conviction” has the same meaning as in section 74A above; and
  - “the relevant court” means—
- (a) where the conviction by reference to which the original determination was made was in proceedings before the Crown Court, that Court; and
  - (b) where that conviction was in proceedings before a magistrates’ court, any magistrates’ court for the same area.]

#### Textual Amendments

**F44** S. 74B inserted (1.11.1995) by 1995 c. 11, s.6; S.I. 1995/2650, art.2

#### [74C <sup>F45</sup>Revision of assessment of amount to be recovered. **E+W**

- (1) This section applies where, in the case of a person convicted of any offence, there has been a determination under this Part of this Act (“the current determination”) of any sum required to be paid in his case under any confiscation order.
- (2) Where the prosecutor is of the opinion that the value of any benefit to the defendant from any relevant criminal conduct was greater than the value at which that benefit was assessed by the court on the current determination, the prosecutor may apply to the relevant court for the evidence on which the prosecutor has formed his opinion to be considered by the court.
- (3) If, having considered the evidence, the relevant court is satisfied that the value of the benefit from any relevant criminal conduct is greater than the value so assessed by the court (whether because its real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the relevant court—



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- (a) subject to subsection (4) below, shall make a fresh determination, as if it were proceeding under section 71 above before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, of the following amounts, that is to say—
    - (i) the amount by which the defendant has benefited from such conduct; and
    - (ii) the amount appearing to be the amount that might be realised at the time of the fresh determination;and
  - (b) subject to subsection (5) below, shall have a power to increase, to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of that section and to vary accordingly any confiscation order made by reference to the current determination.
- (4) Where—
- (a) the court is under a duty to make a fresh determination for the purposes of subsection (3)(a) above in any case, and
  - (b) that case is a case to which section 72AA above applies,
- the court shall not have power, in determining any amounts for those purposes, to make any of the assumptions specified in subsection (4) of that section in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.
- (5) The court shall not, in exercise of the power conferred by paragraph (b) of subsection (3) above, vary any order so as to make it an order requiring the payment of any sum which is more than the lesser of the two amounts determined in pursuance of paragraph (a) of that subsection.
- (6) In making any determination under or for the purposes of subsection (3) above the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.
- (7) Where the Crown Court varies a confiscation order under subsection (3) above, it shall substitute for the term of imprisonment or of detention fixed under subsection (2) of [F46]section 139 of the Powers of Criminal Courts (Sentencing) Act 2000] in respect of the amount to be recovered under the order a longer term determined in accordance with that section (as it has effect by virtue of section 75 below) in respect of any greater amount substituted under subsection (3) above.
- (8) Subsection (7) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under [F47]section 139(4) of that Act of 2000]
- (9) No application shall be entertained by a court under this section if it is made after the end of the period of six years beginning with the date of conviction.
- (10) Section 72A above shall apply where the court is acting under this section as it applies where the court is acting under section 71 above.
- (11) Sections 73 and 73A above shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of subsection (1)(a) of section 71 above, but as if any

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reference in section 73(6) to the time the confiscation order is made were a reference to the time of the determination to be made on that application.

(12) In this section—

“the date of conviction” has the same meaning as in section 74A above; and  
“the relevant court” means—

- (a) where the court which made the current determination is the Crown Court, that Court; and
- (b) where the court which made that determination is a magistrates’ court, any magistrates’ court for the same area.

#### Textual Amendments

**F45** S. 74C inserted (1.11.1995) by 1995 c. 11, s. 7; S.I. 1995/2650, art. 2

**F46** Words in s. 74C(7) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 110(2)

**F47** Words in s. 74C(8) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 110(3)

#### *Enforcement, etc. of confiscation orders*

### 75 Application of procedure for enforcing fines. **E+W**

- (1) Where the Crown Court orders the defendant to pay an amount under this Part of this Act, [<sup>F48</sup>sections 139(1) to (4) and 140(1) to (3) of the Powers of Criminal Courts (Sentencing) Act 2000] (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if that amount were a fine imposed on him by the Crown Court.
- (2) Where a magistrates’ court orders the defendant to pay an amount under this Part of this Act, that amount shall be treated as a fine for the purposes of [<sup>F49</sup>section 78(4) of that Act of 2000] (general limit on the power of a magistrates’ court to impose imprisonment not to apply in the case of imprisonment in default).
- (3) Where—
  - (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Part of this Act in respect of an offence; and
  - (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence;
 the term of imprisonment or of detention under [<sup>F50</sup>section 108 of that Act of 2000] (detention of persons aged 17 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.
- (4) The reference in subsection (3) above to the term of custody which the defendant is liable to serve in respect of the offence 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; and for the purposes of this subsection—
  - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
  - (b) there shall be disregarded—
    - (i) any sentence suspended under [<sup>F51</sup>section 118(1) of that Act of 2000] which has not taken effect at the time the warrant is issued;

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- (ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the <sup>M6</sup>Criminal Law Act 1977, any part of the sentence which the defendant has not at that time been required to serve in prison; and
  - (iii) any term of imprisonment or detention fixed under section <sup>F52</sup>section 139(2) of that Act of 2000] for which a warrant of commitment has not been issued at that time.
- (5) In the application of Part III of the <sup>M7</sup>Magistrates' Courts Act 1980 to amounts payable under confiscation orders—
- (a) 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); and
  - (b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.

<sup>F53</sup>(5A) Where 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.]

- (6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1) above to the Crown Court shall be construed accordingly.

#### Textual Amendments

- F48** Words in s. 75(1) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 111(2)**
- F49** Words in s. 75(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 111(3)**
- F50** Words in s. 75(3) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 111(4)**
- F51** Words in s. 75(4)(b)(i) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 111(5)(a)**
- F52** Words in s. 75(b)(ii) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 111(5)(b)**
- F53** S. 75(5A) inserted (1.11.1995) by 1995 c. 11, s. 8(1), (with s. 16(6)); S.I. 1995/2650, **art. 2**

#### Marginal Citations

- M6** 1977 c. 45.
- M7** 1980 c. 43.

#### [75A <sup>F54</sup>Interest on sums unpaid under confiscation orders. **E+W**

- (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under <sup>F55</sup>section 139(1) of the Powers of Criminal Courts (Sentencing) Act 2000] or for the <sup>M8</sup>purposes of section 75(1) or (2) of the <sup>M9</sup>Magistrates' Courts Act 1980)—
- (a) that person shall be liable to pay interest on that sum for the period for which it remains unpaid, and
  - (b) the amount of the interest shall, for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

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- (2) The Crown Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under [F56 section 139(2) of that Act of 2000] (as it has effect by virtue of section 75 above) if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under [F57 section 139(4) of that Act of 2000]
- (3) The rate of interest under subsection (1) above shall be that for the time being applying to a civil judgment debt under section 17 of the M10 Judgments Act 1838.

#### Textual Amendments

- F54** S. 75A inserted (1.11.1995) by 1995 c. 11, s. 9 (with s. 16(6)); S.I. 1995/2650, art. 2
- F55** Words in s. 75A(1) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 112(2)
- F56** Words in s. 75A(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 112(3)(a)
- F57** Words in s. 75A(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 112(3)(b)

#### Marginal Citations

- M8** 1973 c. 62.
- M9** 1980 c. 43.
- M10** 1838 c.110.

## 76 Cases in which restraint orders and charging orders may be made. **E+W**

[F58(1) The powers conferred on the High Court by sections 77(1) and 78(1) below are exercisable where—

- (a) proceedings have been instituted in England and Wales against any person for an offence to which this Part of this Act applies;
- (b) the proceedings have not been concluded or (if they have) an application that has not been concluded has been made under section 74A, 74B or 74C above in respect of the defendant in those proceedings; and
- (c) the court is satisfied that there is reasonable cause to believe—
  - (i) in a case where there is an application under section 74C above, that the court will be satisfied as mentioned in subsection (3) of that section;
  - (ii) in any other case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence of a relevant description from which he may be, or has been, shown to have benefited.

(1A) The court shall not exercise those powers by virtue of subsection (1) above if it is satisfied—

- (a) that there has been undue delay in continuing the proceedings or application in question; or
- (b) that the person who appears to the court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application does not intend to proceed with it.

(2) The powers conferred on the High Court by sections 77(1) and 78(1) below are also exercisable where—

- (a) the court is satisfied that a person is to be charged (whether by the laying of an information or otherwise) with an offence to which this Part of this Act

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- applies or that an application of a kind mentioned in subsection (1)(b) above is to be made; and
- (b) the court is satisfied that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application.]
- (3) For the purposes of sections 77, 78 and 92 below at any time when those powers are exercisable before proceedings have been instituted—
- (a) references in this Part of this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a) above;
- (b) references in this Part of this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and
- (c) references in this Part of this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) above for an offence to which this Part of this Act applies.
- (4) Where the court has made an order under section 77(1) or 78(1) below by virtue of subsection (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) [F59, or (as the case may be) no application is made,] within such time as the court considers reasonable [F59 or if the court is satisfied that the case has become a case in which, in pursuance of subsection (1A) above, it would be unable to exercise the powers conferred by virtue of subsection (1) above.]

#### Textual Amendments

**F58** S. 76(1)(1A)(2) substituted for s. 76(1)(2) (1.11.1995) by 1995 c. 11, s. 8(2); S.I. 1995/2650, art.2

**F59** Words in s. 76(4) inserted (1.11.1995) by 1995 c. 11, s. 8(3)(a)(b) (with s. 16(6)); S.I. 1995/2650, art.2

#### 77 Restraint orders. **E+W**

- (1) The High Court may by order (referred to in this Part of this Act as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.
- (3) A restraint order may apply—
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.
- (5) A restraint order—
- (a) may be made only on an application by the prosecutor;
- (b) may be made on an ex parte application to a judge in chambers; and

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- (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order—
- (a) may be discharged or varied in relation to any property; and
  - <sup>F60</sup>(b) shall be discharged on the conclusion of the proceedings or application in question.]
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—
- (a) to take possession of any realisable property, and
  - (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from Great Britain.
- (10) Where <sup>F61</sup>a restraint order has been made], a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property. <sup>F62</sup>In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of <sup>F63</sup>the Proceeds of Crime (Scotland) Act 1995] and, in relation to such an order, "realisable property" has the same meaning as in that Part]
- (11) Property seized under subsection (10) above shall be dealt with in accordance with the <sup>F64</sup>directions of the court which made the order].
- (12) The <sup>M11</sup>Land Charges Act 1972 and the <sup>M12</sup>Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) The prosecutor shall 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 restraint order or an application for such an order relates.

#### Extent Information

**E1** [S. 77](#): for extent of s. 77 see [s. 172](#)

**E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

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#### Textual Amendments

- F60** S. 77(6)(b) substituted (1.11.1995) by 1995 c. 11, s. 8(4); S.I. 1995/2650, art. 2
- F61** Words in s. 77(10) substituted (31.3.1996) by 1995 c. 20, s. 117(1), Sch. 6 Pt. II para. 186(3)(a); S.I. 1996/517, art. 3 (which substitution fell (S.) (1.4.1996) by reason of the repeal (S.) (1.4.1996) of s. 117(1), Sch. 6 Pt. II para. 186(3)(a) by 1995 c. 40, s. 6, Sch. 5)
- F62** Words in s. 77(10) added (31.3.1996) by 1995 c. 20, s. 117(1), Sch. 6 Pt. II para. 186(3)(a); S.I. 1996/517, art. 3 (which addition fell (S.) (1.4.1996) by reason of the repeal (S.) (1.4.1996) of s. 117(1), Sch. 6 Pt. II para. 186(3)(a) by 1995 c. 40, s. 6, Sch. 5)
- F63** Words in s. 77(10) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 69(3)
- F64** Words in s. 77(11) substituted (31.3.1996) by 1995 c. 20, s. 117(1), Sch. 6 Pt. II para. 186(3)(b); S.I. 1996/517, art. 3 (which substitution fell (S.) (1.4.1996) by reason of the repeal (S.) (1.4.1996) of s. 117(1), Sch. 6 Pt. II para. 186(3)(b) by 1995 c. 40, s. 6, Sch. 5)

#### Marginal Citations

- M11** 1972 c. 61.  
**M12** 1925 c. 21.

## 77 Restraint orders. **S**

- (1) The High Court may by order (referred to in this Part of this Act as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.
- (3) A restraint order may apply—
  - (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
  - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.
- (5) A restraint order—
  - (a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers; and
  - (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order—
  - (a) may be discharged or varied in relation to any property; and
  - [<sup>F107</sup>(b) shall be discharged on the conclusion of the proceedings or application in question.]
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—
  - (a) to take possession of any realisable property, and



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- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed, subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from Great Britain.
- (10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property.
- (11) Property seized under subsection (10) above shall be dealt with in accordance with the court's directions.
- (12) The <sup>M40</sup>Land Charges Act 1972 and the <sup>M41</sup>Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) The prosecutor shall 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 restraint order or an application for such an order relates.

#### Extent Information

**E8** [S. 77](#): for extent of s. 77 see [s. 172](#)

**E9** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

**F107** [S. 77\(6\)\(b\)](#) substituted (1.11.1995) by [1995 c. 11, s. 8\(4\)](#); [S.I. 1995/2650, art. 2](#)

#### Modifications etc. (not altering text)

**C7** [S. 77](#) extended (S.) (1.4.1996) by [1995 c. 43, ss. 35\(2\)\(4\), 44, 50, Sch. 2 para. 2\(2\)](#)

#### Marginal Citations

**M40** [1972 c. 61.](#)

**M41** [1925 c. 21.](#)

## 78 Charging orders in respect of land, securities, etc. **E+W**

- (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and



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- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Part of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- (a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers;
  - (c) shall provide for notice to be given to persons affected by the order; and
  - (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act—
    - (i) in any asset of a kind mentioned in subsection (5) below; or
    - (ii) under any trust; or
  - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or
  - (b) securities of any of the following kinds—
    - (i) government stock;
    - (ii) stock of any body (other than a building society) incorporated within England and Wales;
    - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- [<sup>F65</sup>(7) In relation to a charging order, the court—
- (a) may at any time make an order discharging or varying it; and
  - (b) shall make an order discharging it on the occurrence of whichever of the following first occurs, that is to say—
    - (i) the conclusion of the proceedings or application in question; and
    - (ii) the payment into court of the amount payment of which is secured by the charge.]

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- (8) An application for the discharge or variation of a charging order may be made by any person affected by it.

#### Textual Amendments

**F65** S. 78(7) substituted for s. 78(7) (1.11.1995) by 1995 c. 11, s. 8(5); S.I. 1995/2650, art.2

### 79 Charging orders: supplementary provisions. **E+W**

- (1) The <sup>M13</sup>Land Charges Act 1972 and the <sup>M14</sup>Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgments.
- (2) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.
- (3) Subject to any provision made under section 80 below or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.
- (4) Where a charging order has been protected by an entry registered under the <sup>M15</sup>Land Charges Act 1972 or the <sup>M16</sup>Land Registration Act 1925, an order under section 78(7) above discharging the charging order may direct that the entry be cancelled.
- (5) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament amend section 78 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- (6) In this section and section 78 above, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the <sup>M17</sup>Charging Orders Act 1979.

#### Marginal Citations

**M13** 1972 c. 61.  
**M14** 1925 c. 21.  
**M15** 1972 c. 61.  
**M16** 1925 c. 21.  
**M17** 1979 c. 53.

### 80 Realisation of property. **E+W+S**

- (1) Where—
  - <sup>F66</sup>(a) a confiscation order is made in proceedings instituted for an offence to which this Part of this Act applies or an order is made or varied on an application under section 74A, 74B or 74C above;

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- (b) the proceedings in question have not, or the application in question has not, been concluded; and
- (c) the order or variation is not subject to appeal;]
- the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.
- (2) The court may appoint a receiver in respect of realisable property.
- (3) The court may empower a receiver appointed under subsection (2) above, under section 77 above or in pursuance of a charging order—
- (a) to enforce any charge imposed under section 78 above on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 78 above, to take possession of the property subject to such conditions or exceptions as may be specified by the court.
- (4) The court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.
- (6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 78 above.
- (8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

#### Extent Information

**E3** S. 80: for extent of s. 80 see s. 172 and 1995 c. 20, s. 101 (which s. 101 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6 Sch. 5)

#### Textual Amendments

**F66** S. 80(1)(a)-(c) substituted (1.11.1995) by 1995 c. 11, s. 8(6); S.I. 1995/2650, art.2

#### Modifications etc. (not altering text)

**C3** S. 80 extended (S.): (31.3.1996, see S.I. 1996/517, art.3)) by 1995 c. 20, s. 101(2)(4) (which s. 101 was repealed (S.) (1.4.1996) by 1995 c. 40, s. 6, Sch. 5); and (1.4.1996) by 1995 c. 43, ss. 35(2)(4), 44, 50, Sch. 2 para. 2(2)

## 81 Application of proceeds of realisation and other sums. **E+W**

- (1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under this Part of this Act or in pursuance of a charging order, that is—

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- (a) the proceeds of the enforcement of any charge imposed under section 78 above;
  - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 77 or 80 above; and
  - (c) any other sums, being property held by the defendant;
- shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 87(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—
    - (a) among such of those who held property which has been realised under this Part of this Act, and
    - (b) in such proportions,
 as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.
  - (3) The receipt of any sum by a [F67]justices' chief executive] on account of an amount payable under a confiscation order shall reduce the amount so payable, but the [justices' chief executive] shall apply the money received for the purposes specified in this section and in the order so specified.
  - (4) The [F67]justices' chief executive] shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 87(2) below but not already paid under subsection (1) above.
  - (5) If the money was paid to the [F67]justices' chief executive] by a receiver appointed under this Part of this Act or in pursuance of a charging order, the [F67]justices' chief executive] shall next pay the receiver's remuneration and expenses.
  - (6) After making—
    - (a) any payment required by subsection (4) above; and
    - (b) in a case to which subsection (5) above applies, any payment required by that subsection,
 the [F67]justices' chief executive] shall reimburse any amount paid under section 88(2) below.
  - (7) The [F67]justices' chief executive] shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 72(7) above.
  - (8) Any balance in the hands of the [F67]justices' chief executive] after he has made all payments required by the foregoing provisions of this section shall be treated for the purposes of [F68]section 60 of the Justices of the Peace Act 1997] (application of fines, etc.) as if it were a fine imposed by a magistrates' court.
  - (9) Where under subsection (3) above a sum falls to be applied in payment both of compensation and of other outgoings—
    - (a) the person entitled to the compensation shall be liable to pay to the [F69]Lord Chancellor] such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under section 72(7) above bears to the total amount payable under the confiscation order;

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- (b) the [<sup>F67</sup>justices' chief executive] shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a) above;
- (c) notwithstanding the deduction under paragraph (b) above, the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated for the purposes of [<sup>F68</sup>section 60 of the Justices of the Peace Act 1997] as if it were a fine imposed by a magistrates' court.

<sup>F70</sup>(10) .....

#### Extent Information

**E4** [S. 81](#): for extent of s. 81 see [s. 172](#)

#### Textual Amendments

**F67** Words in [s. 81\(3\)-\(9\)](#) substituted (1.4.2001) by [1999 c. 22, s. 90, Sch. 13 para. 139](#) (with [Sch. 14 para. 7\(2\)](#)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#)

**F68** Words in [s. 81\(8\)\(9\)\(d\)](#) substituted (19.6.1997) by [1997 c. 25, ss. 73\(2\), 74\(1\), Sch. 5 para. 23\(a\)](#)

**F69** Words in [s. 81\(9\)](#) substituted (1.4.1992) by [S.I. 1992/709, art. 2\(3\), Sch. 1](#).

**F70** [S. 81\(10\)](#) repealed (1.4.2001) by [1999 c. 22, s. 106, Sch. 15 Pt. V\(7\)](#); [S.I. 2001/916, art. 2\(c\)\(ii\)](#)

#### Modifications etc. (not altering text)

**C4** [S. 81\(8\)\(9\)](#): functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by [S.I. 1992/709, art. 2\(1\), Sch. 1](#).

## 82 Exercise of powers by High Court or receiver. **E+W+S**

- (1) This section applies to the powers conferred on the High Court by sections 77 to 81 above or on the Court of Session by sections 90 to 92 below, or on a receiver appointed under this Part of this Act or in pursuance of a charging order.
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Crown.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

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### 83 Variation of confiscation orders. **E+W**

- (1) If, on an application [<sup>F71</sup>made in respect of a confiscation order—
- (a) by the defendant, or
  - (b) by a receiver appointed under section 77 or 80 above, or in pursuance of a charging order,
- the] High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.
- (2) For the purposes of subsection (1) above—
- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and
  - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part of this Act from any risk of realisation under this Part of this Act.
- (3) Where a certificate has been issued under subsection (1) above, the [<sup>F72</sup>person who applied for it] may apply—
- (a) where the confiscation order was made by the Crown Court, to that court; and
  - (b) where the confiscation order was made by a magistrates' court, to a magistrates' court for the same area,
- for the amount to be recovered under the order to be reduced.
- (4) The Crown Court shall, on an application under subsection (3) above—
- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
  - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of [<sup>F73</sup>section 139 of the Powers of Criminal Courts (Sentencing) Act 2000] in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.
- (5) A magistrates' court shall, on an application under subsection (3) above, substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.
- [<sup>F74</sup>(6) Rules of court may make provision—
- (a) for the giving of notice of any application under this section; and
  - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.]

#### Textual Amendments

**F71** S. 83(1)(a)(b) and preceding words substituted (1.11.1995) by 1995 c. 11, s. 10(2); S.I. 1995/2650, art. 2

**F72** Words in s. 83(3) substituted (1.11.1995) by 1995 c. 11, s. 10(3); S.I. 1995/2650, art. 2

*Status: Point in time view as at 24/02/2003.*

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- F73** Words in s. 83(4)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 113**  
**F74** s. 83(6) inserted (1.11.1995) by 1995 c. 11, s. 10(4); S.I. 1995/2650, art. 2

## 84 Bankruptcy of defendant etc. **E+W**

- (1) Where a person who holds realisable property is adjudged bankrupt—
  - (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,is excluded from the bankrupt's estate for the purposes of Part IX of the <sup>M18</sup>Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
  - (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Act;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 [<sup>F75</sup>308 or 308A] of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement) [<sup>F76</sup>and certain tenancies]; and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
  - (a) made before the order adjudging the person bankrupt; or
  - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part of this Act—
  - <sup>F77</sup>(a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when—
    - (i) proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded;
    - (ii) an application has been made under section 74A, 74B or 74C above in respect of the defendant in any such proceedings and has not been concluded; or
    - (iii) property of the person to whom the gift was made is subject to a restraint order or charging order; and



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- (b) any order made under section 339 or 423 of that Act after the conclusion of the proceedings or application shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.]
- (7) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the <sup>M19</sup>Insolvency Act 1986 came into force), this section shall have effect with the following modifications—
- (a) for references to the bankrupt’s estate for the purposes of Part IX of that Act there shall be substituted references to the property of the bankrupt for the purposes of the <sup>M20</sup>Bankruptcy Act 1914;
  - (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
  - (c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914; and
  - (d) subsection (2)(b) shall be omitted.

#### Extent Information

- E5** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

#### Textual Amendments

- F75** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140, Sch. 17 para. 83](#)
- F76** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140, Sch. 17 para. 83](#)
- F77** [S. 84\(6\)\(a\)\(i\)\(ii\)\(iii\)\(b\)](#) substituted (E.W.) (1.11.1995) for [s. 84\(a\)\(b\)](#) by [1995 c. 11, s. 8\(7\); S.I. 1995/2650, art.2](#)

#### Marginal Citations

- M18** [1986 c. 45.](#)
- M19** [1986 c. 45.](#)
- M20** [1914 c. 59.](#)

## 84 Bankruptcy of defendant etc. S

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the bankrupt’s estate for the purposes of Part IX of the <sup>M42</sup>Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt’s estate for the purposes of that Part of that Act;



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- (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 [<sup>F108</sup>308 or 308A] of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement) [<sup>F109</sup> and certain tenancies]; and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or
  - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part of this Act—
- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
  - (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.
- (7) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the <sup>M43</sup>Insolvency Act 1986 came into force), this section shall have effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there shall be substituted references to the property of the bankrupt for the purposes of the <sup>M44</sup>Bankruptcy Act 1914;
  - (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
  - (c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914; and
  - (d) subsection (2)(b) shall be omitted.

#### **Extent Information**

**E10** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

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#### Textual Amendments

**F108** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 83](#)

**F109** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 83](#)

#### Marginal Citations

**M42** [1986 c. 45.](#)

**M43** [1986 c. 45.](#)

**M44** [1914 c. 59.](#)

### 85 Sequestration in Scotland of defendant etc. **E+W+S**

- (1) Where the estate of a person who holds realisable property is sequestrated—
  - (a) property for the time being subject to a restraint order made before the award of sequestration, and
  - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
 is excluded from the debtor’s estate for the purposes of the <sup>M21</sup>Bankruptcy (Scotland) Act 1985.
- (2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
  - (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of that Act, and
  - (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, [<sup>F78</sup>under subsection (10) of section 31 of that Act or subsection (6) of the said section 32 of that Act] , vests in the permanent trustee
 and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
  - (a) made before the award of sequestration; or
  - (b) on property which was subject to a restraint order when the award of sequestration was made.
- (5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor’s estate is subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Part of this Act—
  - (a) no decree shall be granted under section 34 or 36 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act

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applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and

- (b) any decree made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

- (7) In any case in which, notwithstanding the coming into force of the <sup>M22</sup>Bankruptcy (Scotland) Act 1985, the <sup>M23</sup>Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—

- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,  
(b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act to be paid to the trustee of any estate which, under subsection (1) of that section, vests in the trustee,”;

and subsection (3) above shall have effect as if for the reference therein to the Act of 1985 there were substituted a reference to the Act of 1913.

#### Textual Amendments

**F78** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 83](#)

#### Marginal Citations

**M21** [1985 c. 66.](#)

**M22** [1985 c. 66.](#)

**M23** [1913 c. 20.](#)

## 86 Winding up of company holding realisable property. **E+W+S**

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property for the time being subject to a restraint order made before the relevant time, and
- (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 77 to 80 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

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- (3) Nothing in the <sup>M24</sup>Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (5) For the purposes of the application of Parts IV and V of the <sup>M25</sup>Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order.
- (6) In this section—  
     “company” means any company which may be wound up under the Insolvency Act 1986; and  
     “the relevant time” means—  
     (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;  
     (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and  
     (c) in any other case where such an order has been made, the time of the making of the order.
- (7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the <sup>M26</sup>Companies Act 1985.

#### Marginal Citations

**M24** 1986 c. 45.

**M25** 1986 c. 45.

**M26** 1985 c. 6.

## 87 Insolvency officers dealing with property subject to restraint order. **E+W+S**

- (1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—  
     (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and  
     (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported

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to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
  - (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,
- shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 81(1) or (4) above.
- (3) In this Part of this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in sequestration and subsection (5) of that section<sup>F79</sup> . . . shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

#### Textual Amendments

**F79** Words in s. 87(3) repealed (1.4.1993 subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), Sch.2; S.I. 1993/438, art.3

## 88 Receivers: supplementary provisions. **E+W+S**

- (1) Where a receiver appointed under this Part of this Act or in pursuance of a charging order takes any action—
- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
  - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 81(5) above, be paid by the prosecutor or, in a case where proceedings for an offence to which this Part of this Act applies are not instituted, by the person on whose application the receiver was appointed.

## 89 Compensation. **E+W**

- (1) If proceedings are instituted against a person for an offence or offences to which this Part of this Act applies and either—
- (a) the proceedings do not result in his conviction for any such offence, or
  - (b) where he is convicted of one or more such offences—
    - (i) the conviction or convictions concerned are quashed, or

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- (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—
- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in subsection (5) below; and
  - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of
    - <sup>F80</sup>(i) an order under this Part of this Act; or
    - <sup>F81</sup>(ii) an order of the Court of Session under section 32, 33, 34 or 35 of the Proceeds of Crime (Scotland) Act 1995.]
- (3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.
- (4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this section shall be paid—
- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met;
  - (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions;
  - (c) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
  - (d) where the person in default was an officer within the meaning of the <sup>M27</sup>Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and
  - (e) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.

#### Textual Amendments

**F80** S. 89(2)(b)(i)(ii) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt.II para. 186(4)**; S.I. 1996/517, **art. 3**

**F81** S. 89(2)(b)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 69(4)**

#### Marginal Citations

**M27** 1979 c. 2.

### Enforcement in Scotland

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**Textual Amendments**

**F82** S. 90 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 90 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

<sup>F83</sup>**91** ..... **S**

**Textual Amendments**

**F83** S. 91 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 91 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

<sup>F84</sup>**92** ..... **S**

**Textual Amendments**

**F84** S. 92 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 92 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

<sup>F85</sup>**93** ..... **S**

**Textual Amendments**

**F85** S. 93 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), **Sch.7 Pt. II**; S.I. 1996/517, **art.3**; s. 93 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), **Sch. 12**

*[<sup>F86</sup>Money laundering and other offences]*

**Textual Amendments**

**F86** S. 93A and cross heading inserted (E.W.S.) (15.2.1994) by 1993 c. 36, **s. 29(1)**; S.I. 1994/71, art. 2, **Sch.**

**93A** **Assisting another to retain the benefit of criminal conduct.** **E+W+S**

<sup>F87</sup> .....

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#### Textual Amendments

**F87** S. 93A repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

### 93B Acquisition, possession or use of proceeds of criminal conduct. **E+W+S**

**F88** .....

#### Textual Amendments

**F88** S. 93B repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

### 93C Concealing or transferring proceeds of criminal conduct. **E+W+S**

**F89** .....

#### Textual Amendments

**F89** S. 93C repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

### 93D Tipping-off. **E+W+S**

**F90** .....

#### Textual Amendments

**F90** S. 93D repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

### 93E Application of sections 93A to 93D to Scotland. **S**

**F91** .....

#### Textual Amendments

**F91** S. 93E repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))



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**93F Prosecution by order of the Commissioners of Customs and Excise. E+W+S**

F92  
.....

**Textual Amendments**

**F92** S. 93F repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

**93G Extension of certain offences to Crown servants and exemptions for regulators etc. E+W+S**

F93  
.....

**Textual Amendments**

**F93** S. 93G repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

*[<sup>F94</sup>Investigations into the proceeds of criminal conduct]*

**Textual Amendments**

**F94** S. 93H (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, **s.11**; S.I. 1995/2650, **art.2**

**93H Order to make material available. E+W**

F95  
.....

**Textual Amendments**

**F95** S. 93H repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

**93I Authority for search. E+W**

F96  
.....

**Textual Amendments**

**F96** S. 93I repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

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### 93J Disclosure of information held by government departments. **E+W**

F97

#### Textual Amendments

**F97** S. 93J repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

#### Enforcement of external orders

### 94 Enforcement of Northern Ireland orders. **E+W+S**

F98

#### Textual Amendments

**F98** S. 94 repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12; S.I. 2003/120, art. 2(1), Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

### F99 95 ..... **S+N.I.**

#### Textual Amendments

**F99** S. 95 repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. II para. 186(5), Sch. 7 Pt. II; S.I. 1996/517, art. 3; s. 95 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12

### 96 Enforcement of other external orders. **E+W**

(1) Her Majesty may by Order in Council—

- (a) direct in relation to a country or territory outside the United Kingdom designated by the Order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
  - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
  - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 97 below; and
  - (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and

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- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this Part of this Act—
- “external confiscation order” means an order made by a court in a designated country for the purpose—
- (a) of recovering—
- (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Part of this Act applies; or
- (ii) the value of property so obtained; or
- (b) of depriving a person of a pecuniary advantage so obtained; and
- “modifications” includes additions, alterations and omissions.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.
- [<sup>F100</sup>(5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F100** S. 96(5) substituted (1.12.1993) by 1993 c. 36, s. 21(3)(g); S.I. 1993/2734, art. 2, Sch.

#### Modifications etc. (not altering text)

**C5** S. 96 modified (29.12.1991) by S.I. 1991/2873, arts. 4(1), 5(1)

## 97 Registration of external confiscation orders. **E+W**

- (1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—
- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.
- (3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due

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under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

**Modifications etc. (not altering text)**

C6 S. 97 modified (29.12.1991) by S.I. 1991/2873, arts. 4(1), 5(1)

*Miscellaneous and supplemental*

F10198 . **E+W**

**Textual Amendments**

F101 S. 98 repealed (15.2.1994) by 1993 c. 36, s. 79(13)(14), Sch. 5 Pt. I para. 14(1), Sch. 6 Pt. I, S.I. 1994/71, art. 2, Sch. Appedix.; s. 98 expressed to be repealed (*prosp.*) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(2)(a), Sch. 12

99 **Authorisation of delay in notifying arrest etc.** **E+W**

- (1) The <sup>M28</sup>Police and Criminal Evidence Act 1984 shall be amended as follows.
- (2) In section 56(5A) (which authorises delay in notifying arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies (offences in respect of which confiscation orders under that Part may be made)”; and
  - (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
    - “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by telling the named person of the arrest; and
    - (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest.”
- (3) In section 58(8A) (which authorises delay in access to legal advice on arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies”; and
  - (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—

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- “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above; and
- (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by subsection (1) above.”
- (4) Without prejudice to section 20(2) of the <sup>M29</sup>Interpretation Act 1978, the <sup>M30</sup>Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 shall apply to sections 56 and 58 of the <sup>M31</sup>Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

#### Marginal Citations

- M28** 1984 c. 60.  
**M29** 1978 c. 30.  
**M30** S.I. 1985/1800.  
**M31** 1984 c. 60.

## 100 Power to inspect Land Register, etc. **E+W**

- (1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (2) or (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the <sup>M32</sup>Land Registration Act 1925 which relates to the person or property so specified.
- (2) An application may be made by—
- any police officer not below the rank of superintendent;
  - any Crown Prosecutor; or
  - any member of the Serious Fraud Office designated for the purposes of section 1 of the <sup>M33</sup>Criminal Justice Act 1987; or
  - any person commissioned by the Commissioners of Customs and Excise not below the rank of senior executive officer; or
  - any person authorised in that behalf by the Commissioners of Inland Revenue not below the rank of senior executive officer;
- and on an application under this subsection an appropriate certificate shall be given to the registrar.
- (3) In subsection (2) above “appropriate certificate” means a certificate—
- that a person specified in the certificate has committed or that there are reasonable grounds for suspecting that a person so specified has committed an offence to which this Part of this Act applies; and
  - that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to be of substantial value (whether by itself or

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together with other information) to an investigation into whether the person so specified has benefited from the commission of the offence or in facilitating the recovery of the value of the property obtained by that person from or in connection with the offence.

- (4) An application may be made by a receiver appointed under this Part of this Act and on an application under this subsection there shall be given to the registrar—
- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver; and
  - (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.
- (5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.
- (6) The references to senior executive officers in subsection (2) above include references to equivalent departmental grades.
- (7) This section shall cease to have effect on the day appointed under section 3(2) of the <sup>M34</sup>Land Registration Act 1988 for the coming into force of that Act.

#### Marginal Citations

M32 1925 c. 21.

M33 1987 c. 38.

M34 1988 c. 3.

### 101 Abolition of power to make criminal bankruptcy order. **E+W**

- (1) The power to make a criminal bankruptcy order which section 39 of the <sup>M35</sup>Powers of Criminal Courts Act 1973 confers on the Crown Court is abolished.
- (2) Nothing in subsection (1) above—
- (a) shall affect any criminal bankruptcy order made before this section comes into force; or
  - (b) shall prevent the taking of any step following such an order.

#### Marginal Citations

M35 1973 c. 62.

### 102 Part VI— Interpretation. **E+W**

- (1) In this Part of this Act—
- “constable” includes a person commissioned by the Commissioners of Customs and Excise;
- “interest”, in relation to property, includes right;
- [<sup>F102</sup>“proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;]

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“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

- (2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

<b>Expression</b>	<b>Relevant provision</b>
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
[ <sup>F103</sup> Criminal conduct	Section 93A(7)]
Dealing with property	Section 77(9)
Defendant	Section 71(9)(d)
Gift caught by this Part of this Act	Section 74(10)
Making a gift	Section 74(12)
[ <sup>F104</sup> Offence of a relevant description	Section 71(1E)]
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)
[ <sup>F104</sup> Relevant criminal conduct	Section 71(1D)]
Restraint order	Section 77(1)
Value of gift	Section 74(7) and (8)
Value of property	Section 74(4) to (6)

- (3) This Part of this Act applies to property wherever situated.
- (4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.
- (5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Part of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the <sup>M36</sup>Bankruptcy (Scotland) Act 1985 or liquidator.



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- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the <sup>M37</sup>Magistrates' Courts Act 1980 in respect of that 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 <sup>M38</sup>Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

- [<sup>F105</sup>(12) Proceedings for an offence are concluded—
- (a) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;
  - (b) if he is convicted on one or more counts or charges but the court decides not to make a confiscation order against him, when the court makes that decision;
  - (c) if he is sentenced without the court having considered whether or not to proceed under section 71 above in his case, when he is sentenced; and
  - (d) if a confiscation order is made against him in those proceedings, when the order is satisfied.

- (12A) An application under section 74A, 74B or 74C above is concluded—
- (a) if the court decides not to make or, as the case may be, not to vary any order against the defendant on that application, when it makes that decision;
  - (b) if an order against the defendant is made or varied on that application, when the order is satisfied; and
  - (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made.

(12B) For the purposes of this Part of this Act, a confiscation order is satisfied when no amount is due under it.

(12C) For the purposes only of section 84 above, a confiscation order shall be treated as satisfied when the defendant in respect of whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.]

- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

#### **Extent Information**

**E6** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

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#### Textual Amendments

- F102** Definition in s. 102(1) inserted (15.2.1994) by 1993 c. 36, s. 29(2); S.I. 1994/71, art. 2
- F103** Entry in s. 102(2) Table inserted (15.2.1994) by 1993 c. 36, s. 29(3); S.I. 1994/71, art. 2
- F104** Entries in s. 102(2) inserted (E.W.) (1.11.1995) by 1995 c. 11, s. 15(1), Sch. 1 para.3; S.I. 1995/2650, art.2
- F105** S. 102(12)(12A)-(12C) substituted (E.W.) (1.11.1995) for s. 102(12) by 1995 c. 11, s. 8(8); S.I. 1995/2650, art.2

#### Marginal Citations

- M36** 1985 c. 66.
- M37** 1980 c. 43.
- M38** 1933 c. 36.

## 102 Part VI— Interpretation. **S**

(1) In this Part of this Act—

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“interest”, in relation to property, includes right;

[<sup>F110</sup>“proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;]

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
[ <sup>F111</sup> Criminal conduct	Section 93A(7)]
Dealing with property	Section 77(9)
Defendant	Section 71(9)(d)
Gift caught by this Part of this Act	Section 74(10)
Making a gift	Section 74(12)
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)
Restraint order	Section 77(1)
Value of gift	Section 74(7) and (8)
Value of property	Section 74(4) to (6)

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- (3) This Part of this Act applies to property wherever situated.
- (4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.
- (5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Part of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the <sup>M45</sup>Bankruptcy (Scotland) Act 1985 or liquidator.
- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted—
  - (a) when a justice of the peace issues a summons or warrant under section 1 of the <sup>M46</sup>Magistrates' Courts Act 1980 in respect of that 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 <sup>M47</sup>Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;
 and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (12) Proceedings are concluded—
  - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
  - (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

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#### Extent Information

**E11** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

**F110** Definition in s. 102(1) inserted (15.2.1994) by 1993 c. 36, s. 29(2); S.I. 1994/71, art. 2

**F111** Entry in s. 102(2) Table inserted (15.2.1994) by 1993 c. 36, s. 29(3); S.I. 1994/71, art. 2

#### Marginal Citations

**M45** 1985 c. 66.

**M46** 1980 c. 43.

**M47** 1933 c. 36.

### 103 Amendments of Drug Trafficking Offences Act 1986 and Criminal Justice (Scotland) Act 1987. **E+W+S**

<sup>F106</sup>(1) . . . . .

(2) The amendments of the <sup>M39</sup>Criminal Justice (Scotland) Act 1987 specified in Part II of that Schedule shall also have effect.

#### Extent Information

**E7** For extent of s. 103 see s. 172

#### Textual Amendments

**F106** S. 103(1) repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3

#### Marginal Citations

**M39** 1987 c. 41.

**Status:**

Point in time view as at 24/02/2003.

**Changes to legislation:**

Criminal Justice Act 1988, Part VI is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.