



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART VI

#### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

#### 74 Definition of principal terms used.

- (1) In this Part of this Act, “realisable property” means, subject to subsection (2) below—
- any property held by the defendant; and
  - 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—
- an order under section 43 of the <sup>M1</sup>Powers of Criminal Courts Act 1973 (deprivation orders);
  - an order under section 27 of the <sup>M2</sup>Misuse of Drugs Act 1971 (forfeiture orders); <sup>F1</sup>
  - an order under section 223 or 436 of the <sup>M3</sup>Criminal Procedure (Scotland) Act 1975 (forfeiture of property) [<sup>F2</sup>; or
  - an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders).]
- 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—
- the total of the values at that time of all the realisable property held by the defendant, less
  - 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.

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*Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.*

*Changes to legislation: Criminal Justice Act 1988, Section 74 is up to date with all changes known to be in force on or before 27 July 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. (See end of Document for details)*

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- (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—
- (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

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- (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the <sup>M4</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.

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#### Textual Amendments

- F1** Word repealed by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 25(1), [Sch. 8 para. 10\(3\)](#)
- F2** [S. 74\(2\)\(d\)](#) and 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\(3\)](#)

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#### Marginal Citations

- M1** 1973 c. 62.
- M2** 1971 c. 38.
- M3** 1975 c. 21.
- M4** 1986 c. 45.

**Status:**

Point in time view as at 01/02/1991. This version of this provision has been superseded.

**Changes to legislation:**

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