



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART VI

#### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

*[<sup>F1</sup>Review and revision of certain questions and determinations]*

VALID FROM 01/11/1995

#### **[<sup>F1</sup>74A Review of cases where proceeds of crime not assessed.**

- (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.

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*Status: Point in time view as at 02/02/1991. This version of this provision is not valid for this point in time.*

*Changes to legislation: Criminal Justice Act 1988, Section 74A is up to date with all changes known to be in force on or before 31 August 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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- (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.
- (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 section 35 of the <sup>M1</sup>Powers of Criminal Courts Act 1973 (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

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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

**F1** S. 74A (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, s.5; S.I. 1995/2650, art.2

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#### Marginal Citations

**M1** 1973 c. 62.

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