



Criminal Justice Act 1988

1988 CHAPTER 33

PART VI

CONFISCATION OF THE PROCEEDS OF AN OFFENCE

[^{F1}Review and revision of certain questions and determinations]

VALID FROM 01/11/1995

[74B ^{F1}Revision of assessment of proceeds of crime.

- (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

Status: Point in time view as at 02/02/1991.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 74B is up to date with all changes known to be in force on or before 06 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)

- (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 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

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(b) where that conviction was in proceedings before a magistrates' court, any magistrates' court for the same area.]

Textual Amendments

F1 S. 74B inserted (1.11.1995) by 1995 c. 11, s.6; S.I. 1995/2650, art.2

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