



Proceeds of Crime Act 1995

1995 CHAPTER 11

Making of confiscation orders

1 Duty to make confiscation orders

- (1) Section 71 of the Criminal Justice Act 1988 (“the 1988 Act”) shall be amended as follows.
- (2) For subsections (1) to (3) (orders confiscating the proceeds of an offence) there shall be substituted the following subsections—
 - “(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.
 - (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,

Status: This is the original version (as it was originally enacted).

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.”

(3) In subsection (6) (amount to be paid under a confiscation order)—

- (a) at the beginning there shall be inserted “Subject to subsection (1C) above”; and
- (b) for “must be at least the minimum amount, but must not exceed” there shall be substituted “shall be equal to”.

(4) Subsections (7) and (8) (minimum amount of confiscation order) shall cease to have effect.

(5) In subsection (7A) (standard of proof required to determine matters under Part VI)—

- (a) in paragraph (a), for “as mentioned in subsection (2)(b)(i) above” there shall be substituted “from any offence”, and at the end there shall be inserted “or”;
- (b) paragraph (b) shall be omitted; and
- (c) in paragraph (c), the words “by virtue of section 72 below” shall be omitted.

2 **Confiscation relating to a course of criminal conduct**

The following section shall be inserted in the 1988 Act after section 72—

“72AA Confiscation relating to a course of criminal conduct

- (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—
 - (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

Status: This is the original version (as it was originally enacted).

- (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 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."

Incidental provisions relating to confiscation

3 Provision of information by prosecutor

- (1) For subsection (1) of section 73 of the 1988 Act (effect of provision of statement by prosecutor) there shall be substituted the following subsections—
- “(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) In subsection (2)(a) of that section (power of court to require defendant to indicate extent of acceptance of allegations), for "under subsection (1)(a) above" there shall be substituted "by the prosecutor under this section".

(3) In subsection (6) of that section (issue of certificate by court), for the words from "the offence" onwards there shall be substituted "any relevant criminal conduct."

(4) After subsection (6) of that section, there shall be inserted the following subsection—

"(7) Where the court has given a direction under this section, it may at any time vary the direction by giving a further direction."

4 Provision of information by defendant

The following section shall be inserted in the 1988 Act after section 73—

"73A Provision of information by defendant

(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.

(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.”

5 Review of cases where proceeds of crime not assessed

The following section shall be inserted in the 1988 Act after section 74—

“Review and revision of certain questions and determinations

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.

- (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 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

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

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.”

6 Revision of assessment of proceeds of crime

The following section shall be inserted in the 1988 Act after the section 74A inserted by section 5 above—

“74B 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
 - (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
 - (b) where that conviction was in proceedings before a magistrates' court, any magistrates' court for the same area.”

7 **Revision of assessment of amount to be recovered**

The following section shall be inserted in the 1988 Act after the section 74B inserted by section 6 above—

“74C Revision of assessment of amount to be recovered

- (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—
 - (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 section 31 of the Powers of Criminal Courts Act 1973 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 section 31(3A) of that Act of 1973.
- (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 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.”

8 Enforcement etc. of confiscation orders

- (1) In section 75 of the 1988 Act (application of procedure for enforcing fines), the following subsection shall be inserted after subsection (5)—
 - “(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.”
- (2) The following subsections shall be substituted for subsections (1) and (2) of section 76 of that Act (cases in which restraint or charging order may be made)—
 - “(1) The powers conferred on the High Court by sections 77(1) and 78(1) below are exercisable where—

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

- (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 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) In subsection (4) of section 76 of that Act—
- (a) after “otherwise)” there shall be inserted “, or (as the case may be) no application is made,”; and
 - (b) at the end there shall be inserted “ 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.”
- (4) In section 77(6) of that Act (discharge of restraint orders), the following paragraph shall be substituted for paragraph (b)—
- “(b) shall be discharged on the conclusion of the proceedings or application in question.”
- (5) In section 78 of that Act (charging orders), the following subsection shall be substituted for subsection (7)—
- “(7) In relation to a charging order, the court—
- (a) may at any time make an order discharging or varying it; and

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

- (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.”
- (6) In section 80(1) of that Act (circumstances in which High Court may exercise powers relating to realisation of property), the following paragraphs shall be substituted for paragraphs (a) to (c)—
 - “(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;
 - (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;”.
- (7) In section 84(6) of that Act (bankruptcy of defendant), the following paragraphs shall be substituted for paragraphs (a) and (b)—
 - “(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
 - (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.”
- (8) In section 102 of that Act (interpretation of Part VI), the following subsections shall be substituted for subsection (12)—
 - “(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.”

9 Payment of interest on sums unpaid

The following section shall be inserted in the 1988 Act after section 75—

“75A Interest on sums unpaid under confiscation orders

- (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 section 31(1) of the Powers of Criminal Courts Act 1973 or for the purposes of section 75(1) or (2) of the 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.
- (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 section 31(2) of that Act of 1973 (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 section 31(3A) of that Act of 1973.
- (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 Judgments Act 1838.”

10 Variation of confiscation order on receiver's application

- (1) Section 83 of the 1988 Act (variation of confiscation orders) shall be amended as follows.
- (2) In subsection (1) (variation on application of defendant), for “by the defendant in respect of a confiscation order, the” there shall be substituted “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”.

(3) In subsection (3), for “defendant” there shall be substituted “person who applied for it”.

(4) The following subsection shall be inserted after subsection (5)—

“(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.”

11 Order to make material available

The following section shall be inserted in the 1988 Act after section 93G—

“Investigations into the proceeds of criminal conduct

93H Order to make material available

- (1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to a Circuit judge for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If, on such an application, the judge is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
 - (a) produce it to a constable for him to take away, or
 - (b) give a constable access to it,within such period as the order may specify.

This subsection has effect subject to section 93J(11) below.
- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are—
 - (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege or excluded material;

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

- and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
- (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it,
- that the material should be produced or that access to it should be given.
- (5) Where the judge makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (6) An application under subsection (1) or (5) above may be made *ex parte* to a judge in chambers.
- (7) Provision may be made by Crown Court Rules as to—
- (a) the discharge and variation of orders under this section; and
 - (b) proceedings relating to such orders.
- (8) An order of a Circuit judge under this section shall have effect as if it were an order of the Crown Court.
- (9) Where the material to which an application under subsection (1) above relates consists of information contained in a computer—
- (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (10) An order under subsection (2) above—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of an authorised government department;
- and in this subsection “authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947.
- (11) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material) material produced in pursuance of an order under subsection (2)(a) above shall be treated as if it were material seized by a constable.
- (12) In this section—
- (a) “excluded material”, “items subject to legal privilege” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984; and

- (b) references to a person benefiting from any criminal conduct, in relation to conduct which is not an offence to which this Part of this Act applies but would be if it had occurred in England and Wales, shall be construed in accordance with section 71(4) and (5) above as if it had so occurred.”

12 Authority for search

The following section shall be inserted in the 1988 Act after the section 93H inserted by section 11 above—

“93I Authority for search

- (1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct apply to a Circuit judge for a warrant under this section in relation to specified premises.
- (2) On such application the judge may issue a warrant authorising a constable to enter and search the premises if the judge is satisfied—
 - (a) that an order made under section 93H above in relation to material on the premises has not been complied with;
 - (b) that the conditions in subsection (3) below are fulfilled; or
 - (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—
 - (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
 - (b) that the conditions in subsection (4)(b) and (c) of section 93H above are fulfilled in relation to any material on the premises; and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
 - (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
 - (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating—
 - (i) to the specified person, or
 - (ii) to the question whether that person has benefited from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the

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

application is made, but that the material cannot at the time of the application be particularised; and

- (c) that—
- (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

(5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

(6) Subsection (12) of section 93H above shall apply for the purposes of this section as it applies for the purposes of that section.”

13 Disclosure of information held by government departments

The following section shall be inserted in the 1988 Act after the section 93I inserted by section 12 above—

“93J Disclosure of information held by government departments

(1) Subject to subsection (4) below, the High Court may, on an application by the person appearing to the court to have the conduct of any prosecution, order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the court within such period as the court may specify.

- (2) The power to make an order under subsection (1) above is exercisable if—
- (a) the powers conferred on the court by sections 77(1) and 78(1) above are exercisable by virtue of subsection (1) of section 76 above; or
 - (b) those powers are exercisable by virtue of subsection (2) of that section and the court has made a restraint order or a charging order which (in either case) has not been discharged;

but where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (3) of section 76 above shall apply for the purposes of this section as it applies for the purposes of sections 77 and 78 above.

- (3) The material referred to in subsection (1) above is any material which—
- (a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property;
 - (b) has been made by an officer of an authorised government department in relation to the defendant or such a person; or
 - (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person;

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

- (4) An order under subsection (1) above shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—
 - (a) on the court by sections 77 to 80 above; or
 - (b) on a receiver appointed under section 77 or 80 above or in pursuance of a charging order.
- (5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the court.
- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions by virtue of any provision of this Part of this Act of the receiver, of the Crown Court or of any magistrates' court.
- (7) The court may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless—
 - (a) a reasonable opportunity has been given for an officer of the department to make representations to the court; and
 - (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.
- (8) The persons referred to in subsection (7) above are—
 - (a) any member of a police force;
 - (b) any member of the Crown Prosecution Service; and
 - (c) any officer within the meaning of the Customs and Excise Management Act 1979.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of crime, of whether any person has benefited from any criminal conduct or of the extent or whereabouts of the proceeds of any such conduct.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 93H above may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it; and an order containing any requirement by virtue of this subsection shall be served as if the proceedings were civil proceedings against the department.

- (12) Where any requirement is included in any order by virtue of subsection (11) above, the person on whom the order is served—
- (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and
 - (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the court;
- and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.
- (13) In this section "authorised government department" means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947; and subsection (12)(b) of section 93H above shall apply for the purposes of this section as it applies for the purposes of that section."

Enforcement of overseas forfeiture and restraint orders

14 Enforcement in UK of overseas forfeiture and restraint orders

- (1) In each of the following paragraphs of Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (enforcement of overseas orders providing for the forfeiture or restraint of terrorist funds), namely—
- (a) paragraph 10 (which relates to enforcement in England and Wales),
 - (b) paragraph 20 (which relates to enforcement in Scotland), and
 - (c) paragraph 30 (which relates to enforcement in Northern Ireland),
- there shall be inserted, after sub-paragraph (2), the sub-paragraph set out in subsection (2) below.
- (2) That sub-paragraph is—
- “(2A) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be made by virtue of that sub-paragraph includes provision which, for the purpose of facilitating the enforcement of any external order that may be made, has effect at times before there is an external order to be enforced.”
- (3) Section 9 of the Criminal Justice (International Co-operation) Act 1990 (enforcement of overseas forfeiture orders) shall have effect, and be deemed always to have had effect, with the insertion, after subsection (1), of the following subsection—
- “(1A) Without prejudice to the generality of subsection (1) above the provision that may be made by virtue of that subsection includes provision which, for the purpose of facilitating the enforcement of any order that may be made, has effect at times before there is an order to be enforced.”

Supplemental

15 Consequential and transitional amendments and repeals

- (1) The 1988 Act shall have effect with the further amendments specified in Schedule 1 to this Act, being amendments consequential on the provisions of this Act.

- (2) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material) an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct shall be treated (so far as that would not otherwise be the case) as if it were an investigation of, or in connection with, an offence.
- (3) Expressions used in subsection (2) above and in Part VI of the 1988 Act have the same meanings in that subsection as in that Part.
- (4) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

16 Short title, interpretation, commencement and extent

- (1) This Act may be cited as the Proceeds of Crime Act 1995.
- (2) In this Act “the 1988 Act” means the Criminal Justice Act 1988.
- (3) Subject to subsections (4) to (6) below, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed under this subsection for different purposes.
- (4) Section 14 above and this section come into force on the passing of this Act.
- (5) Section 1 above shall not apply in the case of any proceedings against any person where that person is convicted in those proceedings of an offence which was committed before the commencement of that section.
- (6) Sections 8(1) and 9 above shall not apply where the offence, or any of the offences, in respect of which the confiscation order was made was committed before the commencement of section 1 above.
- (7) This Act, except for section 14 above and this section, does not extend to Scotland or Northern Ireland.