



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,

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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.