



Proceeds of Crime Act 1995

1995 CHAPTER 11

Incidental provisions relating to confiscation

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;

Status: This is the original version (as it was originally enacted).

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.”