



Criminal Justice (Scotland) Act 1995

1995 CHAPTER 20

PART II

PROCEEDS OF CRIME AND PROPERTY USED IN CRIME

CHAPTER I

CONFISCATION OF THE PROCEEDS OF CRIME

Confiscation orders

70 General provision

- (1) Subject to the provisions of this Chapter, where in respect of any offence to which this Chapter applies—
- (a) the accused is convicted, whether in solemn or summary proceedings; or
 - (b) in the case of summary proceedings (without proceeding to conviction) an order is made discharging him absolutely,
- the court, on the application of the prosecutor, may make an order (a “confiscation order”) requiring the accused to pay such sum as the court thinks fit.
- (2) This Chapter applies to any offence which has been prosecuted—
- (a) on indictment; or
 - (b) on summary complaint if the offence is punishable by a fine of an amount greater than the amount corresponding to level 5 on the standard scale or by imprisonment for a period longer than 3 months or by both such fine and imprisonment,

but it does not apply to an offence to which section 1 of the 1987 Act (offences relating to drug trafficking) relates or to an offence under Part III of the 1989 Act (financial assistance for terrorism).

Status: This is the original version (as it was originally enacted).

- (3) A confiscation order shall not be made unless the court orders some other disposal (including an absolute discharge) in respect of the accused.
- (4) The court may make a confiscation order against an accused only if it is satisfied that he has benefited from the commission of the offence concerned.
- (5) The sum which a confiscation order requires an accused to pay must not exceed the lesser of—
 - (a) the amount of the benefit—
 - (i) from the commission of the offence; or
 - (ii) where section 71(4) of this Act applies, from the commission of the offence and any other offence to which this Chapter applies; or
 - (b) the amount that might be realised at the time the order is made.
- (6) Any application under this section shall be made—
 - (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the accused is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
 - (b) in summary proceedings, following the conviction of the accused.
- (7) For the purposes of any appeal or review, a confiscation order is a sentence.