



Proceeds of Crime (Scotland) Act 1995

1995 CHAPTER 43

PART II

FORFEITURE OF PROPERTY USED IN CRIME

25 Recall or variation of suspended forfeiture order.

- (1) The court shall, on an application being made to it under this section by a person other than the accused, recall a suspended forfeiture order in relation to any property or an interest in property if—
 - (a) it is satisfied by the applicant on the balance of probabilities that he is the owner of the property or otherwise has an interest in it; and
 - (b) subsection (2) or subsection (3) below is applicable.
- (2) This subsection applies if the court is not satisfied by the prosecutor that—
 - (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order was made, he—
 - (i) knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and
 - (ii) did not take all the steps which were reasonable for him to take to prevent such intended use; or
 - (b) where he has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, the applicant knew or ought to have known that the property had been intended to be, or had been, so used.
- (3) This subsection applies if the court is satisfied as mentioned in subsection (2) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.
- (4) Where an order (“a recalling order”) recalling a suspended forfeiture order relates to heritable property situated in Scotland, the prosecutor shall, as soon as may be after the recalling order has been made, cause a certified copy of the recalling order to be

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recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

- (5) Where the prosecutor believes that the person named in the suspended forfeiture order in pursuance of section 21(4) of this Act is not the owner of, or does not otherwise have an interest in, the property concerned then—
- (a) if he does not know who the true owner is, or who otherwise truly has the interest, he may apply to the court under this section for an order varying the suspended forfeiture order by deleting that name from it;
 - (b) if he does know or reasonably suspects the identity of the true owner or the person who otherwise truly has the interest (“the correct person”), he may apply to the court under this section for an order varying the suspended forfeiture order by substituting the name of the correct person for that of the person so named.
- (6) Where no person is named in the suspended forfeiture order in pursuance of section 21(4) of this Act but the prosecutor later comes to believe that a person is, or may be, the owner of, or otherwise has or may have an interest in, the property concerned, he may apply to the court for an order varying the suspended forfeiture order by naming that person as a person having or being suspected of having such an interest.
- (7) The court shall grant any application made in pursuance of subsection (5) or (6) above; and sections 21(10) and 24 of this Act shall apply in relation to an order varying a suspended forfeiture order in accordance with an application under subsection (5) or (6) above as they apply in relation to a suspended forfeiture order.
- (8) An application under this section may be made at any time before the property concerned is forfeited to the Crown or another person under section 24 of this Act.
- (9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any ^{F1} . . . order of discharge made, in respect of the offence concerned otherwise than as provided by this section.
- (10) In this section “the court” means the court which made the suspended forfeiture order.

Textual Amendments

F1 Words in s. 25(9) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206, [Sch. 2 para. 40\(2\)](#); S.S.I. 2010/413, [art. 2](#), Sch. (with [art. 3](#))

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