



Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002

2002 CHAPTER 25

Amendment of the Copyright, Designs and Patents Act 1988

4 Forfeiture: illicit recordings

After section 204 of the 1988 Act (order as to disposal of illicit recording) insert—

“204A Forfeiture of illicit recordings: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.
- (2) For the purposes of this section “relevant offence” means—
 - (a) an offence under section 198(1) (criminal liability for making or dealing with illicit recordings),
 - (b) an offence under the Trade Descriptions Act 1968 (c. 29), or
 - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made—
 - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court, or
 - (b) where no application for the forfeiture of the illicit recordings has been made under paragraph (a), by way of complaint to a magistrates’ court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

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- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—
 - (a) in England and Wales, to the Crown Court, or
 - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1987/1675 (N.I. 26)) (statement of case)).
- (8) Subject to subsection (9), where any illicit recordings are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

204B Forfeiture: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of any illicit recordings.
- (2) An order under this section may be made—
 - (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the illicit recordings to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the

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hearing of the application to show cause why the illicit recordings should not be forfeited.

- (6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, illicit recordings to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.
- (8) The court shall not make an order following an application under subsection (2)
 - (a)—
 - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
 - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any illicit recordings is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the illicit recordings should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) shall not take effect—
 - (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
 - (b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.
- (12) An order under subsection (2)(b) shall not take effect—
 - (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), illicit recordings forfeited under this section shall be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.
- (15) For the purposes of this section—

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“relevant offence” means an offence under section 198(1) (criminal liability for making or dealing with illicit recordings), or under the Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception;

“the court” means—

- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and
- (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.”.

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