



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 2

#### CONFISCATION: ENGLAND AND WALES

##### Modifications etc. (not altering text)

- C1** Pt. 2 applied by Terrorism Act 2000 (c. 11), Sch. 8 paras. 8(5A), **34(3A)** (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.I. 2003/210, art. 2(1)(b)(2), **Sch.** (with art. 7); S.I. 2003/333, art. 2, **Sch.**)
- C2** Pt. 2 applied by Police and Criminal Evidence Act 1984 (c. 60), **ss. 56(5B)**, 58(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, **Sch.**)
- C3** Pt. 2: power to amend conferred (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 97(3)**, 178(8); S.I. 2005/1521, art. 3(1)(a)
- C4** Pt. 2 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(5)**
- C5** Pt. 2 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **10(5)**
- C6** Pt. 2: power to modify conferred (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 47**, 61(2); S.I. 2015/813, art. 2(b)
- C7** Pt. 2 applied (with modifications) (1.6.2015) by The Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015 (S.I. 2015/868), regs. 1, **5** (with reg. 4)
- C8** Pt. 2 applied (12.2.2019 for specified purposes, 13.8.2020 in so far as not already in force) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(g), **Sch. 3 para. 33(5)** (with s. 25(9)); S.I. 2020/792, reg. 2(g)

#### *Confiscation orders*

## 6 Making of order

- (1) The Crown Court must proceed under this section if the following two conditions are satisfied.

*Status: Point in time view as at 13/08/2020.*

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- (2) The first condition is that a defendant falls within any of the following paragraphs—
- (a) he is convicted of an offence or offences in proceedings before the Crown Court;
  - (b) he is committed to the Crown Court for sentence in respect of an offence or offences under [<sup>F1</sup>section 3, 4 or 6][<sup>F1</sup>section 3, 3A, 3B, 3C, 4, 4A or 6] of the Sentencing Act;
  - (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).
- (3) The second condition is that—
- (a) the prosecutor <sup>F2</sup>... asks the court to proceed under this section, or
  - (b) the court believes it is appropriate for it to do so.
- (4) The court must proceed as follows—
- (a) it must decide whether the defendant has a criminal lifestyle;
  - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
  - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—
- (a) decide the recoverable amount, and
  - (b) make an order (a confiscation order) requiring him to pay that amount.
- [<sup>F3</sup>Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.]
- (6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.
- [<sup>F4</sup>(6A) The court must also treat the duty in subsection (5) as a power if—
- (a) an order has been made, or it believes an order may be made, against the defendant under section 4 (criminal unlawful profit orders) of the Prevention of Social Housing Fraud Act 2013 in respect of profit made by the defendant in connection with the conduct, or
  - (b) it believes that a person has at any time started or intends to start proceedings against the defendant under section 5 (civil unlawful profit orders) of that Act in respect of such profit.]
- (7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.
- (8) The first condition is not satisfied if the defendant absconds (but section 27 may apply).
- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

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#### Textual Amendments

- F1** Words in s. 6(2)(b) substituted (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\), s. 336\(3\)\(4\), Sch. 3 para. 75\(2\)](#); [S.I. 2012/1320, art. 4\(1\)\(c\)\(2\)\(3\)](#) (with [art. 5](#)) (see [S.I. 2012/2574, art. 4\(2\)](#) and [S.I. 2013/1103, art. 4](#)); [S.I. 2012/2574, art. 2\(2\)\(3\)\(c\), Sch.](#) (with [arts. 3, 4](#)) (as amended (4.11.2012) by [S.I. 2012/2761, art. 2](#)) (with [S.I. 2013/1103, art. 4](#)); [S.I. 2013/1103, art. 2\(1\)\(c\)\(2\)\(3\)](#) (with [arts. 3, 4](#))
- F2** Words in s. 6(3)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 2, Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with [arts. 3-14](#))
- F3** Words in s. 6(5) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), s. 88\(1\), Sch. 4 para. 19](#); [S.I. 2015/820, reg. 3\(q\)\(iii\)](#)
- F4** S. 6(6A) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\), s. 12, Sch. para. 12](#); [S.I. 2013/2622, art. 2](#); [S.I. 2013/2861, art. 2](#)

#### Commencement Information

- I1** S. 6 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#) (with [arts. 3\(1\), 7, 10-13](#)) (as amended (6.3.2003) by [S.I. 2003/531, art. 3](#))

## 7 Recoverable amount

- (1) The recoverable amount for the purposes of section 6 is an amount equal to the defendant's benefit from the conduct concerned.
- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—
  - (a) the available amount, or
  - (b) a nominal amount, if the available amount is nil.
- (3) But if section 6(6) [<sup>F5</sup>or 6(6A)] applies the recoverable amount is such amount as—
  - (a) the court believes is just, but
  - (b) does not exceed the amount found under subsection (1) or (2) (as the case may be).
- (4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), [<sup>F6</sup>the following must be ignored—
  - (a) any property in respect of which a recovery order is in force under section 266,
  - (b) any property which has been forfeited in pursuance of a forfeiture notice under section 297A [<sup>F7</sup>or an account forfeiture notice under section 303Z9], <sup>F8</sup>...
  - (c) any property in respect of which a forfeiture order is in force under section 298(2)][<sup>F9</sup>, 303O(3), 303R(3) or 303Z14(4)][<sup>F10</sup>, and
  - (d) any property which is the forfeitable property in relation to an order under section 303Q(1).]
- (5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

#### Textual Amendments

- F5** Words in s. 7(3) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\), s. 12, Sch. para. 13](#); [S.I. 2013/2622, art. 2](#); [S.I. 2013/2861, art. 2](#)

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- F6** Words in s. 7(4) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 100](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F7** Words in s. 7(4)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 20\(a\)](#); [S.I. 2018/78](#), reg. 5(3)(b)(i)(ii)
- F8** Word in s. 7(4)(b) omitted (27.4.2017 for specified purposes, 16.4.2018 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 20\(b\)](#); [S.I. 2018/78](#), reg. 5(3)(c)
- F9** Words in s. 7(4)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 20\(c\)](#); [S.I. 2018/78](#), reg. 5(3)(b)(i)(ii)
- F10** S. 7(4)(d) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 20\(d\)](#); [S.I. 2018/78](#), reg. 5(3)(b)(i)(ii)

#### Commencement Information

- I2** S. 7 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 8 Defendant's benefit

- (1) If the court is proceeding under section 6 this section applies for the purpose of—
  - (a) deciding whether the defendant has benefited from conduct, and
  - (b) deciding his benefit from the conduct.
- (2) The court must—
  - (a) take account of conduct occurring up to the time it makes its decision;
  - (b) take account of property obtained up to that time.
- (3) Subsection (4) applies if—
  - (a) the conduct concerned is general criminal conduct,
  - (b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the defendant, and
  - (c) his benefit for the purposes of that order was benefit from his general criminal conduct.
- (4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.
- (5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
  - (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
  - (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (7).
- (6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.
- (7) These are the provisions—
  - (a) the [Drug Trafficking Offences Act 1986 \(c. 32\)](#);
  - (b) Part 1 of the [Criminal Justice \(Scotland\) Act 1987 \(c. 41\)](#);

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- (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
  - (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  - (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
  - (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
  - (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
  - (h) Part 3 or 4 of this Act.
- (8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

#### Commencement Information

**I3** S. 8 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

## 9 Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
- (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and
  - (b) the total of the values (at that time) of all tainted gifts.
- (2) An obligation has priority if it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
  - (b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.
- (3) "Preferential debts" has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

#### Commencement Information

**I4** S. 9 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

## 10 Assumptions to be made in case of criminal lifestyle

- (1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—
- (a) deciding whether he has benefited from his general criminal conduct, and
  - (b) deciding his benefit from the conduct.

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- (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—
  - (a) as a result of his general criminal conduct, and
  - (b) at the earliest time he appears to have held it.
- (3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—
  - (a) as a result of his general criminal conduct, and
  - (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.
- (6) But the court must not make a required assumption in relation to particular property or expenditure if—
  - (a) the assumption is shown to be incorrect, or
  - (b) there would be a serious risk of injustice if the assumption were made.
- (7) If the court does not make one or more of the required assumptions it must state its reasons.
- (8) The relevant day is the first day of the period of six years ending with—
  - (a) the day when proceedings for the offence concerned were started against the defendant, or
  - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (9) But if a confiscation order mentioned in section 8(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8)—
  - (a) the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order;
  - (b) the second assumption does not apply to any property which was held by him on or before the relevant day.
- (10) The date of conviction is—
  - (a) the date on which the defendant was convicted of the offence concerned, or
  - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

**Commencement Information**

**I5** S. 10 in force at 24.3.2003 by *S.I. 2003/333, art. 2, Sch.*

**[<sup>F11</sup>10A Determination of extent of defendant's interest in property**

- (1) Where it appears to a court making a confiscation order that—

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- (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
  - (b) a person other than the defendant holds, or may hold, an interest in the property,the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.
- (2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.
- (3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—
  - (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
  - (b) any action or proceedings taken for the purposes of any such realisation or transfer.
- (4) Subsection (3)—
  - (a) is subject to section 51(8B), and
  - (b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.
- (5) In this Part, the “extent” of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.]

#### Textual Amendments

**F11** S. 10A inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 1, 88(1)**; [S.I. 2015/820](#), **reg. 3(a)**

#### [<sup>F12</sup>11 Time for payment

- (1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.
- (2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid—
  - (a) in a specified period, or
  - (b) in specified periods each of which relates to a specified amount.
- (3) A specified period—
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed three months.
- (4) If—
  - (a) within any specified period the defendant applies to the Crown Court for that period to be extended, and
  - (b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,

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the court may make an order extending the period (for all or any part or parts of the amount in question).

- (5) An extended period—
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed six months.
- (6) An order under subsection (4)—
  - (a) may be made after the end of the specified period to which it relates, but
  - (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.
- (7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able—
  - (a) to pay the amount remaining to be paid, or
  - (b) to pay an amount towards what remains to be paid,
 that amount is required to be paid no later than that day.
- (8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.]

#### Textual Amendments

**F12** S. 11 substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 5(1)**, 88(1); S.I. 2015/820, reg. 3(b)

#### Commencement Information

**I6** S. 11 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 12 Interest on unpaid sums

(1) If [<sup>F13</sup>any amount required to be paid] by a person under a confiscation order is not paid when it is required to be paid, he [<sup>F14</sup>must pay interest on that amount] for the period for which it remains unpaid.

(2) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts).

[<sup>F15</sup>(3) If—

- (a) an application has been made under section 11(4) for a specified period to be extended,
- (b) the application has not been determined by the court, and
- (c) the period of six months starting with the day on which the confiscation order was made has not ended,

the amount on which interest is payable under this section does not include the amount to which the specified period relates.]

(4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.



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#### Textual Amendments

- F13** Words in s. 12(1) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 20\(a\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F14** Words in s. 12(1) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 20\(b\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F15** S. 12(3) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 5\(2\)](#), 88(1); [S.I. 2015/820](#), reg. 3(b)

#### Modifications etc. (not altering text)

- C9** S. 12 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), [15\(6\)](#)

#### Commencement Information

- I7** S. 12 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 13 Effect of order on court's other powers

- (1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- (2) The court must take account of the confiscation order before—
- it imposes a fine on the defendant, or
  - it makes an order falling within subsection (3).
- (3) These orders fall within this subsection—
- an order involving payment by the defendant, other than <sup>[F16]</sup>an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) or <sup>[F17]</sup>a priority order;
  - an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
  - an order under section 143 of the Sentencing Act (deprivation orders);
  - an order under section 23 <sup>[F18]</sup>or 23A] of the Terrorism Act 2000 (c. 11) (forfeiture orders).

<sup>[F19]</sup>(3A) In this section “priority order” means any of the following—

- a compensation order under section 130 of the Sentencing Act;
- an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003;
- an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.]
- <sup>[F20]</sup>a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015.]

(4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

<sup>[F21]</sup>(5) Subsection (6) applies if—

- the Crown Court makes both a confiscation order and one or more priority orders against the same person in the same proceedings, and

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- (b) the court believes the person will not have sufficient means to satisfy all those orders in full.]
- (6) In such a case the court must direct that so much of the [<sup>F22</sup>amount payable under the priority order (or orders)] as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

#### Textual Amendments

- F16** Words in s. 13(3)(a) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), s. 95\(1\), Sch. 12 para. 11](#); S.I. 2015/778, art. 3, Sch. 1 para. 78
- F17** Words in s. 13(3)(a) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 6\(2\), 88\(1\)](#); S.I. 2015/820, reg. 3(c)
- F18** Words in s. 13(3)(d) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), s. 100\(5\), Sch. 3 para. 7\(2\)](#) (with s. 101(2)); S.I. 2009/1256, art. 2(c)
- F19** S. 13(3A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 6\(3\), 88\(1\)](#); S.I. 2015/820, reg. 3(c)
- F20** S. 13(3A)(d) inserted by 2015 c. 30 Sch. 5 para. 15 (as substituted) (17.3.2016) by [The Modern Slavery Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/244\), regs. 1\(1\), 26](#)
- F21** S. 13(5) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 6\(4\), 88\(1\)](#); S.I. 2015/820, reg. 3(c)
- F22** Words in s. 13(6) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 6\(5\), 88\(1\)](#); S.I. 2015/820, reg. 3(c)

#### Commencement Information

- I8** S. 13 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### [<sup>F23</sup>13A Orders for securing compliance with confiscation order

- (1) This section applies where the court makes a confiscation order.
- (2) The court may make such order as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”).
- (3) The court must consider whether to make a compliance order—
- on the making of the confiscation order, and
  - if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the prosecutor.
- (4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in subsection (2).
- (5) The court may discharge or vary a compliance order on an application made by—
- the prosecutor;
  - any person affected by the order.

#### Textual Amendments

- F23** Ss. 13A, 13B inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), ss. 7, 88\(1\)](#) (with s. 86(1)); S.I. 2015/820, reg. 3(d)

*Status: Point in time view as at 13/08/2020.*

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### **13B Appeals against orders under section 13A**

- (1) If on an application under section 13A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.
- (2) The following persons may appeal to the Court of Appeal in respect of the Crown Court's decision to make, discharge or vary a compliance order—
  - (a) the prosecutor;
  - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may—
  - (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.
- (4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).
- (5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (6) On an appeal under subsection (4) the Supreme Court may—
  - (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.
- (7) In this section “compliance order” means an order made under section 13A.]

#### **Textual Amendments**

**F23** Ss. 13A, 13B inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 7, 88\(1\)](#) (with [s. 86\(1\)](#)); [S.I. 2015/820](#), [reg. 3\(d\)](#)

#### *Procedural matters*

### **14 Postponement**

- (1) The court may—
  - (a) proceed under section 6 before it sentences the defendant for the offence (or any of the offences) concerned, or
  - (b) postpone proceedings under section 6 for a specified period.
- (2) A period of postponement may be extended.
- (3) A period of postponement (including one as extended) must not end after the permitted period ends.
- (4) But subsection (3) does not apply if there are exceptional circumstances.
- (5) The permitted period is the period of two years starting with the date of conviction.
- (6) But if—
  - (a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and

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- (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (5), the permitted period is that period of three months.
- (7) A postponement or extension may be made—
- (a) on application by the defendant;
  - (b) on application by the prosecutor <sup>F24</sup> ...;
  - (c) by the court of its own motion.
- (8) If—
- (a) proceedings are postponed for a period, and
  - (b) an application to extend the period is made before it ends,
- the application may be granted even after the period ends.
- (9) The date of conviction is—
- (a) the date on which the defendant was convicted of the offence concerned, or
  - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (10) References to appealing include references to applying under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case).
- (11) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.
- (12) But subsection (11) does not apply if before it made the confiscation order the court—
- (a) imposed a fine on the defendant;
  - (b) made an order falling within section 13(3);
  - (c) made an order under section 130 of the Sentencing Act (compensation orders) <sup>F25</sup>;
  - <sup>F26</sup>(ca) [ made an order under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);]
  - (d) made an order under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)].

#### Textual Amendments

- F24** Words in s. 14(7)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 4](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F25** S. 14(12)(d) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, [Sch. para. 15](#); [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2
- F26** S. 14(12)(ca) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 21](#); [S.I. 2015/820](#), reg. 3(q)(iii)

#### Commencement Information

- I9** S. 14 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

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## 15 Effect of postponement

- (1) If the court postpones proceedings under section 6 it may proceed to sentence the defendant for the offence (or any of the offences) concerned.
- (2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not—
  - (a) impose a fine on him,
  - (b) make an order falling within section 13(3), <sup>F27</sup> ...
  - (c) make an order for the payment of compensation under section 130 of the Sentencing Act [<sup>F28</sup>, <sup>F29</sup> ...
  - <sup>F30</sup> [ make an order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or]
  - (d) make an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013].
- (3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by—
  - (a) imposing a fine on him,
  - (b) making an order falling within section 13(3), <sup>F31</sup> ...
  - (c) making an order for the payment of compensation under section 130 of the Sentencing Act [<sup>F32</sup>, <sup>F33</sup> ...
  - <sup>F34</sup> [ making an order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or]
  - (d) making an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013].
- (4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.
- (5) For the purposes of—
  - (a) section 18(2) of the Criminal Appeal Act 1968 (c. 19) (time limit for notice of appeal or of application for leave to appeal), and
  - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (c. 33) (time limit for notice of application for leave to refer a case under section 36 of that Act),the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3).
- (6) If the court proceeds to sentence the defendant under subsection (1), section 6 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (7) The postponement period is the period for which proceedings under section 6 are postponed.

### Textual Amendments

- F27** Word in s. 15(2)(b) omitted (15.10.2013 for E., 5.11.2013 for W.) by virtue of [Prevention of Social Housing Fraud Act 2013 \(c. 3\), s. 12, Sch. para. 16\(2\)\(a\)](#); S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F28** S. 15(2)(d) and word inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\), s. 12, Sch. para. 16\(2\)\(b\)](#); S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

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- F29** Word in s. 15(2)(c) omitted (1.6.2015) by virtue of Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(2)(a)**; S.I. 2015/820, reg. 3(q)(iii)
- F30** S. 15(2)(ca) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(2)(b)**; S.I. 2015/820, reg. 3(q)(iii)
- F31** Word in s. 15(3)(b) omitted (15.10.2013 for E., 5.11.2013 for W.) by virtue of Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 16(3)(a)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F32** S. 15(3)(d) and word inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 16(3)(b)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F33** Word in s. 15(3)(c) omitted (1.6.2015) by virtue of Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(3)(a)**; S.I. 2015/820, reg. 3(q)(iii)
- F34** S. 15(3)(ca) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(3)(b)**; S.I. 2015/820, reg. 3(q)(iii)

#### Commencement Information

- I10** S. 15 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

## 16 Statement of information

- (1) If the court is proceeding under section 6 in a case where section 6(3)(a) applies, the prosecutor<sup>F35</sup> ... must give the court a statement of information within the period the court orders.
- (2) If the court is proceeding under section 6 in a case where section 6(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders.
- (3) If the prosecutor<sup>F36</sup> ... believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor<sup>F37</sup> ... believes are relevant in connection with deciding these issues—
  - (a) whether the defendant has a criminal lifestyle;
  - (b) whether he has benefited from his general criminal conduct;
  - (c) his benefit from the conduct.
- (4) A statement under subsection (3) must include information the prosecutor<sup>F38</sup> ... believes is relevant—
  - (a) in connection with the making by the court of a required assumption under section 10;
  - (b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.
- (5) If the prosecutor<sup>F39</sup> ... does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor<sup>F40</sup> ... believes are relevant in connection with deciding these issues—
  - (a) whether the defendant has benefited from his particular criminal conduct;
  - (b) his benefit from the conduct.
- (6) If the prosecutor<sup>F41</sup> ... gives the court a statement of information—
  - (a) he may at any time give the court a further statement of information;
  - (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders.

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- [<sup>F42</sup>(6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide—
- (a) whether to make a determination under section 10A, or
  - (b) what determination to make (if the court decides to make one).
- (6B) If the court has decided to make a determination under section 10A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.]
- (7) If the court makes an order under this section it may at any time vary it by making another one.

#### Textual Amendments

- F35** Words in s. 16(1) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(2), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F36** Words in s. 16(3) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(3)(a), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F37** Words in s. 16(3) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(3)(b), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F38** Words in s. 16(4) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(4), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F39** Words in s. 16(5) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(5)(a), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F40** Words in s. 16(5) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(5)(b), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F41** Words in s. 16(6) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 5(6), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F42** S. 16(6A)(6B) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 2\(1\)](#), 88(1); [S.I. 2015/820](#), reg. 3(a)

#### Commencement Information

- I11** S. 16 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 17 Defendant's response to statement of information

- (1) If the prosecutor <sup>F43</sup>... gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—
  - (a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and
  - (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.
- (2) If the defendant accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 16(3) or (5) (as the case may be).
- (3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—
  - (a) any allegation in respect of which he has complied with the requirement;

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- (b) any allegation that he has benefited from his general or particular criminal conduct.
- (4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.
- (5) If the court makes an order under this section it may at any time vary it by making another one.
- (6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

#### Textual Amendments

**F43** Words in s. 17(1) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 6, [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

#### Commencement Information

**I12** S. 17 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 18 Provision of information by defendant

- (1) This section applies if—
  - (a) the court is proceeding under section 6 in a case where section 6(3)(a) applies, or
  - (b) it is proceeding under section 6 in a case where section 6(3)(b) applies or it is considering whether to proceed.
- (2) For the purpose of obtaining information to help it in carrying out its functions [<sup>F44</sup> (including functions under section 10A)] the court may at any time order the defendant to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) Subsection (4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.
- (6) If the prosecutor <sup>F45</sup>... accepts to any extent an allegation made by the defendant—
  - (a) in giving information required by an order under this section, or
  - (b) in any other statement given to the court in relation to any matter relevant to <sup>F46</sup>deciding—
    - (i) the available amount under section 9, or
    - (ii) whether to make a determination under section 10A, or what determination to make (if the court decides to make one),]
 the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.



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- (8) If the court makes an order under this section it may at any time vary it by making another one.
- (9) No information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

#### Textual Amendments

- F44** Words in s. 18(2) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 2(2)(a)**, 88(1); S.I. 2015/820, reg. 3(a)
- F45** Words in s. 18(6) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 7, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F46** Words in s. 18(6)(b) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 2(2)(b)**, 88(1); S.I. 2015/820, reg. 3(a)

#### Commencement Information

- I13** S. 18 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

### [<sup>F47</sup>18A Provision of information as to defendant's interest in property

- (1) This section applies if the court—
  - (a) is considering whether to make a determination under section 10A of the extent of the defendant's interest in any property, or
  - (b) is deciding what determination to make (if the court has decided to make a determination under that section).

In this section “interested person” means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

- (2) For the purpose of obtaining information to help it in carrying out its functions under section 10A the court may at any time order an interested person to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.
- (6) If the prosecutor accepts to any extent an allegation made by an interested person—
  - (a) in giving information required by an order under this section, or
  - (b) in any other statement given to the court in relation to any matter relevant to a determination under section 10A,the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

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- (8) If the court makes an order under this section it may at any time vary it by making another one.
- (9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.]

#### Textual Amendments

**F47** S. 18A inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), ss. **2(3)**, 88(1); S.I. 2015/820, reg. 3(a)

### Reconsideration

#### 19 No order made: reconsideration of case

- (1) This section applies if—
- (a) the first condition in section 6 is satisfied but no court has proceeded under that section,
  - (b) there is evidence which was not available to the prosecutor on the relevant date,
  - (c) before the end of the period of six years starting with the date of conviction the prosecutor <sup>F48</sup>... applies to the Crown Court to consider the evidence, and
  - (d) after considering the evidence the court believes it is appropriate for it to proceed under section 6.
- (2) If this section applies the court must proceed under section 6, and when it does so subsections (3) to (8) below apply.
- (3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (4) Section 8(2) does not apply, and the rules applying instead are that the court must—
- (a) take account of conduct occurring before the relevant date;
  - (b) take account of property obtained before that date;
  - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (5) In section 10—
- (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;
  - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
  - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (6) The recoverable amount for the purposes of section 6 is such amount as—
- (a) the court believes is just, but
  - (b) does not exceed the amount found under section 7.
- (7) In arriving at the just amount the court must have regard in particular to—

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- (a) the amount found under section 7;
  - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
  - (c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;
  - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) <sup>F49</sup>;
  - <sup>F50</sup> [ any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);]
  - (e) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)].
- (8) If an order for the payment of compensation under section 130 of the Sentencing Act <sup>F51</sup>, a surcharge under section 161A of the Criminal Justice Act 2003<sup>F52</sup> or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013] has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply <sup>F53</sup> in relation to it].
- (9) The relevant date is—
- (a) if the court made a decision not to proceed under section 6, the date of the decision;
  - (b) if the court did not make such a decision, the date of conviction.
- (10) The date of conviction is—
- (a) the date on which the defendant was convicted of the offence concerned, or
  - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

#### Textual Amendments

- F48** Words in s. 19(1)(c) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 8](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F49** S. 19(7)(e) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, [Sch. para. 17\(2\)](#); [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2
- F50** S. 19(7)(da) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 23\(2\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F51** Words in s. 19(8) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 23\(3\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F52** Words in s. 19(8) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, [Sch. para. 17\(3\)](#); [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2
- F53** Words in s. 19(8) inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\)](#), s. 61(1), [Sch. 5 para. 16](#); [S.I. 2015/1476](#), reg. 2(j)

#### Commencement Information

- I14** S. 19 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 20 No order made: reconsideration of benefit

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that in proceeding under section 6 the court has decided that—
  - (a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or
  - (b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct.
- <sup>F54</sup>(3) .....
- (4) <sup>F55</sup>... the second condition is that—
  - (a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct,
  - (b) before the end of the period of six years starting with the date of conviction the prosecutor <sup>F56</sup>... applies to the Crown Court to consider the evidence, and
  - (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.
- (5) If this section applies the court—
  - (a) must make a fresh decision under section 6(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);
  - (b) may make a confiscation order under that section.
- (6) Subsections (7) to (12) below apply if the court proceeds under section 6 in pursuance of this section.
- (7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) Section 8(2) does not apply, and the rules applying instead are that the court must—
  - (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
  - (b) take account of property obtained before that date;
  - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) In section 10—
  - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
  - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
  - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (10) The recoverable amount for the purposes of section 6 is such amount as—

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- (a) the court believes is just, but
  - (b) does not exceed the amount found under section 7.
- (11) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 7;
  - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
  - (c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;
  - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) <sup>F57</sup>;
  - <sup>F58</sup> [ (da) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);
  - (e) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)].
- (12) If an order for the payment of compensation under section 130 of the Sentencing Act <sup>F59</sup>, a surcharge under section 161A of the Criminal Justice Act 2003 <sup>F60</sup> or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013] has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply <sup>F61</sup> in relation to it].
- (13) The date of conviction is the date found by applying section 19(10).

#### Textual Amendments

- F54** S. 20(3) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 9(2), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F55** Words in s. 20(4) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 9(3)(a), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F56** Words in s. 20(4)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 9(3)(b), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F57** S. 20(11)(e) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, **Sch. para. 18(2)**; [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2
- F58** S. 20(11)(da) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 24(2)**; [S.I. 2015/820](#), reg. 3(q)(iii)
- F59** Words in s. 20(12) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 24(3)**; [S.I. 2015/820](#), reg. 3(q)(iii)
- F60** Words in s. 20(12) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, **Sch. para. 18(3)**; [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2
- F61** Words in s. 20(12) inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\)](#), s. 61(1), **Sch. 5 para. 17**; [S.I. 2015/1476](#), reg. 2(j)

#### Commencement Information

- I15** S. 20 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

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## **21 Order made: reconsideration of benefit**

- (1) This section applies if—
  - (a) a court has made a confiscation order,
  - (b) there is evidence which was not available to the prosecutor <sup>F62</sup>... at the relevant time,
  - (c) the prosecutor <sup>F63</sup>... believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,
  - (d) before the end of the period of six years starting with the date of conviction the prosecutor <sup>F64</sup>... applies to the Crown Court to consider the evidence, and
  - (e) after considering the evidence the court believes it is appropriate for it to proceed under this section.
- (2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply.
- (3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (4) Section 8(2) does not apply, and the rules applying instead are that the court must—
  - (a) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;
  - (b) take account of property obtained up to that time;
  - (c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (5) In applying section 8(5) the confiscation order must be ignored.
- (6) In section 10—
  - (a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order;
  - (b) the third assumption does not apply with regard to expenditure incurred by him after that time;
  - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.
- (7) If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court—
  - (a) must make a new calculation of the recoverable amount for the purposes of section 6, and
  - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (8) In applying subsection (7)(a) the court must—
  - (a) take the new calculation of the defendant's benefit;
  - (b) apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if

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references to the date of the confiscation order were to the date of that new calculation.

- (9) In applying subsection (7)(b) the court must have regard in particular to—
- (a) any fine imposed on the defendant for the offence (or any of the offences) concerned;
  - (b) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;
  - (c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) <sup>F65</sup>;
  - <sup>F66</sup>(ca) [ any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);]
  - (d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)].
- (10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) <sup>F67</sup>, (ca) <sup>F68</sup> or (d)] if a court has made a direction under section 13(6).
- (11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
- (12) The relevant time is—
- (a) when the court calculated the defendant’s benefit for the purposes of the confiscation order, if this section has not applied previously;
  - (b) when the court last calculated the defendant’s benefit in pursuance of this section, if this section has applied previously.
- (13) The relevant amount is—
- (a) the amount found as the defendant’s benefit for the purposes of the confiscation order, if this section has not applied previously;
  - (b) the amount last found as the defendant’s benefit in pursuance of this section, if this section has applied previously.
- (14) The date of conviction is the date found by applying section 19(10).

#### Textual Amendments

- F62** Words in s. 21(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 10, Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F63** Words in s. 21(1)(c) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 10, Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F64** Words in s. 21(1)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 10, Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F65** S. 21(9)(d) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, [Sch. para. 19\(2\)](#); S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F66** S. 21(9)(ca) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 25\(2\)](#); S.I. 2015/820, reg. 3(q)(iii)

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- F67** Words in s. 21(10) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 25\(3\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F68** Words in s. 21(10) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, [Sch. para. 19\(3\)](#); [S.I. 2013/2622](#), art. 2; [S.I. 2013/2861](#), art. 2

#### Commencement Information

- I16** S. 21 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 22 Order made: reconsideration of available amount

- (1) This section applies if—
- a court has made a confiscation order,
  - the amount required to be paid was the amount found under section 7(2), and
  - an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.
- (2) These applicants fall within this subsection—
- the prosecutor;
  - <sup>F69</sup>(b) .....
  - a receiver appointed under section 50 <sup>F70</sup>....
- (3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.
- (4) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—
- it believes is just, but
  - does not exceed the amount found as the defendant's benefit from the conduct concerned.
- (5) In deciding what is just the court must have regard in particular to—
- any fine imposed on the defendant for the offence (or any of the offences) concerned;
  - any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;
  - any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).
  - <sup>F71</sup>(d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge).]
- (6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) [<sup>F72</sup> or (d).] if a court has made a direction under section 13(6).
- (7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.



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- (8) The relevant amount is—
- (a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;
  - (b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.
- (9) The amount found as the defendant's benefit from the conduct concerned is—
- (a) the amount so found when the confiscation order was made, or
  - (b) if one or more new calculations of the defendant's benefit have been made under section 21 the amount found on the occasion of the last such calculation.

#### Textual Amendments

- F69** S. 22(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 11(a), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F70** Words in s. 22(2)(c) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 11(b), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F71** S. 22(5)(d) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 26\(2\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F72** Words in s. 22(6) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 26\(3\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)

#### Commencement Information

- I17** S. 22 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 23 Inadequacy of available amount: variation of order

- (1) This section applies if—
- (a) a court has made a confiscation order, and
  - (b) the defendant [<sup>F73</sup> or the prosecutor] , or a receiver appointed under section 50<sup>F74</sup> ..., applies to the Crown Court to vary the order under this section.
- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.
- (4) If a person has been [<sup>F75</sup>made] bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.
- (5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

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- (6) In subsection (4) “company” means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

#### Textual Amendments

- F73** Words in s. 23(1)(b) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 8(1)**, 88(1); S.I. 2015/820, **reg. 3(e)**
- F74** Words in s. 23(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), **Sch. 8 para. 12**, **Sch. 14**; S.I. 2008/755, **art. 2(1)(a)(d)** (with arts. 3-14)
- F75** Word in s. 23(4) substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), **reg. 1**, **Sch. 1 para. 18**

#### Commencement Information

- I18** S. 23 in force at 24.3.2003 by [S.I. 2003/333](#), **art. 2**, **Sch.**

## 24 Inadequacy of available amount: discharge of order

- (1) This section applies if—
- a court has made a confiscation order,
  - [<sup>F76</sup>the designated officer for a magistrates' court] applies to the Crown Court for the discharge of the order, and
  - the amount remaining to be paid under the order is less than £1,000.
- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (3) If the court—
- finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and
  - is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,
- it may discharge the confiscation order.
- (4) The specified reasons are—
- in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;
  - any reason specified by the Secretary of State by order.
- (5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).
- [<sup>F77</sup>(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).
- (7) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked.]

*Status: Point in time view as at 13/08/2020.*

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#### Textual Amendments

- F76** Words in s. 24(1)(b) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), [Sch. 8 para. 406\(a\)](#); [S.I. 2005/910](#), art. 3(y)
- F77** S. 24(6)(7) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 32\(2\)](#), 58(1)(6) (with s. 32(7)); [S.I. 2018/78](#), reg. 3(p)

#### Commencement Information

- I19** S. 24 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 25 Small amount outstanding: discharge of order

- (1) This section applies if—
- a court has made a confiscation order,
  - [<sup>F78</sup>the designated officer for a magistrates' court] applies to the Crown Court for the discharge of the order, and
  - the amount remaining to be paid under the order is £50 or less.
- (2) In such a case the court may discharge the order.
- (3) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).
- [<sup>F79</sup>(4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).
- (5) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked.]

#### Textual Amendments

- F78** Words in s. 25(1)(b) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), [Sch. 8 para. 406\(b\)](#); [S.I. 2005/910](#), art. 3(y)
- F79** S. 25(4)(5) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 32\(3\)](#), 58(1)(6) (with s. 32(7)); [S.I. 2018/78](#), reg. 3(p)

#### Commencement Information

- I20** S. 25 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## [<sup>F80</sup>25A Recovery from estate of deceased defendant impractical: discharge of order

- (1) This section applies if—
- a court has made a confiscation order,
  - the defendant dies while the order is not satisfied, and
  - the designated officer for a magistrates' court applies to the Crown Court for the discharge of the order.
- (2) The court may discharge the order if it appears to the court that—
- it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or

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- (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.]

#### Textual Amendments

**F80** S. 25A inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 8(2)**, 88(1); S.I. 2015/820, reg. 3(e)

## 26 Information

- (1) This section applies if—
- (a) the court proceeds under section 6 in pursuance of section 19 or 20, or
  - (b) the prosecutor <sup>F81</sup>... applies under section 21.
- (2) In such a case—
- (a) the prosecutor <sup>F82</sup>... must give the court a statement of information within the period the court orders;
  - (b) section 16 applies accordingly (with appropriate modifications where the prosecutor <sup>F83</sup>... applies under section 21);
  - (c) section 17 applies accordingly;
  - (d) section 18 applies as it applies in the circumstances mentioned in section 18(1).

#### Textual Amendments

**F81** Words in s. 26(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 13(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

**F82** Words in s. 26(2)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 13(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

**F83** Words in s. 26(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 13(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

#### Commencement Information

**I21** S. 26 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

### *Defendant absconds*

## 27 Defendant convicted or committed

- (1) This section applies if the following two conditions are satisfied.
- [<sup>F84</sup>(2) The first condition is that a defendant falls within any of the following paragraphs—
- (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;
  - (b) he absconds after being committed to the Crown Court for sentence in respect of an offence or offences under section 3, 3A, 3B, 3C, 4, 4A or 6 of the Sentencing Act;
  - (c) he absconds after being committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).]

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The second condition is that—
- (a) the prosecutor <sup>F85</sup>... applies to the Crown Court to proceed under this section, and
  - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications—
- (a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;
  - (b) the court must not make an order under section 6 unless the prosecutor <sup>F86</sup>... has taken reasonable steps to contact the defendant;
  - (c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
  - (d) sections 10, 16(4), 17 and 18 must be ignored;
  - (e) sections 19, 20 and 21 must be ignored while the defendant is still an absconder.
- [<sup>F87</sup>(6) Once the defendant ceases to be an absconder—
- (a) section 19 has effect as if subsection (1) read—
    - “(1) This section applies if—
    - (a) at a time when the first condition in section 27 was satisfied the court did not proceed under section 6,
    - (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 6, and
    - (c) the court believes it is appropriate for it to do so.”;
  - (b) section 20 has effect as if subsection (4) read—
    - “(4) The second condition is that—
    - (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and
    - (b) the court believes it is appropriate for it to do so.”;
  - (c) section 21 has effect as if subsection (1) read—
    - “(1) This section applies if—
    - (a) a court has made a confiscation order,
    - (b) the prosecutor believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,
    - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
    - (d) the court believes it is appropriate for it to do so.”;

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 19, 20 or 21 (as applied by this subsection).]

#### Textual Amendments

- F84** S. 27(2) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 9(1)**, 88(1); S.I. 2015/820, reg. 3(f)
- F85** Words in s. 27(3)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 14(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F86** Words in s. 27(5)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 14(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F87** S. 27(6) substituted for s. 27(6)(7) (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 9(2)**, 88(1); S.I. 2015/820, reg. 3(f)

#### Commencement Information

- I22** S. 27 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.** (with arts. 3(2), 10-13)

## 28 Defendant neither convicted nor acquitted

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that—
- proceedings for an offence or offences are started against a defendant but are not concluded,
  - he absconds, and
  - the period of [<sup>F88</sup>three months] (starting with the day the court believes he absconded) has ended.
- (3) The second condition is that—
- the prosecutor <sup>F89</sup>... applies to the Crown Court to proceed under this section, and
  - the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications—
- any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;
  - the court must not make an order under section 6 unless the prosecutor <sup>F90</sup>... has taken reasonable steps to contact the defendant;
  - section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
  - sections 10, 16(4) and 17 to 20 must be ignored;
  - section 21 must be ignored while the defendant is still an absconder.
- [<sup>F91</sup>(6) Once the defendant has ceased to be an absconder—
- section 21 has effect as if subsection (1) read—

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- “(1) This section applies if—
- (a) a court has made a confiscation order,
  - (b) the prosecutor believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,
  - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
  - (d) the court believes it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 21 (as applied by this subsection).]
- (7) If—
- (a) the court makes an order under section 6 as applied by this section, and
  - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,
- section 6 does not apply so far as that conviction is concerned.

#### Textual Amendments

- F88** Words in s. 28(2)(c) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 9(3)**, 88(1); S.I. 2015/820, reg. 3(f)
- F89** Words in s. 28(3)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 15(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F90** Words in s. 28(5)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 15(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F91** S. 28(6) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 9(4)**, 88(1); S.I. 2015/820, reg. 3(f)

#### Commencement Information

- I23** S. 28 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.** (with arts. 3(2), 10-13)

## 29 Variation of order

- (1) This section applies if—
- (a) the court makes a confiscation order under section 6 as applied by section 28,
  - (b) the defendant ceases to be an absconder,
  - (c) he is convicted of an offence (or any of the offences) mentioned in section 28(2)(a),
  - (d) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and
  - (e) before the end of the relevant period he applies to the Crown Court to consider the evidence on which his belief is based.
- (2) If (after considering the evidence) the court concludes that the defendant's belief is well founded—

*Status: Point in time view as at 13/08/2020.*

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- (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and
  - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (3) The relevant period is the period of 28 days starting with—
- (a) the date on which the defendant was convicted of the offence mentioned in section 28(2)(a), or
  - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (4) But in a case where section 28(2)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

**Commencement Information**

**I24** S. 29 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### 30 Discharge of order

- (1) Subsection (2) applies if—
- (a) the court makes a confiscation order under section 6 as applied by section 28,
  - (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and
  - (c) he applies to the Crown Court to discharge the order.
- (2) In such a case the court must discharge the order.
- (3) Subsection (4) applies if—
- (a) the court makes a confiscation order under section 6 as applied by section 28,
  - (b) the defendant ceases to be an absconder,
  - (c) subsection (1)(b) does not apply, and
  - (d) he applies to the Crown Court to discharge the order.
- (4) In such a case the court may discharge the order if it finds that—
- (a) there has been undue delay in continuing the proceedings mentioned in section 28(2), or
  - (b) the prosecutor does not intend to proceed with the prosecution.
- (5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

**Commencement Information**

**I25** S. 30 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)



*Status: Point in time view as at 13/08/2020.*

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## Appeals

### 31 Appeal by prosecutor [<sup>F92</sup> etc]<sup>F93</sup>...

- (1) If the Crown Court makes a confiscation order the prosecutor <sup>F94</sup>... may appeal to the Court of Appeal in respect of the order.
- (2) If the Crown Court decides not to make a confiscation order the prosecutor <sup>F95</sup>... may appeal to the Court of Appeal against the decision.
- (3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section [<sup>F96</sup>10A, ] 19, 20, 27 or 28.
- [<sup>F97</sup>(4) An appeal lies to the Court of Appeal against a determination, under section 10A, of the extent of the defendant's interest in property.
- (5) An appeal under subsection (4) lies at the instance of—
  - (a) the prosecutor;
  - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.
- (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.
- (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.
- (8) An appeal does not lie under subsection (4) where—
  - (a) the Court of Appeal believes that an application under section 50 is to be made by the prosecutor for the appointment of a receiver,
  - (b) such an application has been made but has not yet been determined, or
  - (c) a receiver has been appointed under section 50.]

#### Textual Amendments

- F92** Word in s. 31 heading inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 27\(2\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F93** Words in s. 31 heading repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 16\(2\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F94** Words in s. 31(1) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 16\(3\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F95** Words in s. 31(2) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 16\(4\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F96** Word in s. 31(3) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 27\(3\)](#); [S.I. 2015/820](#), reg. 3(q)(iii)
- F97** S. 31(4)-(8) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 3\(1\)](#), 88(1); [S.I. 2015/820](#), reg. 3(a)

#### Commencement Information

- I26** S. 31 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 32 Court's powers on appeal

- (1) On an appeal under section 31(1) the Court of Appeal may confirm, quash or vary the confiscation order.
- (2) On an appeal under section 31(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—
  - (a) itself proceed under section 6 (ignoring subsections (1) to (3)), or
  - (b) direct the Crown Court to proceed afresh under section 6.
- [<sup>F98</sup>(2A) On an appeal under section 31(4) the Court of Appeal may—
  - (a) confirm the determination, or
  - (b) make such order as it believes is appropriate.]
- (3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.
- (4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must—
  - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
  - (b) have regard to any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 9.
- (5) If the Court of Appeal proceeds under section 6 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply.
- (6) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) [<sup>F99</sup>, section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge)] [<sup>F100</sup> or section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)]—
  - (a) the court must have regard to it, and
  - (b) section 13(5) and (6) above do not apply [<sup>F101</sup> in relation to it].
- (8) Section 8(2) does not apply, and the rules applying instead are that the court must—
  - (a) take account of conduct occurring before the relevant date;
  - (b) take account of property obtained before that date;
  - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) In section 10—
  - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;
  - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

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- (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (10) Section 26 applies as it applies in the circumstances mentioned in subsection (1) of that section.
- (11) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

#### Textual Amendments

- F98** S. 32(2A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 3(2)**, 88(1); S.I. 2015/820, reg. 3(a)
- F99** Words in s. 32(7) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 28**; S.I. 2015/820, reg. 3(q)(iii)
- F100** Words in s. 32(7) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, **Sch. para. 20**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F101** Words in s. 32(7)(b) inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\)](#), s. 61(1), **Sch. 5 para. 18**; S.I. 2015/1476, reg. 2(j)

#### Commencement Information

- I27** S. 32 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

### 33 Appeal to <sup>F102</sup>Supreme Court

- (1) An appeal lies to the <sup>F103</sup>Supreme Court] from a decision of the Court of Appeal on an appeal under section 31.
- <sup>F104</sup>(2) An appeal under this section lies at the instance of—
  - (a) the defendant or the prosecutor (except where paragraph (b) applies);
  - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 31(4), any person who was a party to those proceedings.]
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the <sup>F105</sup>Supreme Court] may confirm, quash or vary the order.
- <sup>F106</sup>(3A) On an appeal under this section from a decision under section 32(2A) the Supreme Court may—
  - (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.]
- (4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the <sup>F105</sup>Supreme Court] may—
  - (a) confirm the decision, or
  - (b) direct the Crown Court to proceed afresh under section 6 if it believes the decision was wrong.
- (5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the <sup>F105</sup>Supreme Court] may make.
- (6) If a court varies a confiscation order under this section or makes a confiscation order in pursuance of a direction under this section it must—

*Status: Point in time view as at 13/08/2020.*

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- (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
  - (b) have regard to any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 9.
- (7) If the Crown Court proceeds afresh under section 6 in pursuance of a direction under this section subsections (8) to (12) apply.
- (8) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (9) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) <sup>F107</sup>, section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge) <sup>F108</sup> or section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)]—
- (a) the Crown Court must have regard to it, and
  - (b) section 13(5) and (6) above do not apply <sup>F109</sup> in relation to it].
- (10) Section 8(2) does not apply, and the rules applying instead are that the Crown Court must—
- (a) take account of conduct occurring before the relevant date;
  - (b) take account of property obtained before that date;
  - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (11) In section 10—
- (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;
  - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
  - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (12) Section 26 applies as it applies in the circumstances mentioned in subsection (1) of that section.
- (13) The relevant date is—
- (a) in a case where the Crown Court made a confiscation order which was quashed by the Court of Appeal, the date on which the Crown Court made the order;
  - (b) in any other case, the date on which the Crown Court decided not to make a confiscation order.

#### Textual Amendments

**F102** Words in s. 33 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(2\)](#); S.I. 2009/1604, art. 2(d)

**F103** Words in s. 33(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(2\)](#); S.I. 2009/1604, art. 2(d)

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F104** S. 33(2) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 3(3)(a)**, 88(1); S.I. 2015/820, reg. 3(a)
- F105** Words in s. 33(3)-(5) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 9 para. 77(2)**; S.I. 2009/1604, art. 2(d)
- F106** S. 33(3A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 3(3)(b)**, 88(1); S.I. 2015/820, reg. 3(a)
- F107** Words in s. 33(9) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 29**; S.I. 2015/820, reg. 3(q)(iii)
- F108** Words in s. 33(9) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, **Sch. para. 21**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2
- F109** Words in s. 33(9)(b) inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\)](#), s. 61(1), **Sch. 5 para. 19**; S.I. 2015/1476, reg. 2(j)

**Commencement Information**

- I28** S. 33 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

*Enforcement authority*

**<sup>F110</sup>34 Enforcement authority**

.....

**Textual Amendments**

- F110** S. 34 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), **Sch. 8 para. 18**, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

**Commencement Information**

- I29** S. 34 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

*Enforcement as fines etc*

**35 [<sup>F111</sup>Enforcement as fines ]**

- (1) This section applies if a court—
  - (a) makes a confiscation order, and
  - <sup>F112</sup>(b) .....

- (2) Sections [<sup>F113</sup>139(2), (3)] and (9) and 140(1) to (4) of the Sentencing Act (functions of court as to fines and enforcing fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.

- <sup>F114</sup>(2A) Where a court is fixing a term of imprisonment or detention under section 139(2) of the Sentencing Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

*Status: Point in time view as at 13/08/2020.*

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TABLE

<i>Amount</i>	<i>Maximum term</i>
£10,000 or less	6 months
More than £10,000 but no more than £500,000	5 years
More than £500,000 but no more than £1 million	7 years
More than £1 million	14 years

(2B) In the application of subsection (9) of section 139 of the Sentencing Act by virtue of subsection (2) above, the reference to subsections (2) to (4) of that section is to be read as a reference to—

- (a) subsections (2) and (3) of that section, and
- (b) subsection (2A) above.

(2C) The Secretary of State may by order—

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 139(2) of the Sentencing Act (as applied by subsection (2) above) in respect of amounts ordered to be paid under a confiscation order;
- (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of the power in paragraph (a) of this subsection) or to add any entry.]

(3) In the application of Part 3 of the Magistrates' Courts Act 1980 (c. 43) to an amount payable under a confiscation order—

- (a) ignore section 75 of that Act (power to dispense with immediate payment);
- (b) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines) of that Act;
- (c) in section 87 of that Act ignore subsection (3) (inquiry into means).

#### Textual Amendments

- F111** S. 35 heading substituted (1.4.2008) by *Serious Crime Act 2007* (c. 27), s. 94(1), **Sch. 8 para. 19(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F112** S. 35(1)(b) and preceding word repealed (1.4.2008) by *Serious Crime Act 2007* (c. 27), s. 94(1), Sch. 8 para. 19(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F113** Words in s. 35(2) substituted (1.6.2015) by *Serious Crime Act 2015* (c. 9), s. 88(1), **Sch. 4 para. 30**; S.I. 2015/820, reg. 3(q)(iii)
- F114** S. 35(2A)-(2C) inserted (1.6.2015) by *Serious Crime Act 2015* (c. 9), **ss. 10(1)**, 88(1); S.I. 2015/820, reg. 3(g)

#### Modifications etc. (not altering text)

- C10** S. 35 excluded (3.12.2014) by *The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014* (S.I. 2014/3141), regs. 1(b), **15(6)**

#### Commencement Information

- I30** S. 35 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

*Status: Point in time view as at 13/08/2020.*

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### **F115 36 Director appointed as enforcement authority**

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#### **Textual Amendments**

**F115** S. 36 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 20, [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

#### **Commencement Information**

**I31** S. 36 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### **F116 37 Director's application for enforcement**

.....

#### **Textual Amendments**

**F116** S. 37 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 20, [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

#### **Commencement Information**

**I32** S. 37 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## **38 Provisions about imprisonment or detention**

- (1) Subsection (2) applies if—
  - (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and
  - (b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).
- (2) In such a case the term of imprisonment or of detention under section 108 of the Sentencing Act (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above.
- (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences).
- (4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—
  - (a) any sentence suspended under [<sup>F117</sup>section 189(1) of the Criminal Justice Act 2003] which has not taken effect at the time the warrant is issued;
  - (b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (c. 45) (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison;

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- (c) any term of imprisonment or detention fixed under section 139(2) of the Sentencing Act (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued at that time.
- (5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned.

#### Textual Amendments

**F117** Words in s. 38(4)(a) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 32 para. 141](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 42\(38\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1 paras. 48\(s\), 50\(2\)\(d\)](#); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))

#### Modifications etc. (not altering text)

**C11** S. 38 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), regs. 1(b), [15\(6\)](#)

#### Commencement Information

**I33** S. 38 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 39 Reconsideration etc: variation of prison term

- (1) Subsection (2) applies if—
- a court varies a confiscation order under section 21, 22, 23, 29, 32 or 33,
  - the effect of the variation is to vary the maximum period applicable in relation to the order under section 139(4) of the Sentencing Act, and
  - the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act.
- (2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under section 139(2) of the Sentencing Act in place of the term previously fixed.
- (3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.
- (4) In such a case the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under section 139(2) of the Sentencing Act.
- (5) If the effect of section 12 is to increase the maximum period applicable in relation to a confiscation order under section 139(4) of the Sentencing Act, on the application of the <sup>F118</sup>[prosecutor] the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 139(2) of that Act.

<sup>F119</sup>(6) .....



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#### Textual Amendments

- F118** Word in s. 39(5) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 21\(2\)](#); [S.I. 2008/755, art. 2\(1\)\(a\)](#) (with arts. 3-14)
- F119** S. 39(6) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 21\(3\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

#### Modifications etc. (not altering text)

- C12** S. 39 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\), regs. 1\(b\), 15\(6\)](#)

#### Commencement Information

- I34** S. 39 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### *Restraint orders*

## **40 Conditions for exercise of powers**

- (1) The Crown Court may exercise the powers conferred by section 41 if any of the following conditions is satisfied.
- (2) The first condition is that—
  - (a) a criminal investigation has been started in England and Wales with regard to an offence, and
  - (b) there [<sup>F120</sup>are reasonable grounds to suspect] that the alleged offender has benefited from his criminal conduct.
- (3) The second condition is that—
  - (a) proceedings for an offence have been started in England and Wales and not concluded, and
  - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (4) The third condition is that—
  - (a) an application by the prosecutor <sup>F121</sup>... has been made under section 19, 20, 27 or 28 and not concluded, or the court believes that such an application is to be made, and
  - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (5) The fourth condition is that—
  - (a) an application by the prosecutor <sup>F122</sup>... has been made under section 21 and not concluded, or the court believes that such an application is to be made, and
  - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).
- (6) The fifth condition is that—
  - (a) an application by the prosecutor <sup>F123</sup>... has been made under section 22 and not concluded, or the court believes that such an application is to be made, and

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- (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (7) The second condition is not satisfied if the court believes that—
  - (a) there has been undue delay in continuing the proceedings, or
  - (b) the prosecutor does not intend to proceed.
- (8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—
  - (a) there has been undue delay in continuing the application, or
  - (b) the prosecutor <sup>F124</sup>... does not intend to proceed.
- (9) If the first condition is satisfied—
  - (a) references in this Part to the defendant are to the alleged offender;
  - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;
  - (c) section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

#### Textual Amendments

- F120** Words in s. 40(2)(b) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 11(1)**, 88(1); [S.I. 2015/820](#), reg. 3(h)
- F121** Words in s. 40(4)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 22(2), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F122** Words in s. 40(5)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 22(3), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F123** Words in s. 40(6)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 22(4), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F124** Words in s. 40(8)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 22(5), **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

#### Commencement Information

- I35** S. 40 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

## 41 Restraint orders

- (1) If any condition set out in section 40 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.
  - (2) A restraint order may provide that it applies—
    - (a) to all realisable property held by the specified person whether or not the property is described in the order;
    - (b) to realisable property transferred to the specified person after the order is made.
- [<sup>F125</sup>(2A) A restraint order must be made subject to an exception enabling relevant legal aid payments to be made (a legal aid exception).

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(2B) A relevant legal aid payment is a payment that the specified person is obliged to make—

- (a) by regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and
- (b) in connection with services provided in relation to an offence which falls within subsection (5),

whether the obligation to make the payment arises before or after the restraint order is made.]

(3) A restraint order may be made subject to [<sup>F126</sup> other ] exceptions, and an exception may in particular—

- (a) make provision for reasonable living expenses and reasonable legal expenses;
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

<sup>F127</sup>(c) .....

(4) [<sup>F128</sup>But where an exception to a restraint order is made under subsection (3), it] must not make provision for any legal expenses which—

- (a) relate to an offence which falls within subsection (5), and
- (b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

- (a) the offence mentioned in section 40(2) or (3), if the first or second condition (as the case may be) is satisfied;
- (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

<sup>F129</sup>(5A) A legal aid exception—

- (a) must be made subject to prescribed restrictions (if any) on—
  - (i) the circumstances in which payments may be made in reliance on the exception, or
  - (ii) the amount of the payments that may be made in reliance on the exception,
- (b) must be made subject to other prescribed conditions (if any), and
- (c) may be made subject to other conditions.

(5B) Any other exception to a restraint order may be made subject to conditions.]

(6) Subsection (7) applies if—

- (a) a court makes a restraint order, and
- (b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).

(7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

<sup>F130</sup>(7A) Subsections (7B) and (7C) apply where the Crown Court makes a restraint order (by virtue of the first condition in section 40) as a result of a criminal investigation having been started in England and Wales with regard to an offence.

(7B) The court—

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- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
  - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 42(3)).
- (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—
- (a) must give reasons for its decision, and
  - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 42(3)).]
- [<sup>F131</sup>(7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.]
- (8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
  - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (9) Dealing with property includes removing it from England and Wales.
- [<sup>F132</sup>(10) In this section “prescribed” means prescribed by regulations made by the Secretary of State.]

#### Textual Amendments

- F125** S. 41(2A)(2B) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(2\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F126** Word in s. 41(3) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(3\)\(a\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F127** S. 41(3)(c) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(3\)\(b\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F128** Words in s. 41(4) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(4\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F129** S. 41(5A)(5B) inserted (20.3.2015 for specified purposes, 1.6.2015 in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(5\)](#), 61(2); S.I. 2015/813, arts. 2(a)(ii), 3(b)
- F130** S. 41(7A)-(7C) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 11\(2\)](#), 88(1); S.I. 2015/820, reg. 3(h)
- F131** S. 41(7D) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 31](#); S.I. 2015/820, reg. 3(q)(iii)
- F132** S. 41(10) inserted (20.3.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(6\)](#), 61(2); S.I. 2015/813, art. 2(a)(iii)

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### Commencement Information

**I36** S. 41 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#) (with arts. 5, 10-13)

## [<sup>F133</sup>41A Restraint orders: power to retain seized property etc.

- (1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
  - (a) is seized by an appropriate officer under a relevant seizure power, or
  - (b) is produced to an appropriate officer in compliance with a production order under section 345.
- (2) Provision under subsection (1) may, in particular—
  - (a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
  - (b) relate to property that has already been seized or produced or to property that may be seized or produced in future.
- (3) “Appropriate officer” means—
  - (a) an accredited financial investigator;
  - (b) a constable;
  - (c) an officer of Revenue and Customs;
  - [ an immigration officer;]

<sup>F134</sup>(ca)

  - [<sup>F135</sup>(d) a National Crime Agency officer,]
  - (e) a member of staff of the relevant director (within the meaning of section 352(5A)).
- (4) “Relevant seizure power” means a power to seize property which is conferred by or by virtue of—
  - (a) section 47C,
  - (b) section 352, or
  - (c) Part 2 or 3 of the Police and Criminal Evidence Act 1984 (including as applied by order under section 114(2) of that Act).
- (5) The Secretary of State may by order amend the definition of “relevant seizure power”.]

### Textual Amendments

- F133** S. 41A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 52\(2\)](#), 116(1); [S.I. 2015/983](#), art. 2(2)(a)
- F134** S. 41A(3)(ca) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), Sch. 21 para. 15 (with Sch. 21 para. 40); [S.I. 2014/3098](#), art. 2(e)
- F135** S. 41A(3)(d) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), Sch. 8 para. 112; [S.I. 2013/1682](#), art. 3(v)

## 42 Application, discharge and variation

- (1) A restraint order—
  - (a) may be made only on an application by an applicant falling within subsection (2);

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- (b) may be made on an ex parte application to a judge in chambers.
- (2) These applicants fall within this subsection—
- (a) the prosecutor;
  - <sup>F136</sup>(b) .....
  - (c) an accredited financial investigator.
- (3) An application to discharge or vary a restraint order or an order under section 41(7) may be made to the Crown Court by—
- (a) the person who applied for the order;
  - (b) any person affected by the order.
- (4) Subsections (5) to [<sup>F137</sup>(8)] apply to an application under subsection (3).
- (5) The court—
- (a) may discharge the order;
  - (b) may vary the order.
- (6) If the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).
- <sup>F138</sup>(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—
- (a) the proceedings are concluded by reason of a defendant's conviction for an offence being quashed,
  - (b) the order is in force at the time when the conviction is quashed, and
  - (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.
- (6B) But the court must discharge the restraint order—
- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
  - (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
  - (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.]
- <sup>F139</sup>(7) If the condition in section 40 which was satisfied was that an investigation was started—
- (a) the court must discharge the order if within a reasonable time proceedings for the offence are not started;
  - (b) otherwise, the court must discharge the order on the conclusion of the proceedings.
- (8) If the condition in section 40 which was satisfied was that an application was to be made—
- (a) the court must discharge the order if within a reasonable time the application is not made;
  - (b) otherwise, the court must discharge the order on the conclusion of the application.]

*Status: Point in time view as at 13/08/2020.*

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#### Textual Amendments

- F136** S. 42(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 23, **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F137** Word in s. 42(4) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 32(2)**; [S.I. 2015/820](#), reg. 3(q)(iii)
- F138** S. 42(6A)(6B) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 12**, 88(1); [S.I. 2015/820](#), reg. 3(i)
- F139** S. 42(7)(8) substituted for s. 42(7) (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 32(3)**; [S.I. 2015/820](#), reg. 3(q)(iii)

#### Modifications etc. (not altering text)

- C13** S. 42(2)(c) modified (1.4.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) Order 2018 \(S.I. 2018/196\)](#), arts. 1(2), 3, **Sch. para. 1**

#### Commencement Information

- I37** S. 42 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

### 43 Appeal to Court of Appeal

- (1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If an application is made under section 42(3) in relation to a restraint order or an order under section 41(7) the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application—
  - (a) the person who applied for the order;
  - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may—
  - (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.

#### Commencement Information

- I38** S. 43 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

### 44 Appeal to <sup>F140</sup>Supreme Court

- (1) An appeal lies to the <sup>F141</sup>Supreme Court] from a decision of the Court of Appeal on an appeal under section 43.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the <sup>F142</sup>Supreme Court] may—
  - (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.

*Status: Point in time view as at 13/08/2020.*

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#### Textual Amendments

- F140** Words in s. 44 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F141** Words in s. 44(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F142** Words in s. 44(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(3\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

#### Commencement Information

- I39** S. 44 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### [<sup>F143</sup> 44A Detention of property pending appeal

- (1) This section applies where—
- (a) a restraint order includes provision under section 41A authorising the detention of property, and
  - (b) the restraint order is discharged under section 42(5) or 43(3)(b).
- (2) This section also applies where—
- (a) a restraint order includes provision under section 41A authorising the detention of property, and
  - (b) the restraint order is varied under section 42(5) or 43(3)(b) so as to omit any such provision.
- (3) The property may be detained until there is no further possibility of an appeal against—
- (a) the decision to discharge or vary the restraint order, or
  - (b) any decision made on an appeal against that decision.]

#### Textual Amendments

- F143** S. 44A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 52\(3\), 116\(1\)](#); [S.I. 2015/983, art. 2\(2\)\(a\)](#)

### <sup>F144</sup> 45 Seizure

#### Textual Amendments

- F144** S. 45 repealed (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 55\(3\), 116\(1\), Sch. 8 Pt. 4](#); [S.I. 2015/983, art. 2\(2\)\(a\)\(f\) \(with art. 4\(1\)\(2\)\)](#)

#### Commencement Information

- I40** S. 45 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)



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## 46 Hearsay evidence

- (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).
- (2) Sections 2 to 4 of the Civil Evidence Act 1995 (c. 38) apply in relation to restraint proceedings as those sections apply in relation to civil proceedings.
- (3) Restraint proceedings are proceedings—
  - (a) for a restraint order;
  - (b) for the discharge or variation of a restraint order;
  - (c) on an appeal under section 43 or 44.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

### Commencement Information

**I41** S. 46 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 47 Supplementary

- (1) The registration Acts—
  - (a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;
  - (b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions.
- (2) The registration Acts are—
  - (a) the Land Registration Act 1925 (c. 21);
  - (b) the Land Charges Act 1972 (c. 61);
  - (c) the Land Registration Act 2002 (c. 9).
- (3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a restraint order.
- (4) The person applying for a restraint order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—
  - (a) the application relates, or
  - (b) a restraint order made in pursuance of the application relates.

### Modifications etc. (not altering text)

**C14** S. 47 extended (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, [7\(1\)](#)

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#### Commencement Information

**I42** S. 47 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### *f<sup>F145</sup>* Search and seizure powers

#### Textual Amendments

**F145** Ss. 47A-47S and cross-heading inserted (22.11.2014 for the insertion of ss. 47A, 47G, 47S(1)-(5) for specified purposes, 1.6.2015 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 55\(2\)](#), 116(1); [S.I. 2014/3101](#), art. 3; [S.I. 2015/983](#), art. 2(2)(a)

#### 47A Sections 47B to 47S: meaning of “appropriate officer”

(1) In sections 47B to 47S “appropriate officer” means—

- (a) an officer of Revenue and Customs,  
     [ an immigration officer;]  
<sup>F146</sup>(aa)
- (b) a constable, <sup>F147</sup>...  
     [ an SFO officer, or]  
<sup>F148</sup>(ba)
- (c) an accredited financial investigator.

(2) In subsection (1)(c) the reference to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State <sup>F149</sup>or the Welsh Ministers] under section 453.

#### Textual Amendments

- F146** S. 47A(1)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 55\(4\)\(a\)](#), 61(2) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(b)
- F147** Word in s. 47A(1)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), [Sch. 1 para. 3\(a\)](#); [S.I. 2018/78](#), [reg. 3\(aa\)](#)
- F148** S. 47A(1)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), [Sch. 1 para. 3\(b\)](#); [S.I. 2018/78](#), [reg. 3\(aa\)](#)
- F149** Words in s. 47A(2) inserted (1.4.2018) by [The Tax Collection and Management \(Wales\) Act 2016 \(Consequential and Supplemental Provisions\) Regulations 2018 \(S.I. 2018/285\)](#), regs. 1(2), [5\(a\)](#)

#### Modifications etc. (not altering text)

**C15** S. 47A(1)(c) modified (1.4.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) Order 2018 \(S.I. 2018/196\)](#), arts. 1(2), 3, [Sch. para. 2](#)

#### 47B Conditions for exercise of powers

- (1) An appropriate officer may exercise the power conferred by section 47C if satisfied that any of the following conditions is met.
- (2) The first condition is that—

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- (a) a criminal investigation has been started in England and Wales with regard to an indictable offence,
  - (b) a person has been arrested for the offence,
  - (c) proceedings for the offence have not yet been started against the person in England and Wales,
  - (d) there [<sup>F150</sup>are reasonable grounds to suspect] that the person has benefited from conduct constituting the offence, and
  - (e) a restraint order is not in force in respect of any realisable property.
- (3) The second condition is that—
- (a) a criminal investigation has been started in England and Wales with regard to an indictable offence,
  - (b) a person has been arrested for the offence,
  - (c) proceedings for the offence have not yet been started against the person in England and Wales, and
  - (d) a restraint order is in force in respect of any realisable property.
- (4) The third condition is that—
- (a) proceedings for an indictable offence have been started in England and Wales and have not been concluded,
  - (b) there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence, and
  - (c) a restraint order is not in force in respect of any realisable property.
- (5) The fourth condition is that—
- (a) proceedings for an indictable offence have been started in England and Wales and have not been concluded, and
  - (b) a restraint order is in force in respect of any realisable property.
- (6) The fifth condition is that—
- (a) an application by the prosecutor has been made under section 19, 20, 27 or 28 and not concluded, or the officer believes that such an application is to be made, and
  - (b) there is reasonable cause to believe that the defendant has benefited from criminal conduct.
- (7) The sixth condition is that—
- (a) an application by the prosecutor has been made under section 21 and not concluded, or the officer believes that such an application is to be made, and
  - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).
- (8) The seventh condition is that—
- (a) an application by the prosecutor has been made under section 22 and not concluded, or the officer believes that such an application is to be made, and
  - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (9) The third or fourth condition is not met if the officer believes that—
- (a) there has been undue delay in continuing the proceedings, or

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- (b) the prosecutor does not intend to proceed.
- (10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—
  - (a) there has been undue delay in continuing the application, or
  - (b) the prosecutor does not intend to proceed.
- (11) In relation to the first or second condition references in sections 47C to 47S to the defendant are to the person mentioned in that condition.
- (12) In relation to the first or second condition section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

#### Textual Amendments

**F150** Words in s. 47B(2)(d) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 13(1)**, 88(1); S.I. 2016/148, reg. 3(a)

### 47C Power to seize property

- (1) On being satisfied as mentioned in section 47B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—
  - (a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
  - (b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.
- (2) But the officer may not seize—
  - (a) cash, or
  - (b) exempt property.
- (3) “Cash” has the same meaning as in section 289.
- (4) “Exempt property” means—
  - (a) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in the defendant's employment, business or vocation;
  - (b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family.
- (5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the defendant are to be read as references to the recipient of that gift.

Section 47B(11) is subject to this subsection.

- (6) The power conferred by this section—
  - (a) may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and
  - F151** [ where applicable, in accordance with subsection (6A) or (6B).]

(aa)

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[<sup>F152</sup>(6A) The power conferred by this section is exercisable] by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).

[ The power conferred by this section is exercisable by an immigration officer only if  
<sup>F153</sup>(6B) the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.]

(7) “Relevant offence” means—

- (a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 47B is met, the offence mentioned in that condition,
- (b) in a case where the officer is satisfied that any of the other conditions in section 47B is met, the offence (or any of the offences) concerned.

[ Relevant nationality enactment” means any enactment in—

- <sup>F154</sup>(8) (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.]

#### Textual Amendments

**F151** S. 47C(6)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 16\(2\)\(a\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)

**F152** S. 47C(6A) substituted (22.11.2014) for words by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 16\(2\)\(b\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)

**F153** S. 47C(6B) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 16\(3\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)

**F154** S. 47C(8) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 16\(4\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)

#### 47D Search power: premises

(1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—

- (a) the officer has reasonable grounds for suspecting may be found there, and
- (b) if found there, the officer intends to seize under section 47C.

(2) The power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

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- (3) “Premises” has the meaning given by section 23 of the Police and Criminal Evidence Act 1984.

#### **47E Search power: people**

- (1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 47C.
- (2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
- (a) to permit a search of any article with the person,
  - (b) to permit a search of the person.
- (3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.
- (4) A power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (5) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

#### **47F Search power: vehicles**

- (1) The powers specified in subsection (4) are exercisable if—
- (a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 47C, and
  - (b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.
- (2) The powers are exercisable only if the vehicle is—
- (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
  - (b) in any other place to which at that time people have ready access but which is not a dwelling.
- (3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—
- (a) that the person does not reside in the dwelling, and
  - (b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.
- (4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 47C, require the person to—
- (a) permit entry to the vehicle,
  - (b) permit a search of the vehicle.
- (5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.

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- (6) A power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

#### **47G “Appropriate approval”**

- (1) This section has effect for the purposes of sections 47C, 47D, 47E and 47F.
- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.
- (3) A senior officer means—
- (a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
    - <sup>F155</sup>(aa) [ in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,]
    - <sup>F156</sup>(ab) [ in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,]
    - <sup>F157</sup>(ac) [ in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office,]
  - (b) in relation to the exercise of a power by a constable, a senior police officer,
    - <sup>F158</sup>(ba) [ in relation to the exercise of a power by an accredited financial investigator who is—
      - (i) a member of the civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or
      - (ii) a member of staff of the City of London police force, a senior police officer,]
  - (c) in relation to the exercise of a power by an accredited financial investigator [<sup>F159</sup>who does not fall within any of the preceding paragraphs], an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State [<sup>F160</sup>or the Welsh Ministers] under section 453.
- (4) A senior police officer means a police officer of at least the rank of inspector.

#### **Textual Amendments**

**F155** S. 47G(3)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 17](#) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(e)

**F156** S. 47G(3)(ab) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 13\(2\)](#), 88(1); [S.I. 2016/148](#), [reg. 3\(a\)](#)

**F157** S. 47G(3)(ac) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), [Sch. 1 para. 4](#); [S.I. 2018/78](#), [reg. 3\(aa\)](#)

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**F158** S. 47G(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 31(2)**, 58(1)(6); S.I. 2018/78, reg. 3(n)

**F159** Words in s. 47G(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 21**; S.I. 2018/78, reg. 5(1)(e)

**F160** Words in s. 47G(3)(c) inserted (1.4.2018) by [The Tax Collection and Management \(Wales\) Act 2016 \(Consequential and Supplemental Provisions\) Regulations 2018 \(S.I. 2018/285\)](#), regs. 1(2), **5(b)**

**Modifications etc. (not altering text)**

**C16** S. 47G(3)(c) modified (1.4.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) Order 2018 \(S.I. 2018/196\)](#), arts. 1(2), 4, **Sch. para. 9**

**47H Exercise of powers without judicial approval**

- (1) An appropriate officer must give a written report to the appointed person in any case where—
  - (a) the officer seizes property under section 47C without the approval of a justice of the peace, and
  - (b) any of the property seized is not detained for more than 48 hours.
- (2) An appropriate officer must also give a written report to the appointed person in any case where—
  - (a) the officer exercises any of the powers conferred by sections 47D, 47E and 47F without the approval of a justice of the peace, and
  - (b) no property is seized under section 47C.
- (3) A report under this section must give particulars of the circumstances which led the officer to believe that—
  - (a) the powers were exercisable, and
  - (b) it was not practicable to obtain the approval of a justice of the peace.
- (4) The appointed person means a person appointed for the purposes of this subsection by the Secretary of State.
- (5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Secretary of State.
- (6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).
- (7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—
  - (a) any Saturday or Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, or
  - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

**47I Report by appointed person on exercise of powers**

- (1) As soon as possible after the end of each financial year, the person appointed under section 47H(4) must prepare a report for that year.



*Status: Point in time view as at 13/08/2020.*

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- (2) “Financial year” means—
  - (a) the period beginning with the day on which section 55 of the Policing and Crime Act 2009 comes into force and ending with the next 31 March (which is the first financial year), and
  - (b) each subsequent period of twelve months beginning with 1 April.
- (3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 47C, 47D, 47E and 47F are being exercised in cases where the officer who exercised them is required to give a report under section 47H.
- (4) The report may make any recommendations the appointed person considers appropriate.
- (5) The appointed person must send a copy of the report to the Secretary of State.
- (6) The Secretary of State must—
  - (a) publish any report received under subsection (5), and
  - (b) lay a copy before Parliament.
- (7) Before acting under subsection (6) the Secretary of State must exclude from the report any matter which the Secretary of State thinks is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the Secretary of State excludes any matter from the report the Secretary of State must comply with subsection (6) in relation to the whole of the report as soon as the Secretary of State thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

#### **47J Initial detention of seized property**

- (1) This section applies if an appropriate officer seizes property under section 47C.
- (2) The property may be detained initially for a period of 48 hours.
- (3) The period of 48 hours is to be calculated in accordance with section 47H(7).

#### **47K Further detention pending making of restraint order**

- (1) This section applies if—
  - (a) property is detained under section 47J, and
  - (b) no restraint order is in force in respect of the property.
- (2) If within the period mentioned in section 47J an application is made for a restraint order which includes provision under section 41A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
  - (a) the decision to refuse the application, or
  - (b) any decision made on an appeal against that decision.
- (4) In subsection (2) the reference to the period mentioned in section 47J includes that period as extended by any order under section 47M.

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#### **47L Further detention pending variation of restraint order**

- (1) This section applies if—
  - (a) property is detained under section 47J,
  - (b) a restraint order is in force in respect of the property, and
  - (c) the order does not include provision under section 41A authorising the detention of the property.
- (2) If within the period mentioned in section 47J an application is made for the order to be varied so as to include provision under section 41A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
  - (a) the decision to refuse the application, or
  - (b) any decision made on an appeal against that decision.

#### **47M Further detention in other cases**

- (1) This section applies if—
  - (a) property is detained under section 47J,
  - (b) no restraint order is in force in respect of the property, and
  - (c) no application has been made for a restraint order which includes provision under section 41A authorising detention of the property.
- (2) A magistrates' court may by order extend the period for which the property or any part of it may be detained under section 47J if satisfied that—
  - (a) any of the conditions in section 47B is met (reading references in that section to the officer as references to the court),
  - (b) the property or part is realisable property other than exempt property (within the meaning of section 47C(4)), and
  - (c) there are reasonable grounds for suspecting that—
    - (i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
    - (ii) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.
- (3) An application for an order may be made by—
  - (a) the Commissioners for Her Majesty's Revenue and Customs,  
    - <sup>F161</sup>[ an immigration officer;]
    - (aa)
  - (b) a constable,  
    - <sup>F162</sup>[ an SFO officer,]
    - (ba)
  - (c) an accredited financial investigator, or
  - (d) the prosecutor.

*Status: Point in time view as at 13/08/2020.*

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- (4) If the property was seized in reliance on the first or second condition in section 47B, “the prosecutor” means a person who is to have conduct of any proceedings for the offence.
- (5) An order under this section must provide for notice to be given to persons affected by it.
- (6) In this section “part” includes portion.

#### Textual Amendments

**F161** S. 47M(3)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 18](#) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(e)

**F162** S. 47M(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), [Sch. 1 para. 5](#); [S.I. 2018/78](#), reg. 3(aa)

#### Modifications etc. (not altering text)

**C17** S. 47M(3)(c) modified (1.4.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) Order 2018 \(S.I. 2018/196\)](#), arts. 1(2), 3, [Sch. para. 2](#)

### 47N Discharge, variation and lapse of detention order

- (1) An order under section 47M may be discharged or varied.
- (2) An application for variation or discharge of the order may be made by—
  - (a) a person mentioned in section 47M(3), or
  - (b) any person affected by the order.
- (3) On an application under this section the court must discharge the order if—
  - (a) the order was made on the ground that the first or second condition in section 47B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,
  - (b) the order was made on the ground that the third or fourth condition in section 47B was met but proceedings for the offence mentioned in that condition have now been concluded,
  - (c) the order was made on the ground that the fifth, sixth or seventh condition in section 47B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.
- (4) An order made under section 47M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 41A).

### 47O Appeals

- (1) If on an application for an order under section 47M the magistrates' court decides not to make an order, a person mentioned in subsection (3) of that section may appeal to the Crown Court against the decision.

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- (2) If an application is made under section 47N in relation to an order the following persons may appeal to the Crown Court in respect of the magistrates' court's decision on the application—
- (a) a person mentioned in section 47M(3), or
  - (b) any person affected by the order.

#### **47P Detention of property pending section 47O appeal**

- (1) This section applies where—
- (a) an application for an order under section 47M is made within the period mentioned in section 47J, and
  - (b) the application is refused.
- (2) This section also applies where—
- (a) an order is made under section 47M extending the period for which property may be detained under section 47J, and
  - (b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.
- (3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

#### **47Q Hearsay evidence in detention order proceedings**

- (1) Evidence must not be excluded in detention order proceedings on the ground that it is hearsay (of whatever degree).
- (2) Sections 2 to 4 of the Civil Evidence Act 1995 apply in relation to detention order proceedings as those sections apply in relation to civil proceedings.
- (3) Detention order proceedings are proceedings—
- (a) for an order under section 47M;
  - (b) for the discharge or variation of such an order;
  - (c) on an appeal under section 47O.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

#### **47R Release of property**

- (1) This section applies in relation to property which—
- (a) has been seized by an appropriate officer under section 47C, and
  - (b) is detained under or by virtue of any of sections 47J to 47M and 47P.
- (2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.
- (3) The detention condition is met for so long as—

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- (a) any of the conditions in section 47B is met, and
  - (b) there are reasonable grounds for the suspicion mentioned in section 47C(1).
- (4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 47J to 47M and 47P.
- (5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.]

*[<sup>F145</sup>Code of practice about search and seizure and detention of property*

#### **47S Codes of practice**

- (1) The Secretary of State must make a code of practice in connection with—
- (a) the carrying out by appropriate officers of the functions conferred by sections 47C to 47H,
  - (b) the carrying out by senior officers of their functions under section 47G, and
  - (c) the detention of property under or by virtue of sections 41A, 44A and 47J to 47P.
- (2) Where the Secretary of State proposes to issue a code of practice the Secretary of State must—
- (a) publish a draft,
  - (b) consider any representations made about the draft,
  - (c) if the Secretary of State thinks appropriate, modify the draft in the light of any such representations.

[ The Secretary of State must also consult the Attorney General about the draft in its  
<sup>F163</sup>(2A) application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.]

- (3) The Secretary of State must lay a draft of the code before Parliament.
- (4) When the Secretary of State has laid a draft of the code before Parliament the Secretary of State may bring it into operation by order.
- (5) The Secretary of State may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

#### **Textual Amendments**

**F163** S. 47S(2A) inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 6**; S.I. 2017/991, reg. 2(k)

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### Management receivers

#### 48 Appointment

- (1) Subsection (2) applies if—
  - (a) the Crown Court makes a restraint order, and
  - (b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).
- (2) The Crown Court may by order appoint a receiver in respect of any realisable property to which the restraint order applies.

#### Commencement Information

**I43** S. 48 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

#### 49 Powers

- (1) If the court appoints a receiver under section 48 it may act under this section on the application of the person who applied for the restraint order.
- (2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies—
  - (a) power to take possession of the property;
  - (b) power to manage or otherwise deal with the property;
  - (c) power to start, carry on or defend any legal proceedings in respect of the property;
  - (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
  - (a) search for or inspect anything authorised by the court;
  - (b) make or obtain a copy, photograph or other record of anything so authorised;
  - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
  - (a) hold property;
  - (b) enter into contracts;
  - (c) sue and be sued;
  - (d) employ agents;
  - (e) execute powers of attorney, deeds or other instruments;
  - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.
- (6) The court—

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- (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
  - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
  - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not—
- (a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or
  - (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- [ Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does <sup>F164</sup>(8A) not apply to property which—
- (a) is perishable; or
  - (b) ought to be disposed of before its value diminishes.]
- (9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (10) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
  - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
  - (c) incurring capital expenditure in respect of the property.

#### Textual Amendments

**F164** S. 49(8A) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 82\(1\), 94\(1\)](#); S.I. 2008/755, art. 17(1)(h) (with art. 17(3))

#### Modifications etc. (not altering text)

**C18** S. 49(6) excluded (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, [12\(3\)](#)

#### Commencement Information

**I44** S. 49 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

*Status: Point in time view as at 13/08/2020.*

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## *Enforcement receivers*

### **50 Appointment**

- (1) This section applies if—
  - (a) a confiscation order is made,
  - (b) it is not satisfied, and
  - (c) it is not subject to appeal.
- (2) On the application of the prosecutor the Crown Court may by order appoint a receiver in respect of realisable property.

#### **Commencement Information**

**I45** S. 50 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### **51 Powers**

- (1) If the court appoints a receiver under section 50 it may act under this section on the application of the prosecutor.
- (2) The court may by order confer on the receiver the following powers in relation to the realisable property—
  - (a) power to take possession of the property;
  - (b) power to manage or otherwise deal with the property;
  - (c) power to realise the property, in such manner as the court may specify;
  - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
  - (a) search for or inspect anything authorised by the court;
  - (b) make or obtain a copy, photograph or other record of anything so authorised;
  - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
  - (a) hold property;
  - (b) enter into contracts;
  - (c) sue and be sued;
  - (d) employ agents;
  - (e) execute powers of attorney, deeds or other instruments;
  - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver.
- (6) The court—



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- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
  - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
  - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not—
- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
  - (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- [ Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does <sup>F165</sup>(8A) not apply to property which—
- (a) is perishable; or
  - (b) ought to be disposed of before its value diminishes.]
- [ Representations that a person is entitled to make by virtue of subsection (8) do <sup>F166</sup>(8B) not include representations that are inconsistent with a determination made under section 10A, unless—
- (a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or
  - (b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;
- and the determination does not bind the court if paragraph (a) or (b) applies.]
- (9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (10) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
  - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
  - (c) incurring capital expenditure in respect of the property.

#### Textual Amendments

**F165** S. 51(8A) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 82\(2\)](#), [94\(1\)](#); S.I. 2008/755, [art. 17\(1\)\(h\)](#) (with [art. 17\(3\)](#))

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**F166** S. 51(8B) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 4**, 88(1); S.I. 2015/820, reg. 3(a)

**Modifications etc. (not altering text)**

**C19** S. 51(6) excluded (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(3)**

**Commencement Information**

**I46** S. 51 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

*Director’s receivers*

<sup>F167</sup>**52 Appointment**

.....

**Textual Amendments**

**F167** S. 52 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 24, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

<sup>F168</sup>**53 Powers**

.....

**Textual Amendments**

**F168** S. 53 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 24, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

*Application of sums*

**54 Enforcement receivers**

- (1) This section applies to sums which are in the hands of a receiver appointed under section 50 if they are—
  - (a) the proceeds of the realisation of property under section 51;
  - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.
- (2) The sums must be applied as follows—
  - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
  - (b) second, they must be applied in making any payments directed by the Crown Court;
  - (c) third, they must be applied on the defendant’s behalf towards satisfaction of the confiscation order.

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- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—
  - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
  - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is—
  - (a) the property represented by the proceeds mentioned in subsection (1)(a);
  - (b) the sums mentioned in subsection (1)(b).
- (6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the appropriate [F169designated officer] on account of the amount payable under the order.
- (7) The appropriate [F169designated officer] is the one for the magistrates' court responsible for enforcing the confiscation order as if the amount ordered to be paid were a fine.

#### Textual Amendments

**F169** Words in s. 54(6)(7) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 407](#); [S.I. 2005/910, art. 3\(y\)](#)

#### Commencement Information

**I47** S. 54 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

## 55 Sums received by [F170designated officer]

- (1) This section applies if a [F170designated officer] receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 54 or otherwise).
- (2) The [F171designated officer's] receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
  - (a) are payable under this subsection by virtue of section 432, but
  - (b) are not already paid under section 54(2)(a) [F172 or 67D(2)(a)] .
- (4) If the [F170designated officer] received the sums under section 54 [F173 or 67D] he must next apply them—
  - (a) first, in payment of the remuneration and expenses of a receiver appointed under section 48, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 49(2)(d);
  - (b) second, in payment of the remuneration and expenses of [F174any receiver] appointed under section 50.
  - [F175(c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 67B.]

*Status: Point in time view as at 13/08/2020.*

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- (5) If a direction was made under section 13(6) for [<sup>F176</sup>an amount payable under a priority order (or orders)] to be paid out of sums recovered under the confiscation order, the [<sup>F170</sup>designated officer] must next apply the sums in payment of that amount.
- (6) If any amount remains after the [<sup>F170</sup>designated officer] makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of [<sup>F177</sup>section 38 of the Courts Act 2003] (application of fines etc) as if it were a fine imposed by a magistrates' court.
- [<sup>F178</sup>(7) Subsection (4) does not apply in relation to the remuneration of a receiver if the receiver is a person falling within subsection (8).
- (8) The following fall within this subsection—
- (a) a constable,
  - [<sup>F179</sup>(aa) a member of a police and crime commissioner's staff (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011),
  - (ab) a member of the staff of the Mayor's Office for Policing and Crime (within the meaning of that Part of that Act),
  - (ac) a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of that Part of that Act,]
  - (b) <sup>F180</sup> ... a member of staff of the City of London police force,
  - (c) an accredited financial investigator,
  - (d) a member of staff of the Crown Prosecution Service,
  - (e) a member of staff of the Serious Fraud Office,
  - <sup>F181</sup>(f) .....
  - (g) a member of staff of the Commissioners for Her Majesty's Revenue and Customs,
  - [<sup>F182</sup>(h) a National Crime Agency officer,]
  - (i) a member of staff of any government department not mentioned above.
- (9) It is immaterial for the purposes of subsection (7) whether a person falls within subsection (8) by virtue of a permanent or temporary appointment or a secondment from elsewhere.
- (10) The reference in subsection (8) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.]

#### Textual Amendments

- F170** Words in s. 55 substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 408\(1\)\(2\)](#); S.I. 2005/910, art. 3(y)
- F171** Words in s. 55(2) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 408\(1\)\(3\)](#); S.I. 2005/910, art. 3(y)
- F172** Words in s. 55(3)(b) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 58\(4\), 116\(1\)](#); S.I. 2015/983, art. 2(2)(a)
- F173** Words in s. 55(4) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 58\(5\)\(a\), 116\(1\)](#); S.I. 2015/983, art. 2(2)(a)
- F174** Words in s. 55(4)(b) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 58\(5\)\(b\), 116\(1\)](#); S.I. 2015/983, art. 2(2)(a)
- F175** S. 55(4)(c) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 58\(5\)\(c\), 116\(1\)](#); S.I. 2015/983, art. 2(2)(a)

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- F176** Words in s. 55(5) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 33**; S.I. 2015/820, reg. 3(q)(iii)
- F177** Words in s. 55(6) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), Sch. 8 para. 408(1)(4); S.I. 2005/910, art. 3(y)
- F178** S. 55(7)-(10) substituted for s. 55(7) (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 51(2)**, 116(1); S.I. 2009/3096, art. 3(f)
- F179** S. 55(8)(aa)-(ac) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), s. 157(1), **Sch. 16 para. 305(a)**; S.I. 2011/3019, art. 3, Sch. 1
- F180** Words in s. 55(8)(b) omitted (16.1.2012) by virtue of [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), s. 157(1), **Sch. 16 para. 305(b)**; S.I. 2011/3019, art. 3, Sch. 1
- F181** S. 55(8)(f) omitted (27.3.2014) by virtue of [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 22**
- F182** S. 55(8)(h) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 113**; S.I. 2013/1682, art. 3(v)

**Modifications etc. (not altering text)**

- C20** S. 55(8)(aa) applied (with modifications) (8.5.2017) by [The Greater Manchester Combined Authority \(Transfer of Police and Crime Commissioner Functions to the Mayor\) Order 2017 \(S.I. 2017/470\)](#), arts. 1(2), 3(2), **Sch. 1 para. 12(2)**

**Commencement Information**

- I48** S. 55 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

**F183** **56 Director's receivers**

.....

**Textual Amendments**

- F183** S. 56 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 25, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

**F184** **57 Sums received by Director**

.....

**Textual Amendments**

- F184** S. 57 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 25, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

*Restrictions*

**58 Restraint orders**

- (1) Subsections (2) to (4) apply if a court makes a restraint order.
- (2) No distress may be levied <sup>F185</sup>, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be

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- exercised,] against any realisable property to which the order applies except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (3) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
  - (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
  - (5) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
  - (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
    - (a) the applicant for the restraint order, and
    - (b) any receiver appointed in respect of the property under section 48<sup>F186</sup> or 50].

#### Textual Amendments

**F185** Words in s. 58(2) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 13 para. 143](#) (with s. 89); [S.I. 2014/768](#), art. 2(1)(b)

**F186** Words in s. 58(6)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 26](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

**I49** S. 58 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 59 Enforcement receivers

- (1) Subsections (2) to (4) apply if a court makes an order under section 50 appointing a receiver in respect of any realisable property.
- (2) No distress may be levied <sup>F187</sup>, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,] against the property except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (5) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 50 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

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- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
- (a) the prosecutor, and
  - (b) the receiver (if the order under section 50 has been made).

#### Textual Amendments

**F187** Words in s. 59(2) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 13 para. 144](#) (with s. 89); [S.I. 2014/768](#), art. 2(1)(b)

#### Commencement Information

**I50** S. 59 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### <sup>F188</sup> 60 Director's receivers

.....

#### Textual Amendments

**F188** S. 60 repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 27](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

*Receivers: further provisions*

### 61 Protection

- If a receiver appointed under section 48<sup>F189</sup> or 50]—
- (a) takes action in relation to property which is not realisable property,
  - (b) would be entitled to take the action if it were realisable property, and
  - (c) believes on reasonable grounds that he is entitled to take the action,
- he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

#### Textual Amendments

**F189** Words in s. 61 substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 28](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

**I51** S. 61 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 62 Further applications

- (1) This section applies to a receiver appointed under section 48<sup>F190</sup> or 50].
- (2) The receiver may apply to the Crown Court for an order giving directions as to the exercise of his powers.

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- (3) The following persons may apply to the Crown Court—
- (a) any person affected by action taken by the receiver;
  - (b) any person who may be affected by action the receiver proposes to take.
- (4) On an application under this section the court may make such order as it believes is appropriate.

#### Textual Amendments

**F190** Words in s. 62(1) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 29](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

**I52** S. 62 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 63 Discharge and variation

- (1) The following persons may apply to the Crown Court to vary or discharge an order made under any of sections 48 [<sup>F191</sup>to 51 ]—
- (a) the receiver;
  - (b) the person who applied for the order <sup>F192</sup>...;
  - (c) any person affected by the order.
- (2) On an application under this section the court—
- (a) may discharge the order;
  - (b) may vary the order.
- (3) But in the case of an order under section 48 or 49—
- (a) if the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be);
  - (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

#### Textual Amendments

**F191** Words in s. 63(1) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 30\(a\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

**F192** Words in s. 63(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 30\(b\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

#### Commencement Information

**I53** S. 63 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 64 Management receivers: discharge

- (1) This section applies if—



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- (a) a receiver stands appointed under section 48 in respect of realisable property (the management receiver), and
  - (b) the court appoints a receiver under section 50 <sup>F193</sup>....
- (2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 49.
- <sup>F194</sup>(3) .....
- (4) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 49(2)(d).
- (5) If the management receiver complies with an order under subsection (2) he is discharged—
  - (a) from his appointment under section 48;
  - (b) from any obligation under this Act arising from his appointment.
- (6) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

#### Textual Amendments

**F193** Words in s. 64(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 31\(2\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

**F194** S. 64(3) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 31\(3\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

#### Commencement Information

**I54** S. 64 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

## 65 Appeal to Court of Appeal

- (1) If on an application for an order under any of sections 48 to 51 <sup>F195</sup>... the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If the court makes an order under any of sections 48 to 51 <sup>F196</sup>..., the following persons may appeal to the Court of Appeal in respect of the court's decision—
  - (a) the person who applied for the order;
  - (b) any person affected by the order.
- (3) If on an application for an order under section 62 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (4) If the court makes an order under section 62, the following persons may appeal to the Court of Appeal in respect of the court's decision—
  - (a) the person who applied for the order;
  - (b) any person affected by the order;
  - (c) the receiver.

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- (5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 63—
- (a) the person who applied for the order in respect of which the application was made<sup>F197</sup> ...;
  - (b) any person affected by the court’s decision;
  - (c) the receiver.
- (6) On an appeal under this section the Court of Appeal may—
- (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.

#### Textual Amendments

- F195** Words in s. 65(1) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 32(2), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F196** Words in s. 65(2) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 32(3), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F197** Words in s. 65(5)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 32(4), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

#### Commencement Information

- I55** S. 65 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 66 Appeal to [<sup>F198</sup>Supreme Court]

- (1) An appeal lies to the [<sup>F199</sup>Supreme Court] from a decision of the Court of Appeal on an appeal under section 65.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the [<sup>F200</sup>Supreme Court] may—
- (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.

#### Textual Amendments

- F198** Words in S. 66 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 9 para. 77\(3\)](#); [S.I. 2009/1604](#), art. 2(d)
- F199** Words in s. 66(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 9 para. 77\(3\)](#); [S.I. 2009/1604](#), art. 2(d)
- F200** Words in s. 66(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 9 para. 77\(3\)](#); [S.I. 2009/1604](#), art. 2(d)

#### Commencement Information

- I56** S. 66 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

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### *Seized money [F201 and personal property]*

#### **Textual Amendments**

**F201** Words in s. 67 cross-heading inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 58\(3\), 116\(1\); S.I. 2015/983, art. 2\(2\)\(a\)](#)

## **67 Seized money**

- (1) This section applies to money which—
- (a) is held by a person, and
  - (b) is held in an account maintained by him with a bank or a building society.

- (2) This section also applies to money which is held by a person and which—
- [ has been seized under a relevant seizure power by a constable or another
  - <sup>F202</sup>(a) person lawfully exercising the power, and
  - (b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.]

[ But this section applies to money only so far as the money is free property.]  
<sup>F203</sup>(2A)

<sup>F204</sup>(3) .....

[<sup>F205</sup>(5) If—

- (a) a confiscation order is made against a person holding money to which this section applies, and
- (b) a receiver has not been appointed under section 50 in relation to the money, a magistrates' court may order the [<sup>F206</sup>appropriate person] to pay the money to the designated officer for the court on account of the amount payable under the confiscation order.]

[<sup>F208</sup>Where this section applies to money which is held in an account maintained with  
<sup>F207</sup>(5A) a bank or building society,] a person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.

(5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates' court—

- (a) may make an order under subsection (5) only if the extent of the person's interest in the money has been determined under section 10A, and
- (b) must have regard to that determination in deciding what is the appropriate order to make.]

(6) If a bank or building society fails to comply with an order under subsection (5)—

- (a) the magistrates' court may order it to pay an amount not exceeding £5,000, and
- (b) for the purposes of the Magistrates' Courts Act 1980 (c. 43) the sum is to be treated as adjudged to be paid by a conviction of the court.

(7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)

(a).

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[ The Secretary of State may by order amend this section so that it applies <sup>F210</sup>by virtue <sup>F209</sup>(7A) of subsection (1)] not only to money held in an account maintained with a bank or building society but also to—

- (a) money held in an account maintained with a financial institution of a specified kind, or
- (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.]

[ In this section—  
<sup>F211</sup>(8)

“appropriate person” means—

- (a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;
  - (b) in any other case, the person on whose authority the money is detained;
- “bank” means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;

“building society” has the same meaning as in the Building Societies Act 1986;

“relevant seizure power” means a power to seize money conferred by or by virtue of—

- (a) a warrant granted under any enactment or rule of law, or
- (b) any enactment, or rule of law, under which the authority of a warrant is not required.]

[ In the definition of “bank” in subsection (8), “authorised deposit-taker” means—

- <sup>F212</sup>(9)
- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;
  - (b) a person who—
    - (i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and
    - (ii) accepts deposits;
  - (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(10) A reference in subsection (9) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.]

#### Textual Amendments

**F202** S. 67(2)(a)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(2)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

**F203** S. 67(2A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(3)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

**F204** S. 67(3) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(4)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

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- F205** S. 67(5) substituted for s. 67(4)(5) (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 14(1)**, 88(1); S.I. 2015/820, reg. 3(j)
- F206** Words in s. 67(5) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(5)**, 58(1)(6); S.I. 2018/78, reg. 3(k)
- F207** S. 67(5A)(5B) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 14(2)**, 88(1); S.I. 2015/820, reg. 3(j)
- F208** Words in s. 67(5A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(6)**, 58(1)(6); S.I. 2018/78, reg. 3(k)
- F209** S. 67(7A)(7B) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 14(3)**, 88(1); S.I. 2015/820, reg. 3(j)
- F210** Words in s. 67(7A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(7)**, 58(1)(6); S.I. 2018/78, reg. 3(k)
- F211** S. 67(8) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(8)**, 58(1)(6); S.I. 2018/78, reg. 3(k)
- F212** S. 67(9)(10) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 26(9)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

#### Commencement Information

- I57** S. 67 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

### Seized personal property

[<sup>F213</sup>

- 67A** (1) This section applies to personal property which is held by a person and which—
- has been seized by an appropriate officer under a relevant seizure power, or
  - has been produced to an appropriate officer in compliance with a production order under section 345.

[<sup>F214</sup>(3) If—

- a confiscation order is made against the person by whom the property is held, and
- a receiver has not been appointed under section 50 in relation to the property, a magistrates' court may by order authorise an appropriate officer to realise the property.]

- (4) In this section “appropriate officer” and “relevant seizure power” have the same meaning as in section 41A.

#### Textual Amendments

- F213** Ss. 67A-67D inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 58(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)
- F214** S. 67A(3) substituted for s. 67A(2)(3) (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 14(4)**, 88(1); S.I. 2015/820, reg. 3(j)

### 67B Costs of storage and realisation

- This section applies if a magistrates' court makes an order under section 67A.
- The court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—

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- (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
  - (b) realising the property.
- (3) If the court makes a determination under this section the appropriate officer is entitled to payment of the amount under section 55(4).
- (4) A determination under this section may be made on the same occasion as the section 67A order or on any later occasion; and more than one determination may be made in relation to any case.
- (5) In this section “appropriate officer” has the same meaning as in section 41A.

#### Textual Amendments

**F213** Ss. 67A-67D inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 58\(2\)](#), 116(1); S.I. 2015/983, art. 2(2)(a)

### 67C Sections 67A and 67B: appeals

- (1) If a magistrates' court decides not to make an order under section 67A, an appropriate officer may appeal to the Crown Court.
- (2) If a magistrates' court makes an order under section 67A, a person affected by the order may appeal to the Crown Court.
- (3) But the person mentioned in section 67A(2)(a) may not appeal.
- (4) An appropriate officer may appeal to the Crown Court against—
  - (a) a determination made by a magistrates' court under section 67B;
  - (b) a decision by a magistrates' court not to make a determination under that section.
- (5) In this section “appropriate officer” has the same meaning as in section 41A.

#### Textual Amendments

**F213** Ss. 67A-67D inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 58\(2\)](#), 116(1); S.I. 2015/983, art. 2(2)(a)

### 67D Proceeds of realisation

- (1) This section applies to sums which—
  - (a) are in the hands of an appropriate officer, and
  - (b) are the proceeds of the realisation of property under section 67A.
- (2) The sums must be applied as follows—
  - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
  - (b) second, they must be applied in making any payments directed by the magistrates' court or the Crown Court;

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- (c) third, they must be paid to the appropriate designated officer on account of the amount payable under the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—
  - (a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or the Crown Court directs, and
  - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it.
- (5) If the magistrates' court has made a direction under subsection (2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.
- (6) In this section—
  - “appropriate officer” has the same meaning as in section 41A;
  - “appropriate designated officer” means the designated officer for the magistrates' court which, by virtue of section 35, is responsible for enforcing the confiscation order as if it were a fine.]

#### Textual Amendments

**F213** Ss. 67A-67D inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 58(2)**, 116(1); [S.I. 2015/983](#), art. 2(2)(a)

### *Financial investigators*

## **68 Applications and appeals**

- (1) Subsections (2) and (3) apply to—
  - (a) an application under section 41, 42, 48, 49 or 63;
  - (b) an appeal under section 43, 44, 65 or 66.
- (2) An accredited financial investigator must not make such an application or bring such an appeal unless he falls within subsection (3).
- (3) An accredited financial investigator falls within this subsection if he is one of the following or is authorised for the purposes of this section by one of the following—
  - (a) a police officer who is not below the rank of superintendent,
  - (b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank,
  - (c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State [F215 or the Welsh Ministers] under section 453.
- (4) If such an application is made or appeal brought by an accredited financial investigator any subsequent step in the application or appeal or any further application or appeal

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relating to the same matter may be taken, made or brought by a different accredited financial investigator who falls within subsection (3).

(5) If—

- (a) an application for a restraint order is made by an accredited financial investigator, and
- (b) a court is required under section 58(6) to give the applicant for the order an opportunity to be heard,

the court may give the opportunity to a different accredited financial investigator who falls within subsection (3).

#### Textual Amendments

**F215** Words in s. 68(3)(c) inserted (1.4.2018) by [The Tax Collection and Management \(Wales\) Act 2016 \(Consequential and Supplemental Provisions\) Regulations 2018 \(S.I. 2018/285\)](#), regs. 1(2), **5(c)**

#### Modifications etc. (not altering text)

**C21** S. 68(3)(c) modified (1.4.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) Order 2018 \(S.I. 2018/196\)](#), arts. 1(2), 4, **Sch. para. 10**

#### Commencement Information

**I58** S. 68 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

### *Exercise of powers*

## **69 Powers of court and receiver [F216 etc.]**

(1) This section applies to—

- (a) the powers conferred on a court by sections 41 to [F21759 ] and sections 62 to [F21867D] ;
- (b) the powers of a receiver appointed under section 48[F219 or 50].
- [ F220(c) the powers conferred on appropriate officers by sections 47C to 47L;
- (d) the powers conferred on senior officers by section 47G.]

(2) The powers—

- (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;
- (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
- (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;
- (d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—



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- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
  - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;
  - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

#### Textual Amendments

- F216** Word in s. 69 heading inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 55(4)(b)**, 116(1); S.I. 2015/983, art. 2(2)(a)
- F217** Word in s. 69(1)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 34(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F218** Word in s. 69(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 67**; S.I. 2015/983, arts. 2(2)(e), 3(n)
- F219** Words in s. 69(1)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 34(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F220** S. 69(1)(c)(d) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 55(4)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a)

#### Commencement Information

- I59** S. 69 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

### Committal

#### 70 Committal by magistrates' court

- (1) This section applies if—
- (a) a defendant is convicted of an offence by a magistrates' court, and
  - (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 6.
- (2) In such a case the magistrates' court—
- (a) must commit the defendant to the Crown Court in respect of the offence, and
  - (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).
- (3) An offence falls within this subsection if—
- (a) the defendant has been convicted of it by the magistrates' court or any other court, and
  - (b) the magistrates' court has power to deal with him in respect of it.
- (4) If a committal is made under this section in respect of an offence or offences—
- (a) section 6 applies accordingly, and

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- (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 71.
- (5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under section 3(2) of the Sentencing Act (offences triable either way) [<sup>F221</sup>or under section 3B(2) of that Act (committal of child or young person)] the court must state whether it would have done so.
- (6) A committal under this section may be in custody or on bail.

#### Textual Amendments

**F221** Words in s. 70(5) inserted (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 75\(4\)](#); [S.I. 2012/1320](#), art. 4(1)(c)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), art. 4(2) and [S.I. 2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3)(c), [Sch.](#) (with arts. 3, 4) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1103](#), art. 2(1)(c)(2)(3) (with arts. 3, 4)

#### Commencement Information

**I60** S. 70 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 71 Sentencing by Crown Court

- (1) If a defendant is committed to the Crown Court under section 70 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 6).
- (2) In the case of an offence in respect of which the magistrates' court has stated under section 70(5) that it would have committed the defendant for sentence, the Crown Court—
- must inquire into the circumstances of the case, and
  - may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.
- (3) In the case of any other offence the Crown Court—
- must inquire into the circumstances of the case, and
  - may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

#### Commencement Information

**I61** S. 71 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## Compensation

## 72 Serious default

- (1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.

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- (2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.
- (3) The first condition is also satisfied if proceedings for an offence are started against a person and—
  - (a) they do not result in his conviction for the offence, or
  - (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.
- (4) If subsection (2) applies the second condition is that—
  - (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
  - (b) the investigation would not have continued if the default had not occurred.
- (5) If subsection (3) applies the second condition is that—
  - (a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and
  - (b) the proceedings would not have been started or continued if the default had not occurred.
- (6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.
- (7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.
- (8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.
- (9) Compensation under this section is payable to the applicant and—
  - (a) if the person in default was or was acting as a member of a police force, the compensation is payable out of the police fund from which the expenses of that force are met;
  - (b) if the person in default was a member of the Crown Prosecution Service or was acting on its behalf, the compensation is payable by the Director of Public Prosecutions;
  - <sup>F222</sup>(ba) [ if the person in default was a [<sup>F223</sup>National Crime Agency officer], the compensation is payable by [<sup>F224</sup>the National Crime Agency];]
  - (c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;
  - <sup>F225</sup>(d) .....
  - (e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.
  - <sup>F226</sup>(ea) [ if the person in default was an immigration officer, the compensation is payable by the Secretary of State;]
  - <sup>F227</sup>(f) [ if the person in default was an accredited financial investigator and none of paragraphs (a) to (e) apply, the compensation is payable in accordance with paragraph (a), (c) [<sup>F228</sup>, (da)] or (e) of section 302(7A) (as the case may require).]

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### Textual Amendments

- F222** S. 72(9)(ba) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 61(2)(a)**, 116(1); S.I. 2009/3096, **art. 3(g)**
- F223** Words in s. 72(9)(ba) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 114(a)**; S.I. 2013/1682, **art. 3(v)**
- F224** Words in s. 72(9)(ba) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 114(b)**; S.I. 2013/1682, **art. 3(v)**
- F225** S. 72(9)(d) omitted (27.3.2014) by virtue of [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), **art. 1(1)**, **Sch. 2 para. 23**
- F226** S. 72(9)(ea) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 19** (with [Sch. 21 para. 40](#)); S.I. 2013/1042, **art. 4(k)**
- F227** S. 72(9)(f) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 61(2)(b)**, 116(1); S.I. 2009/3096, **art. 3(g)**
- F228** Word in s. 72(9)(f) inserted (25.1.2018) by [Tax Collection and Management \(Wales\) Act 2016 \(anaw 6\)](#), **ss. 186(1)(2)**, 194(2); S.I. 2018/33, **art. 2(j)**

### Commencement Information

- I62** S. 72 in force at 24.3.2003 by [S.I. 2003/333](#), **art. 2**, **Sch.**

## 73 Order varied or discharged

- (1) This section applies if—
- (a) the court varies a confiscation order under section 29 or discharges one under section 30, and
  - (b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.
- (2) The court may order the payment of such compensation as it believes is just.
- (3) Compensation under this section is payable—
- (a) to the applicant;
  - (b) by the Lord Chancellor.

### Commencement Information

- I63** S. 73 in force at 24.3.2003 by [S.I. 2003/333](#), **art. 2**, **Sch.**

## *Enforcement abroad*

## 74 Enforcement abroad

- (1) This section applies if—
- (a) any of the conditions in section 40 is satisfied,
  - (b) the prosecutor <sup>F229</sup>... believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
  - (c) the prosecutor <sup>F230</sup>... sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.

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- (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.
- (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—
  - (a) any person is prohibited from dealing with realisable property;
  - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.
- (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.
- (6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.
- (7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—
  - (a) that property has been realised in pursuance of a request under subsection (3),
  - (b) the date of realisation, and
  - (c) the proceeds of realisation.
- (8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

#### Textual Amendments

**F229** Words in s. 74(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 35\(a\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

**F230** Words in s. 74(1)(c) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 35\(b\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

#### Commencement Information

**I64** S. 74 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#) (with arts. 5, 10-13)

### *Interpretation*

#### 75 Criminal lifestyle

- (1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.
- (2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—
  - (a) it is specified in Schedule 2;
  - (b) it constitutes conduct forming part of a course of criminal activity;

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- (c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.
- (3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—
  - (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
  - (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.
- (4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.
- (5) Relevant benefit for the purposes of subsection (2)(b) is—
  - (a) benefit from conduct which constitutes the offence;
  - (b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;
  - (c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).
- (6) Relevant benefit for the purposes of subsection (2)(c) is—
  - (a) benefit from conduct which constitutes the offence;
  - (b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).
- (7) The Secretary of State may by order amend Schedule 2.
- (8) The Secretary of State may by order vary the amount for the time being specified in subsection (4).

#### Commencement Information

**I65** S. 75 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#) (with art. 7) (as amended (6.3.2003) by [S.I. 2003/531](#), art. 3)

## 76 Conduct and benefit

- (1) Criminal conduct is conduct which—
  - (a) constitutes an offence in England and Wales, or
  - (b) would constitute such an offence if it occurred in England and Wales.
- (2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—
  - (a) whether conduct occurred before or after the passing of this Act;
  - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs—
  - (a) conduct which constitutes the offence or offences concerned;
  - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;
  - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

#### **Commencement Information**

**I66** S. 76 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#) (with [art. 9](#))

## **77 Tainted gifts**

- (1) Subsections (2) and (3) apply if—
  - (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
  - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the relevant day.
- (3) A gift is also tainted if it was made by the defendant at any time and was of property—
  - (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
  - (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.
- (4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.
- (5) A gift is tainted if it was made by the defendant at any time after—
  - (a) the date on which the offence concerned was committed, or
  - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.

*Status: Point in time view as at 13/08/2020.*

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- (7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (9) The relevant day is the first day of the period of six years ending with—
- (a) the day when proceedings for the offence concerned were started against the defendant, or
  - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

#### Commencement Information

**I67** S. 77 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### 78 Gifts and their recipients

- (1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.
- (2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
- (a) whose numerator is the difference between the two values mentioned in subsection (1), and
  - (b) whose denominator is the value of the property at the time of the transfer.
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

#### Commencement Information

**I68** S. 78 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### 79 Value: the basic rule

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person.
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).
- (4) The provisions are—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
  - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));



*Status: Point in time view as at 13/08/2020.*

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- (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (5) This section has effect subject to sections 80 and 81.

#### Commencement Information

**I69** S. 79 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 80 Value of property obtained from conduct

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.
- (2) The value of the property at the material time is the greater of the following—
  - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
  - (b) the value (at the material time) of the property found under subsection (3).
- (3) The property found under this subsection is as follows—
  - (a) if the person holds the property obtained, the property found under this subsection is that property;
  - (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;
  - (c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 79.

#### Commencement Information

**I70** S. 80 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 81 Value of tainted gifts

- (1) The value at any time (the material time) of a tainted gift is the greater of the following—
  - (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
  - (b) the value (at the material time) of the property found under subsection (2).
- (2) The property found under this subsection is as follows—
  - (a) if the recipient holds the property given, the property found under this subsection is that property;

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- (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
  - (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 79.

#### Commencement Information

**I71** S. 81 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 82 Free property

<sup>F231</sup>(1) [ Property is free unless it falls within subsection (2) or (3).]

<sup>F232</sup>(2) [ <sup>F233</sup>Property falls within this subsection if] an order is in force in respect of it under any of these provisions—

- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
- (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);
- (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);
- (d) section 143 of the Sentencing Act (deprivation orders);
- (e) section 23 [<sup>F234</sup>, 23A] or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);

<sup>F235</sup>(ea) [ paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001;]

- (f) section [<sup>F236</sup>245A, ] 246, [<sup>F237</sup>255A, 256,] 266, 295(2) [<sup>F238</sup>, 298(2), 303L(1), 303O(3), 303R(3), 303Z3 or 303Z14(4)] of this Act.

<sup>F239</sup>(3) [ Property falls within this subsection if—

- (a) it has been forfeited in pursuance of a forfeiture notice under section 297A [<sup>F240</sup> or an account forfeiture notice under section 303Z9];

- (b) it is detained under section 297C [<sup>F241</sup>, 297D [<sup>F242</sup>, 298(4) or 303O(9)]]].]

<sup>F243</sup>(c) [ it is the forfeitable property in relation to an order under section 303Q(1).]

<sup>F244</sup>(d) [ it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

- (e) it is detained under paragraph 5B, 5C, 9A or 10G(7) of that Schedule;
- (f) it is the forfeitable property in relation to an order under paragraph 10I(1) of that Schedule.]

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### Textual Amendments

- F231** S. 82(1) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 101\(2\)](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F232** S. 82(2): s. 82 renumbered as s. 82(2) (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 101\(3\)](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F233** Words in s. 82(2) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 101\(4\)](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F234** Word in s. 82(e) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), s. 100(5), [Sch. 3 para. 7\(3\)](#) (with s. 101(2)); [S.I. 2009/1256](#), art. 2(c)
- F235** S. 82(2)(ea) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 34\(2\)\(a\)](#), 58(1)(6); [S.I. 2018/78](#), reg. 3(s)
- F236** Word in s. 82(f) inserted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 5\(a\)](#); [S.I. 2005/3136](#), art. 3(c)
- F237** Words in s. 82(f) inserted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 5\(b\)](#); [S.I. 2005/3136](#), art. 3(c)
- F238** Words in s. 82(2)(f) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 22\(2\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F239** S. 82(3) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 101\(5\)](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F240** Words in s. 82(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 22\(3\)\(a\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F241** Words in s. 82(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 34\(2\)\(b\)](#), 58(1)(6); [S.I. 2018/78](#), reg. 3(s)
- F242** Words in s. 82(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 22\(3\)\(b\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F243** S. 82(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 22\(3\)\(c\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F244** S. 82(3)(d)-(f) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 34\(2\)\(c\)](#), 58(1)(6); [S.I. 2018/78](#), reg. 3(s)

### Commencement Information

- I72** S. 82 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 83 Realisable property

Realisable property is—

- (a) any free property held by the defendant;
- (b) any free property held by the recipient of a tainted gift.

### Commencement Information

- I73** S. 83 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

*Status: Point in time view as at 13/08/2020.*

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## 84 Property: general provisions

- (1) Property is all property wherever situated and includes—
- (a) money;
  - (b) all forms of real or personal property;
  - (c) things in action and other intangible or incorporeal property.
- (2) The following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
  - (b) property is obtained by a person if he obtains an interest in it;
  - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
  - (d) references to property held by a person include references to property vested in his trustee in bankruptcy [<sup>F245</sup>or liquidator or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016), of his estate;]
  - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
  - (f) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
  - (g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
  - (h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

### Textual Amendments

**F245** Words in s. 84(2)(d) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(2)**

### Modifications etc. (not altering text)

**C22** S. 84(2)(a)(c)-(g) applied (1.1.2006) by [The Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\)](#), arts. 1, **49(3)**

**C23** S. 84(2)(c)-(g) applied (1.1.2006) by [The Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\)](#), arts. 1, **49(3)**

### Commencement Information

**I74** S. 84 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

## 85 Proceedings

- (1) Proceedings for an offence are started—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (c. 43) in respect of the offence;
  - <sup>F246</sup>(aa) [ when a [<sup>F247</sup>relevant prosecutor] issues a written charge and requisition [<sup>F248</sup>or single justice procedure notice] in respect of the offence;]
  - (b) when a person is charged with the offence after being taken into custody without a warrant;

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- (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) in a case falling within subsection (2)(b) of that section (preferment by Court of Appeal or High Court judge) [<sup>F249</sup>or subsection (2)(ba) of that section (preferment by Crown Court judge following approval of deferred prosecution agreement)].
- (2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.
  - (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.
  - (4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned.
  - (5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded—
    - (a) when the order is satisfied or discharged, or
    - (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.
  - (6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply—
    - (a) if an application for leave to appeal under section 31(2) is refused, the proceedings are concluded when the decision to refuse is made;
    - (b) if the time for applying for leave to appeal under section 31(2) expires without an application being made, the proceedings are concluded when the time expires;
    - (c) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and an application for leave to appeal under section 33 is refused, the proceedings are concluded when the decision to refuse is made;
    - (d) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 33 expires without an application being made, the proceedings are concluded when the time expires;
    - (e) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 33 the [<sup>F250</sup>Supreme Court] confirms the Court of Appeal's decision, the proceedings are concluded when the [<sup>F250</sup>Supreme Court] confirms the decision;
    - (f) if on appeal under section 31(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision;
    - (g) if on appeal under section 33 the [<sup>F250</sup>Supreme Court] directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision.
- [<sup>F251</sup>(7) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored for the purposes of subsection (6).]

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 2 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

[ In this section [<sup>F253</sup>“relevant prosecutor”], “requisition” [<sup>F254</sup>, “single justice procedure” [<sup>F252</sup>(9) notice”] and “written charge” have the same meaning as in section 29 of the Criminal Justice Act 2003.]

#### Textual Amendments

- F246** S. 85(1)(aa) inserted (1.10.2007) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 15(2)**; S.I. 2007/2874, art. 2(1)(4)
- F247** Words in s. 85(1)(aa) substituted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(2)(a)**; S.I. 2015/778, art. 3, Sch. 1 para. 77
- F248** Words in s. 85(1)(aa) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(2)(b)**; S.I. 2015/778, art. 3, Sch. 1 para. 77
- F249** Words in s. 85(1)(c) inserted (24.2.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 17 para. 38** (with **Sch. 17 para. 39**); S.I. 2014/258, art. 2(b)
- F250** Words in s. 85(6) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(4)**; S.I. 2009/1604, art. 2(d)
- F251** S. 85(7) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 68**; S.I. 2015/983, arts. 2(2)(e), 3(n)
- F252** S. 85(9) inserted (1.10.2007) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 15(3)**; S.I. 2007/2874, art. 2(1)(4)
- F253** Words in s. 85(9) substituted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(3)(a)**; S.I. 2015/778, art. 3, Sch. 1 para. 77
- F254** Words in s. 85(9) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(3)(b)**; S.I. 2015/778, art. 3, Sch. 1 para. 77

#### Commencement Information

- I75** S. 85 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

## 86 Applications

- (1) An application under section 19, 20, 27 or 28 is concluded—
- (a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;
  - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
  - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.
- (2) An application under section 21 or 22 is concluded—
- (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
  - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

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- (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

#### Commencement Information

**I76** S. 86 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

## 87 Confiscation orders

- (1) A confiscation order is satisfied when no amount is due under it.

[ The “amount payable” under a confiscation order, where part of that amount has been <sup>F255</sup>(1A) paid, means the amount that remains to be paid.]

- (2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed<sup>F256</sup> ....

#### Textual Amendments

**F255** S. 87(1A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 5\(3\)](#), [88\(1\)](#); [S.I. 2015/820](#), [reg. 3\(b\)](#)

**F256** Words in s. 87(2) repealed (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [s. 116\(1\)](#), [Sch. 7 para. 69](#), [Sch. 8 Pt. 4](#); [S.I. 2015/983](#), [art. 2\(2\)\(e\)\(f\)](#), [3\(n\)](#)

#### Commencement Information

**I77** S. 87 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

## <sup>F257</sup>87A No further possibility of appeal

- (1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—

- (a) an appeal against a decision of a court, or  
(b) an appeal on which an order of a court could be varied or quashed.

- (2) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.]

#### Textual Amendments

**F257** S. 87A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [s. 116\(1\)](#), [Sch. 7 para. 70](#); [S.I. 2015/983](#), [arts. 2\(2\)\(e\)](#), [3\(n\)](#)

## 88 Other interpretative provisions

- (1) A reference to the offence (or offences) concerned must be construed in accordance with section 6(9).

- (2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

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- (3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).
- (4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.
- (5) The Sentencing Act is the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
- (6) The following paragraphs apply to references to orders—
  - (a) a confiscation order is an order under section 6;
  - (b) a restraint order is an order under section 41.
- (7) Sections 75 to 87 and this section apply for the purposes of this Part.

#### Commencement Information

**I78** S. 88 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### General

#### 89 Procedure on appeal to the Court of Appeal

- (1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.
  - (2) Subject to rules of court made under section 53(1) of the [<sup>F258</sup>Senior Courts Act 1981] (c. 54) (distribution of business between civil and criminal divisions) the criminal division of the Court of Appeal is the division—
    - (a) to which an appeal to that Court under this Part is to lie, and
    - (b) which is to exercise that Court’s jurisdiction under this Part.
  - (3) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (c. 19) (subject to any specified modifications).
- [ Subject to any rules made under section 91, the costs of and incidental to all
- <sup>F259</sup>(4) proceedings on an appeal to the criminal division of the Court of Appeal under—
    - <sup>F260</sup>(za) [ section 31(4) (appeals against determinations under section 10A),]
    - (a) section 43(1) or (2) (appeals against orders made in restraint proceedings), or
    - (b) section 65 (appeals against, or relating to, the making of receivership orders),
 are in the discretion of the court.
  - (5) Such rules may in particular make provision for regulating matters relating to the costs of those proceedings, including prescribing scales of costs to be paid to legal or other representatives.
  - (6) The court shall have full power to determine by whom and to what extent the costs are to be paid.
  - (7) In any proceedings mentioned in subsection (4), the court may—
    - (a) disallow, or
    - (b) (as the case may be) order the legal or other representative concerned to meet,



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the whole of any wasted costs or such part of them as may be determined in accordance with rules under section 91.

- (8) In subsection (7) “wasted costs” means any costs incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.
- (9) “Legal or other representative”, in relation to a party to proceedings means any person exercising a right of audience or right to conduct litigation on his behalf.]

#### Textual Amendments

- F258** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F259** S. 89(4)-(9) inserted (20.11.2003) by [Courts Act 2003 \(c. 39\), ss. 94\(2\)\(3\), 110\(2\)](#)
- F260** S. 89(4)(za) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\), s. 88\(1\), Sch. 4 para. 34](#); [S.I. 2015/820, reg. 3\(q\)\(iii\)](#)

#### Commencement Information

- I79** S. 89 in force for certain purposes at 30.12.2002 by [S.I. 2002/3015, art. 2, Sch.](#)
- I80** S. 89 in force at 24.3.2003 in so far as not already in force by [S.I. 2003/333, art. 2, Sch.](#)

## 90 Procedure on appeal to the [<sup>F261</sup>Supreme Court]

- (1) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal) does not prevent an appeal to the [<sup>F262</sup>Supreme Court] under this Part.
- (2) In relation to appeals to the [<sup>F262</sup>Supreme Court] under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

#### Textual Amendments

- F261** Words in s. 90 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(5\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F262** Words in s. 90(1)(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(5\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

#### Commencement Information

- I81** S. 90 in force for certain purposes (30.12.2002) by [S.I. 2002/3015, art. 2, Sch.](#)
- I82** S. 90 in force at 24.3.2003 in so far as not already in force by [S.I. 2003/333, art. 2, Sch.](#)

## 91 Crown Court Rules

In relation to—

- (a) proceedings under this Part, or
- (b) receivers appointed under this Part,

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[<sup>F263</sup>Criminal Procedure Rules] may make provision corresponding to provision in Civil Procedure Rules.]

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**Textual Amendments**

**F263** Words in s. 91 substituted (1.9.2004) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), [Sch. 8 para. 410](#); [S.I. 2004/2066](#), [art. 2\(c\)\(xxii\)](#) (with [art. 3](#))

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**Commencement Information**

**I83** S. 91 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

**Status:**

Point in time view as at 13/08/2020.

**Changes to legislation:**

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