



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Reconsideration

106 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 at the relevant time,
 - (c) the prosecutor believes that if the court were to find the amount of the accused'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 applies to the court to consider the evidence, and
 - (e) after considering the evidence the court thinks it is appropriate for it to proceed under this section.
- (2) The court must make a new calculation of the accused's benefit from the conduct concerned, and when it does so subsections (3) to (5) below apply.
- (3) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—
 - (a) conduct occurring up to the time it decided the accused's benefit for the purposes of the confiscation order;
 - (b) property obtained up to that time;
 - (c) property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (4) In applying section 94(3) the confiscation order must be ignored.
- (5) In relation to the assumptions that the court must make under section 96—

Status: This is the original version (as it was originally enacted).

- (a) the first and second assumptions do not apply with regard to property first held by the accused 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.
- (6) If the amount found under the new calculation of the accused's benefit exceeds the relevant amount the court—
- (a) must make a new calculation of the recoverable amount for the purposes of section 92, 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 just.
- (7) In applying subsection (6)(a) the court must—
- (a) take the new calculation of the accused's benefit;
 - (b) apply section 95 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 references to the date of the confiscation order were to the date of that new calculation.
- (8) In applying subsection (6)(b) the court must have regard in particular to—
- (a) any fine imposed on the accused for the offence (or any of the offences) concerned;
 - (b) any order which falls within section 97(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 a court in deciding what is the free property held by the accused for the purposes of section 95;
 - (c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.
- (9) But in applying subsection (6)(b) the court must not have regard to an order falling within subsection (8)(c) if a court has made a direction under section 97(6).
- (10) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
- (11) The relevant time is—
- (a) when the court calculated the accused's benefit for the purposes of the confiscation order, if this section has not applied previously;
 - (b) when the court last calculated the accused's benefit in pursuance of this section, if this section has applied previously.
- (12) The relevant amount is—
- (a) the amount found as the accused's benefit for the purposes of the confiscation order, if this section has not applied previously;
 - (b) the amount last found as the accused's benefit in pursuance of this section, if this section has applied previously.
- (13) The date of conviction is the date found by applying section 104(10).