



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 4

#### CONFISCATION: NORTHERN IRELAND

##### *Reconsideration*

VALID FROM 24/03/2003

#### **170 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 156 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.
- (3) If the court proceeded under section 156 because the Director asked it to, the second condition is that—
  - (a) the Director has evidence which was not available to him 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 Director 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.
- (4) If the court proceeded under section 156 because the prosecutor asked it to or because it believed it was appropriate for it to do so, the second condition is that—

*Status: Point in time view as at 24/02/2003. This version of this provision is not valid for this point in time.*

*Changes to legislation: Proceeds of Crime Act 2002, Section 170 is up to date with all changes known to be in force on or before 27 July 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)*

- (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 or the Director 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 156(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 156 in pursuance of this section.
- (7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 156 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 158(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 160—
- (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 156 is such amount as—
- (a) the court believes is just, but
  - (b) does not exceed the amount found under section 157.
- (11) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 157;
  - (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 163(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already

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been taken into account by the court in deciding what is the free property held by him for the purposes of section 159;

- (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).

(12) If an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 has been made against the defendant in respect of the offence or offences concerned, section 163(5) and (6) above do not apply.

(13) The date of conviction is the date found by applying section 169(10).

**Status:**

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**Changes to legislation:**

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