



Coroners and Justice Act 2009

2009 CHAPTER 25

PART 7

CRIMINAL MEMOIRS ETC

Exploitation proceeds orders

155 Exploitation proceeds orders

- (1) A court may make an exploitation proceeds order in respect of a person if it is satisfied, on the balance of probabilities, that the person—
 - (a) is a qualifying offender, and
 - (b) has obtained exploitation proceeds from a relevant offence.
- (2) An exploitation proceeds order is an order which requires the respondent to pay an amount (“the recoverable amount”) in respect of exploitation proceeds obtained by the respondent from a relevant offence to the enforcement authority which applied for the order.
- (3) A person obtains exploitation proceeds from a relevant offence if the person derives a benefit from—
 - (a) the exploitation of any material pertaining to the relevant offence, or
 - (b) any steps taken or to be taken with a view to such exploitation.
- (4) An exploitation proceeds order must—
 - (a) specify the recoverable amount, and
 - (b) identify the benefits derived by the respondent in respect of which it is made.
- (5) The power conferred by subsection (1) is subject to sections 161 and 163.
- (6) If the recoverable amount required to be paid by the respondent under an exploitation proceeds order (or any part of that amount) is not paid when it is required to be paid, the respondent must pay interest at the appropriate rate on the recoverable amount (or part) for the period for which it remains unpaid.

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (7) Any sum received by an enforcement authority pursuant to an exploitation proceeds order (including any interest under subsection (6)) must be paid—
- (a) if the authority is the Scottish Ministers, into the Scottish Consolidated Fund;
 - (b) in any other case, into the Consolidated Fund.
- (8) In this section—
- “appropriate rate” means—
- (a) in the case of an exploitation proceeds order made by the High Court, the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts), or
 - (b) in the case of an exploitation proceeds order made by the Court of Session, the rate payable under a decree of the Court of Session;
- “court” means—
- (a) in relation to England and Wales, the High Court in England and Wales;
 - (b) in relation to Scotland, the Court of Session;
 - (c) in relation to Northern Ireland, the High Court in Northern Ireland;
- “the respondent”, in relation to an exploitation proceeds order or an application for such an order, means the person against whom the order is made or sought.

Commencement Information

II S. 155 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

156 Qualifying offenders

- (1) In this Part “qualifying offender” means a person who is within subsection (2) or (3) (or both).
- (2) A person is within this subsection if (whether before or after the commencement of this Part) the person—
- (a) has been convicted by a court in the United Kingdom of an offence,
 - (b) has been found not guilty by such a court of an offence by reason of insanity, ^[F1]or
 - ^[F2](ba) has been acquitted by such a court of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or]
 - (c) has been found by such a court to be under a disability and to have done the act charged in respect of an offence.
- (3) A person is within this subsection if—
- (a) under the law in force in a country outside the United Kingdom (and whether before or after the commencement of this Part)—
 - (i) the person has been convicted of a foreign offence,
 - (ii) a court exercising jurisdiction under that law has made, in respect of a foreign offence, a finding equivalent to a finding that the person was not guilty by reason of insanity, ^[F3]or
 - ^[F4](ia) such a court has made, in respect of a foreign offence, a finding equivalent to a finding of the person's acquittal by reason of the

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995, or]
- (iii) such a court has made, in respect of a foreign offence, a finding equivalent to a finding that the person was under a disability and did the act charged in respect of the offence, and
- (b) the person—
- (i) is a United Kingdom national,
- (ii) is resident in the United Kingdom, or
- (iii) was resident in the United Kingdom at the time the act which constituted the offence was done.
- (4) In subsection (3)—
- “foreign offence” means an act which—
- (a) constituted an offence under the law in force in the country concerned,
- (b) at the time it was done, would have constituted an offence if it had been done in any part of the United Kingdom, and
- (c) would constitute an offence if it were done in any part of the United Kingdom at the time the application for an exploitation proceeds order is made in respect of it;
- “United Kingdom national” means an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or
- (c) a British protected person within the meaning of that Act.
- (5) For the purposes of subsection (4), conduct punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law however it is described in that law.
- (6) In this section a reference to the doing of an act includes a reference to a failure to act.

Textual Amendments

- F1** Word in s. 156(2) repealed (S.) (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 87(a)(i)**; S.S.I. 2012/160, art. 3, sch.
- F2** S. 156(2)(ba) inserted (S.) (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 87(a)(ii)**; S.S.I. 2012/160, art. 3, sch.
- F3** Word in s. 156(3)(a) repealed (S.) (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 87(b)(i)**; S.S.I. 2012/160, art. 3, sch.
- F4** S. 156(3)(a)(ia) inserted (S.) (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 87(b)(ii)**; S.S.I. 2012/160, art. 3, sch.

Commencement Information

- I2** S. 156 in force at 6.4.2010 by S.I. 2010/816, art. 2, **Sch. para. 11**

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

157 Qualifying offenders: service offences

- (1) In subsection (2) of section 156—
- (a) a reference to a person who has been convicted by a court in the United Kingdom of an offence includes a reference to a person who has been convicted of a UK service offence;
 - (b) a reference to a finding by a court in the United Kingdom in relation to an offence includes a reference to a finding by a UK service court (wherever situated) in relation to a UK service offence.
- (2) In subsection (3) of that section—
- (a) a reference to a foreign offence includes a foreign service offence;
 - (b) a reference to a person who has been convicted of a foreign offence includes a reference to a person who has been found guilty of a foreign service offence in respect of any act done which was the subject of proceedings under the service law of a country outside the United Kingdom;
 - (c) a reference to a finding of a court exercising jurisdiction under the law in force in a country outside the United Kingdom includes a reference to a finding of—
 - (i) a court established under the service law of that country, or
 - (ii) an authority of the country who under the law of the country is empowered to review the proceedings of such a court or to try or investigate charges brought against persons subject to the service law of that country.
- (3) For the purposes of subsection (1) the reference to a person who has been convicted of a UK service offence includes a person in respect of whom there has been—
- (a) under the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), the recording of a finding that a charge in respect of the offence has been proved;
 - (b) under the Naval Discipline Act 1957 (c. 53), a determination that a charge in respect of the offence has been proved, and the recording of a finding of guilt;
 - (c) under the Armed Forces Act 2006 (c. 52), the recording of a finding that a charge in respect of the offence has been proved;
 - (d) a substitution, by the Summary Appeal Court established under any of the Acts mentioned in paragraphs (a) to (c), of a finding that a charge in respect of the offence has been proved;
 - (e) a substitution by the Courts-Martial Appeal Court or the Court Martial Appeal Court of a finding of guilty of the offence.
- (4) In this section—
- “foreign service offence” means an act which—
- (a) was the subject of proceedings under the service law of a country outside the United Kingdom,
 - (b) at the time it was done, would have constituted an offence, or a UK service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces, and
 - (c) would constitute an offence or a UK service offence if it were done in any part of the United Kingdom by a member of Her Majesty's forces at the time the application for an exploitation proceeds order is made in respect of it;

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

“Her Majesty's forces” has the same meaning as in the Armed Forces Act 2006;

“service law”, in relation to a country outside the United Kingdom, means the law governing all or any of the naval, military or air forces of that country;

“UK service offence” means an offence triable by a UK service court; and a reference to the doing of an act includes a reference to a failure to act.

Commencement Information

I3 S. 157 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

158 Qualifying offenders: supplementary

- (1) In section 7 of the Rehabilitation of Offenders Act 1974 (c. 53) (limitations on rehabilitation under the 1974 Act, etc), in subsection (2), at the end add “or
 - “(h) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).”
- (2) In Article 8 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27)) (limitations on rehabilitation under the 1978 Order etc), in paragraph (2), at the end add “or
 - “(g) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).”
- (3) For the purposes of this Part, the following provisions do not apply to a conviction for an offence in respect of which an order for an absolute or conditional discharge is made—
 - (a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conviction with absolute or conditional discharge deemed not to be a conviction);
 - (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);
 - (c) section 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (effect of probation and absolute discharge);
 - (d) section 187(1) of the Armed Forces Act 2006 (c. 52) (conviction with absolute or conditional discharge deemed not to be a conviction);
 - (e) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge or community suspension order deemed not to be a conviction).

Commencement Information

I4 S. 158(1)(2) in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

I5 S. 158(3) in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

159 Relevant offences

- (1) In this Part “relevant offence”, in relation to a person (“P”), means—

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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) a serious offence by reason of which P is a qualifying offender,
 - (b) a serious offence which was taken into consideration by a court in determining the sentence imposed on P for an offence by reason of which P is a qualifying offender, or
 - (c) a serious offence committed by another person which is associated with—
 - (i) an offence by reason of which P is a qualifying offender, or
 - (ii) an offence which was taken into consideration by a court in determining the sentence imposed on P for such an offence.
- (2) For this purpose an offence is “serious” if—
- (a) in the case of an offence under the law of England and Wales, it is an offence which, if committed by an adult, is triable only on indictment,
 - (b) in the case of an offence under the law of Scotland, it is an offence triable only on indictment,
 - (c) in the case of an offence under the law of Northern Ireland, it is an offence which, if committed by an adult, is triable only on indictment,
 - (d) in the case of a foreign offence, the act constituting the offence—
 - (i) at the time it was done, would have constituted an offence within paragraph (a), (b) or (c) if it had been done in any part of the United Kingdom, and
 - (ii) would also constitute such an offence if it were done in any part of the United Kingdom at the time the application for an exploitation proceeds order is made in respect of it.
- (3) Two offences are associated with one another if—
- (a) they were committed in the context of the same joint criminal venture, or
 - (b) subsection (4) applies.
- (4) This subsection applies if one of the offences is—
- (a) an offence of inciting the commission of the other offence;
 - (b) an offence of conspiring to commit the other offence;
 - (c) an offence under section 44, 45 or 46 of the Serious Crime Act 2007 (c. 27) (offences relating to encouraging or assisting an offence) in relation to the other offence;
 - (d) an offence of soliciting (however expressed) the commission of the other offence;
 - (e) an offence under section 4 of the Criminal Law Act 1967 (c. 58) (assisting the evasion of arrest and concealment) in relation to the other offence;
 - (f) an offence of perverting the course of justice in connection with the other offence;
 - (g) an offence under section 51 of the Criminal Justice and Public Order Act 1994 (c. 33) (intimidation of witnesses and jurors etc) in connection with the other offence.
- (5) In subsection (1)—
- (a) a reference to an offence includes a reference to a UK service offence and a foreign service offence, and
 - (b) the reference to a court includes a reference to a UK service court or a court or authority of the kind mentioned in section 157(2)(c)(i) or (ii).

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (6) Subsection (2) does not apply in relation to a UK service offence or a foreign service offence, and for the purposes of subsection (1) such an offence is “serious” if—
- (a) in the case of a UK service offence—
 - (i) the act constituting the offence is a serious offence within subsection (2)(a),
 - (ii) the act constituting the offence, if done in England and Wales, would be a serious offence within subsection (2)(a), or
 - (iii) the offence is within subsection (7);
 - (b) in the case of a foreign service offence, the act constituting the offence—
 - (i) at the time it was done, would have constituted a serious offence within subsection (2) or an offence within subsection (7) if it had been done in any part of the United Kingdom by a member of Her Majesty's forces, and
 - (ii) would also constitute such an offence if it were done in any part of the United Kingdom by a member of Her Majesty's forces at the time the application for an exploitation proceeds order is made in respect of it.
- (7) An offence is within this subsection if it is an offence under—
- (a) section 24(1) of the AA 1955 or of the AFA 1955, section 2(1) of the NDA 1957 or section 2(1) of the AFA 2006 (misconduct on operations),
 - (b) section 25 of the AA 1955 or of the AFA 1955, section 3 of the NDA 1957 or section 1 of the AFA 2006 (assisting an enemy),
 - (c) section 26(1) of the AA 1955 or of the AFA 1955, section 4(1) of the NDA 1957 or section 3 of the AFA 2006 (obstructing operations),
 - (d) section 30(a) or (b) of the AA 1955 or of the AFA 1955, section 5(a) or (b) of the NDA 1957 or section 4(1) or (2) of the AFA 2006 (looting),
 - (e) section 31 of the AA 1955 or of the AFA 1955, section 9 of the NDA 1957 or section 6 of the AFA 2006 (mutiny), or
 - (f) section 32 of the AA 1955 or of the AFA 1955, section 10 of the NDA 1957 or section 7 of the AFA 2006 (failure to suppress mutiny).
- (8) In subsection (4), the offences listed in paragraphs (a) to (g) include—
- (a) any corresponding offence triable by a court exercising jurisdiction in a country outside the United Kingdom,
 - (b) the corresponding offences triable by a UK service court, and
 - (c) any corresponding offence triable by any court or authority of the kind mentioned in section 157(2)(c)(i) or (ii).
- (9) In this section—
- “AA 1955” means the Army Act 1955 (3 & 4 Eliz. 2 c. 18);
 - “act” includes a failure to act (and references to the doing of an act are to be read accordingly);
 - “AFA 1955” means the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
 - “AFA 2006” means the Armed Forces Act 2006 (c. 52);
 - “foreign offence” has the same meaning as in section 156;
 - “foreign service offence”, “Her Majesty's services” and “UK service offence” have the same meaning as in section 157;
 - “NDA 1957” means the Naval Discipline Act 1957 (c. 53).

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

Commencement Information

I6 S. 159 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

160 Deriving a benefit

- (1) This section applies for the purposes of section 155(3).
- (2) The exploitation may be by any means, including—
 - (a) the publication of any material in written or electronic form;
 - (b) the use of any media from which visual images, words or sounds can be produced;
 - (c) live entertainment, representation or interview.
- (3) A person (“A”) is to be regarded as having derived a benefit if A secures the benefit for another person (“B”) (whether or not A had any legal right to ensure the benefit was so secured or B had any legal entitlement to the benefit).
- (4) It does not matter whether the benefit is derived, or whether the exploitation (or any step taken or to be taken with a view to exploitation) takes place,—
 - (a) within or outside the United Kingdom, or
 - (b) before or after the person who committed the relevant offence is convicted of that offence.
- (5) But—
 - (a) the benefit must be derived after the coming into force of section 155, and
 - (b) where the relevant offence is an offence within section 159(1)(c), the associated offence committed by the respondent must have been committed before the benefit was derived.
- (6) In subsection (4)(b), the reference to conviction of the relevant offence includes a reference to a finding mentioned in section 156(2)(b) or (c) or (3)(a)(ii) or (iii) or 157(2)(b) or (3) in relation to the offence.

Commencement Information

I7 S. 160 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

161 Applications

- (1) A court may not make an exploitation proceeds order except on the application of an enforcement authority.
- (2) “Enforcement authority” means—
 - (a) in relation to an application to the High Court in England and Wales or to the High Court in Northern Ireland—
 - (i) the [F5National Crime Agency], or
 - (ii) a person prescribed or of a description prescribed by order made by the Secretary of State;
 - (b) in relation to an application to the Court of Session, the Scottish Ministers.

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (3) An enforcement authority (other than the Scottish Ministers) may make such an application only with the consent of—
- (a) in the case of an application to the High Court in England and Wales, the Attorney General;
 - (b) in the case of an application to the High Court in Northern Ireland, the Advocate General for Northern Ireland.
- (4) The Secretary of State may by order make such modifications of any provision made by or under Part 8 of the Proceeds of Crime Act 2002 (c. 29) or any other enactment (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made by an order under subsection (2)(a)(ii).
- (5) In subsection (4) “modification” includes an amendment, addition, revocation or repeal.
- [^{F6}(6) In the application of this section to Northern Ireland, in subsections (2)(a)(ii) and (4) references to the Secretary of State are to be read as references to the Department of Justice in Northern Ireland.]

Textual Amendments

- F5** Words in s. 161(2)(a)(i) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), ss. 15, 61, [Sch. 8 para. 186](#); [S.I. 2013/1682](#), [art. 3\(v\)](#)
- F6** S. 161(6) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 14 para. 99](#) (with arts. 28-31)

Commencement Information

- I8** S. 161 in force at 6.4.2010 by [S.I. 2010/816](#), [art. 2](#), [Sch. para. 11](#)

Exercise of power to make orders

162 Determination of applications

- (1) This section applies where the court to which an application for an exploitation proceeds order is made is satisfied as mentioned in section 155(1).
- (2) When determining whether to make an exploitation proceeds order in respect of any benefit, or the recoverable amount to be specified in such an order, the court—
- (a) must take account of the matters mentioned in subsection (3), and
 - (b) may take account of such other matters as it considers relevant.
- (3) Those matters are—
- (a) the nature and purpose of the exploitation from which (or intended exploitation in connection with which) the respondent derived the benefit;
 - (b) the degree to which the relevant material was (or was intended to be) integral to the activity or product and whether it was (or was intended to be) of central importance to the activity or product;
 - (c) the extent to which the carrying out of the activity or supplying of the product is in the public interest;
 - (d) the social, cultural or educational value of the activity or product;
 - (e) the seriousness of the relevant offence to which the activity or product relates;

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (f) the extent to which any victim of the offence or the family of the victim is offended by the respondent obtaining exploitation proceeds from the relevant offence.
- (4) In subsection (3) references to “activity” or “product” are to the activity or product which constituted (or was intended to constitute) the exploitation from which, or in connection with which, the respondent derived the benefit.
- (5) “Relevant material” means the material—
 - (a) which pertains to the relevant offence in relation to the respondent, and
 - (b) by reason of the exploitation of which (or steps taken or to be taken with a view to the exploitation of which) the respondent has derived the benefit.

Commencement Information

I9 S. 162 in force at 6.4.2010 by [S.I. 2010/816](#), art. 2, [Sch. para. 11](#)

163 Limits on recoverable amount

- (1) The recoverable amount specified in an order must not exceed whichever is the lesser of—
 - (a) the total value of the benefits identified in the order under section 155(4)(b), and
 - (b) the available amount.
- (2) The recoverable amount may be a nominal amount.
- (3) The benefits identified in the order—
 - (a) may include any benefit derived by the respondent up to the time the court makes its determination;
 - (b) must not include any benefit identified in a previous exploitation proceeds order made against the respondent;
 - (c) must not include any benefit in respect of which an enforcement authority has no cause of action under this Part by virtue of section 27C of the Limitation Act 1980 (c. 58), Article 72C of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) or section 19D of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (limitation period for exploitation proceeds orders).
- (4) The value of a benefit in kind derived by a person is the amount which, at the time that benefit was received, it would have cost that person to obtain the benefit in the open market less the total value of any consideration for that benefit provided by that person or, where that benefit was secured for another person, by that other person.
- (5) If a benefit in kind cannot be obtained in the open market, the court is to determine a value to attribute to that benefit that is just and reasonable, taking into account any similar benefits available in the open market.
- (6) Where a benefit derives only partly from the matters mentioned in section 155(3)(a) or (b), the value of the benefit derived from those matters is such proportion of the value of the benefit as the court considers it is just and reasonable to regard as attributable to those matters.

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

(7) In this section “the court” means the court making the exploitation proceeds order.

Commencement Information

I10 S. 163 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

164 The available amount

- (1) The available amount is the total of—
- (a) the value of the respondent's relevant assets,
 - (b) to the extent that any benefits identified in the order are benefits secured for a person other than the respondent, the value of those benefits, and
 - (c) the value (at the time the exploitation proceeds order is made) of such relevant gifts (if any) as the court considering making the exploitation proceeds order considers it just and reasonable to take account of in determining the available amount.
- (2) The value of the respondent's relevant assets is the total of the values (at the time the exploitation proceeds order is made) of all the free property then held by the respondent, reduced by the total amount payable in pursuance of obligations which then have priority.
- (3) Property is free unless an order or notice (as the case may be) 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 Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (deprivation orders);
 - (e) section 23, 23A or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);
 - (f) section 245A, 246, 255A, 256, 266, 295(2) or 298(2) of the Proceeds of Crime Act 2002 (c. 29) (freezing, interim receiving, prohibitory, interim administration, recovery, detention and forfeiture orders);
 - (g) section 297A of the Proceeds of Crime Act 2002 (c. 29) (forfeiture notices).
- (4) An obligation has priority if it is an obligation of the respondent—
- (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 exploitation proceeds order is made, or
 - (b) to pay a sum which would be included among the preferential debts (or preferred debts) if the respondent's bankruptcy (or sequestration) had commenced on the date of the exploitation proceeds order or the respondent's winding up had been ordered on that date.
- (5) If the respondent transfers property to another person for a consideration the value of which is significantly less than the value of the property at the time of the transfer, the respondent is to be treated as making a gift of the difference in value between the value of the property transferred and the consideration given in respect of it.

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

(6) In this section—

“preferential debts” has the meaning given by section 386 of the Insolvency Act 1986 (c. 45);

[^{F7}“preferred debts” has the meaning given by section 129(2) of the Bankruptcy (Scotland) Act 2016;]

“relevant gift”, in relation to an exploitation proceeds order, means a gift made by the respondent on or after the day on which the respondent first derived any of the benefits identified in the order under section 155(4)(b).

Textual Amendments

F7 Words in s. 164(6) 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. 34\(2\)](#)

Commencement Information

I11 S. 164 in force at 6.4.2010 by [S.I. 2010/816](#), art. 2, [Sch. para. 11](#)

165 Property

(1) This section applies for the purposes of this Part.

(2) Property is all property wherever situated and includes—

- (a) money;
- (b) all forms of real, corporeal or personal property;
- (c) things in action and other intangible or incorporeal property.

(3) The following rules apply in relation to property—

- (a) property is held by a person if the person holds an interest in it;
- (b) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
- (c) references to property held by a person include references to property vested in the person's trustee in bankruptcy, [^{F8}trustee or interim trustee in a sequestration of the person's estate under the Bankruptcy (Scotland) Act 2016] or liquidator;
- (d) 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;
- (e) references to an interest, in relation to land in Scotland, are to any interest, servitude or other right in or over land, including a heritable security;
- (f) references to an interest, in relation to property other than land, include references to a right (including a right in possession).

(4) Where property is held jointly the court considering making the exploitation proceeds order must determine such value as it considers just and reasonable to attribute to the person's interest in that property for the purposes of section 164.

Textual Amendments

F8 Words in s. 165(3)(c) 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. 34\(3\)](#)

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

Commencement Information

II2 S. 165 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

Additional powers

166 Effect of conviction being quashed etc

- (1) Where an exploitation proceeds order has been made in respect of exploitation proceeds obtained by the respondent from a relevant offence, the order ceases to have effect if—
 - (a) the relevant offence is within paragraph (a) of section 159(1) and the respondent's conviction for it is subsequently quashed, or
 - (b) the relevant offence is within paragraph (b) or (c) of that section and the respondent's conviction for the offence (or, if more than one, all of the offences) by virtue of which the relevant offence is within either of those paragraphs is (or are) subsequently quashed.
- (2) Where an exploitation proceeds order has been made in respect of exploitation proceeds obtained by the respondent from 2 or more relevant offences, the order ceases to have effect if paragraph (a) or (b) of subsection (1) applies in relation to each of those offences.
- (3) Where an exploitation proceeds order ceases to have effect under subsection (1) or (2), the court must, on the application of the respondent (or the respondent's personal representative), order the Secretary of State to repay to the respondent (or the personal representative) the recovered amount.
- (4) Subsection (5) applies where an exploitation proceeds order has been made if—
 - (a) where the order was made in respect of exploitation proceeds obtained by the respondent from 2 or more relevant offences, paragraph (a) or (b) of subsection (1) applies in relation to one or more, but not all, of those offences, or
 - (b) where the order was made in respect of exploitation proceeds obtained by the respondent from a relevant offence within section 159(1)(c) (whether alone or together with other relevant offences), another person has been convicted of that offence and that conviction is subsequently quashed.
- (5) On the application of the respondent (or the respondent's personal representative), the court may—
 - (a) determine that the exploitation proceeds order is to cease to have effect, or
 - (b) reduce the recoverable amount by such amount (if any) as it considers just and reasonable.
- (6) Where the exploitation proceeds order ceases to have effect under subsection (5) (a), the court must order the Secretary of State to repay to the respondent (or the respondent's personal representative) the recovered amount.
- (7) Where the court reduces the recoverable amount under subsection (5)(b), if the recovered amount exceeds the reduced recoverable amount, the court must order the Secretary of State to repay to the respondent (or the respondent's personal representative) that excess.

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (8) An order under subsection (3), (6) or (7) for the repayment of a sum must also order the Secretary of State to pay to the recipient interest on that sum, at a rate determined by the court, for the period which—
- (a) begins with the day on which the respondent made the payment in accordance with the exploitation proceeds order, and
 - (b) ends with the day before the day on which that sum is repaid to the respondent or the respondent's personal representative.
- (9) In the case of an exploitation proceeds order made on the application of the Scottish Ministers—
- (a) references in this section to the Secretary of State are to be read as references to the Scottish Ministers, and
 - (b) the reference in subsection (8) to a rate determined by the court is to read as a reference to a rate set by rules of court.
- [^{F9}(9A) In the case of an exploitation proceeds order made in Northern Ireland on the application of an enforcement authority other than the [^{F10}National Crime Agency], references in this section to the Secretary of State are to be read as references to the Department of Justice in Northern Ireland.]
- (10) In this section—
- (a) any reference to a conviction for an offence includes a reference to a finding, in relation to the offence, of the kind mentioned in section 156(2)(b) or (c) or (3)(a)(ii) or (iii) or section 157(2)(b) or (3), and
 - (b) any reference to a conviction for an offence being quashed includes a reference to—
 - (i) the reversal or setting aside of a conviction;
 - (ii) the substitution of a verdict of acquittal in relation to a finding of the kind mentioned in section 156(2)(b) or (c);
 - (iii) a finding of the kind mentioned in section 156(3)(a)(ii) or (iii) being quashed;
 - (iv) a finding of the kind mentioned in section 157(2)(b) or (3) being quashed, set aside, reversed or replaced with a verdict of acquittal.
- (11) In this section—
- “the court” means the court which made the exploitation proceeds order;
- “personal representative” means—
- (a) in relation to England and Wales, a person who is a personal representative within the meaning of section 55(1) of the Administration of Estates Act 1925 (c. 23),
 - (b) in relation to Scotland, an executor confirmed to the estate of the respondent,
 - (c) in relation to Northern Ireland, a person who is one of the personal representatives within the meaning of the Administration of Estates Act (Northern Ireland) 1955 (c. 24), or
 - (d) any person having, in relation to the respondent, under the law of another country any functions corresponding to the functions of a person falling within paragraph (a), (b) or (c);
- “the recovered amount”, in relation to an exploitation proceeds order, means the amount (if any) paid by the respondent to an enforcement authority

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

in accordance with the order, reduced by any amount already repaid under subsection (7) and disregarding any interest paid under section 155(6).

Textual Amendments

- F9** S. 166(9A) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 100** (with arts. 28-31)
- F10** Words in s. 166(9A) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 186**; S.I. 2013/1682, art. 3(v)

Commencement Information

- I13** S. 166 in force at 6.4.2010 by [S.I. 2010/816](#), art. 2, **Sch. para. 11**

167 Powers of court on repeat applications

- (1) This section applies if—
- a court makes an exploitation proceeds order (“the earlier order”) in respect of a person, and
 - an application (“the later application”) is then made to the court for another exploitation proceeds order in respect of the same person.
- (2) The court may, for the purposes of the later application, adopt any finding of fact made by the court in connection with the earlier order.
- (3) Subsection (4) applies where, on the later application, the court is satisfied as mentioned in section 155(1).
- (4) If, or to the extent that, the earlier order was in respect of benefits derived from the same source as the benefits to which the later application relates, the court must when making a determination under section 162 in relation to the later application, have regard to any determination made by it under that section in connection with the earlier order.
- (5) For the purposes of subsection (4) benefits are from the same source if they consist of benefits derived by the respondent from (or from steps taken or to be taken with a view to) the same exploitation of material related to the same relevant offence.

Commencement Information

- I14** S. 167 in force at 6.4.2010 by [S.I. 2010/816](#), art. 2, **Sch. para. 11**

168 Additional proceeds reporting orders

- (1) A court making an exploitation proceeds order may also make an additional proceeds reporting order in respect of the respondent.
- (2) But it may do so only if it is satisfied that the likelihood of the respondent obtaining further exploitation proceeds from a relevant offence is sufficiently high to justify the making of an additional proceeds reporting order.
- (3) An additional proceeds reporting order—
- comes into force when it is made, and

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (b) has effect for the period specified in the order, beginning with the date on which it is made.
- (4) The period specified under subsection (3) must not exceed 20 years.
- (5) Sections 79, 80(1) and (2) and 81 of the Serious Organised Crime and Police Act 2005 (c. 15) apply in relation to an additional proceeds reporting order under this section as they apply in relation to a financial reporting order under section 76, 77 or 78 of that Act.
- (6) The person to whom reports are made under an additional proceeds reporting order may disclose a report to an enforcement authority for the purposes of—
 - (a) an exploitation proceeds investigation (within the meaning of section 341(5) of the Proceeds of Crime Act 2002 (c. 29)), or
 - (b) the making or pursuing of an application for, or the enforcement of, an exploitation proceeds order or an additional proceeds reporting order.

Commencement Information

I15 S. 168 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

Investigations

169 Exploitation proceeds investigations

Part 8 of the Proceeds of Crime Act 2002 (c. 29) (investigations) is amended in accordance with Schedule 19.

Commencement Information

I16 S. 169 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

^{F11}170 Functions of Serious Organised Crime Agency

.....

Textual Amendments

F11 S. 170 repealed (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), Sch. 8 para. 189; S.I. 2013/1682, art. 3(v)

Limitation

171 Limitation

- (1) After section 27B of the Limitation Act 1980 (c. 58) insert—

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

“27C Actions for exploitation proceeds orders

- (1) None of the time limits given in the preceding provisions of this Act applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.
 - (2) Proceedings under that Part for such an order are not to be brought after the expiration of 6 years from the date on which the enforcement authority's cause of action accrued.
 - (3) Proceedings under that Part for such an order are brought when an application is made for the order.
 - (4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's cause of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.
 - (5) Expressions used in this section and that Part have the same meaning in this section as in that Part.”
- (2) After Article 72B of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) insert—

“72C Actions for exploitation proceeds orders

- (1) None of the time limits given in the preceding provisions of this Order applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.
 - (2) Proceedings under that Part for such an order are not to be brought after the expiration of 6 years from the date on which the enforcement authority's cause of action accrued.
 - (3) Proceedings under that Part for such an order are brought when an application is made for the order.
 - (4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's cause of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.
 - (5) Expressions used in this Article and that Part have the same meaning in this Article as in that Part.”
- (3) After section 19C of the Prescription and Limitation (Scotland) Act 1973 (c. 52) insert—

“19D Actions for exploitation proceeds orders

- (1) None of the time limits given in the preceding provisions of this Act applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.

Status: Point in time view as at 30/11/2016.

Changes to legislation: Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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)

- (2) Proceedings under that Part for such an order are not to be brought after the expiration of 5 years from the date on which the enforcement authority's right of action accrued.
- (3) Proceedings under that Part for such an order are brought when an application is made for the order.
- (4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's right of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.
- (5) Expressions used in this section and that Part have the same meaning in this section as in that Part."

Commencement Information

I17 S. 171 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

Interpretation

172 Interpretation of this Part

In this Part—

“benefit” means a direct or indirect benefit of any nature (pecuniary or non-pecuniary);

“enactment” includes an enactment contained in, or an instrument made under, Northern Ireland legislation;

“enforcement authority” has the meaning given by section 161(2);

“material” means any information, opinion, image or other thing;

“qualifying offender” has the meaning given by section 156;

“recoverable amount” has the meaning given by section 155;

“relevant offence” has the meaning given by section 159;

“the respondent” has the meaning given by section 155;

“UK service court” means—

(a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53) or the Court Martial established by the Armed Forces Act 2006 (c. 52);

(b) a Standing Civilian Court established under the Armed Forces Act 1976 (c. 52) or the Service Civilian Court established by the Armed Forces Act 2006;

(c) the Courts-Martial Appeal Court or the Court Martial Appeal Court.

Commencement Information

I18 S. 172 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

Status:

Point in time view as at 30/11/2016.

Changes to legislation:

Coroners and Justice Act 2009, Part 7 is up to date with all changes known to be in force on or before 10 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.