



# Coroners and Justice Act 2009

## 2009 CHAPTER 25

### PART 7 U.K.

#### CRIMINAL MEMOIRS ETC

##### *Exercise of power to make orders*

#### 162 Determination of applications U.K.

- (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;
  - (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.

*Status: Point in time view as at 06/04/2010.*

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- (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

II S. 162 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

### 163 Limits on recoverable amount **U.K.**

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

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#### Commencement Information

**I2** S. 163 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

### 164 The available amount **U.K.**

- (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.
- (6) In this section—

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

“preferred debts” has the meaning given by section 51(2) of the Bankruptcy (Scotland) Act 1985 (c. 66);

“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).

#### Commencement Information

**I3** S. 164 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

## 165 Property **U.K.**

- (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, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) 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.

#### Commencement Information

**I4** S. 165 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 11

**Status:**

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**Changes to legislation:**

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