



# Serious Crime Act 2015

## 2015 CHAPTER 9

### PART 1

#### PROCEEDS OF CRIME

#### CHAPTER 1

##### ENGLAND AND WALES

*Confiscation: assets held by defendant and other*

## **1 Determination of extent of defendant's interest in property**

After section 10 of the Proceeds of Crime Act 2002 insert—

### **“10A Determination of extent of defendant's interest in property**

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

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- (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.”

## 2 **Provision of information**

(1) In section 16 of the Proceeds of Crime Act 2002 (statement of information), after subsection (6) insert—

“(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.”

(2) In section 18 of that Act (provision of information by defendant)—

- (a) in subsection (2), after “functions” insert “(including functions under section 10A)”;
- (b) in subsection (6)(b), for “deciding the available amount under section 9,” substitute “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),”.

(3) After that section insert—

### **“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.

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- (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.
- (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.”

### **3 Appeals**

- (1) In section 31 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert—
  - “(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

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- (c) a receiver has been appointed under section 50.”
- (2) In section 32 of that Act (court’s powers on appeal), after subsection (2) insert—
- “(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 section 33 of that Act (appeal to Supreme Court)—
- (a) for subsection (2) substitute—
- “(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.”;
- (b) after subsection (3) insert—
- “(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 Enforcement receivers**

In section 51 of the Proceeds of Crime Act 2002 (powers of receivers etc), after subsection (8A) insert—

- “(8B) Representations that a person is entitled to make by virtue of subsection (8) do 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.”