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STATUTORY INSTRUMENTS

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**2003 No. 333 (C. 20)**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Commencement No. 5,  
Transitional Provisions, Savings and Amendment) Order 2003**

*Made - - - - 20th February 2003*

The Secretary of State, in exercise of the powers conferred on him by sections 458(1) and 459(2) of the Proceeds of Crime Act 2002<sup>(1)</sup> and after consultation with the Scottish Ministers, hereby makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Commencement No. 5, Transitional Provisions, Savings and Amendment) Order 2003.

(2) In this Order, “the Act” means the Proceeds of Crime Act 2002.

(3) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this Order to have been committed on the earliest of those days.

**Commencement of provisions**

2.—(1) The provisions of the Act listed in column 1 of the Schedule to this Order shall come into force on 24th March 2003, subject to the transitional provisions and savings contained in this Order.

(2) But where a particular purpose is specified in relation to any such provision in column 2 of that Schedule, the provision concerned shall come into force only for that purpose.

**Transitional provisions relating to confiscation orders—England and Wales**

3.—(1) Section 6 of the Act (making of confiscation order) shall not have effect where the offence, or any of the offences, mentioned in section 6(2) was committed before 24th March 2003.

(2) Section 27 of the Act (defendant convicted or committed absconds) shall not have effect where the offence, or any of the offences, mentioned in section 27(2) was committed before 24th March 2003.

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(1) 2002 c. 29.

(3) Section 28 of the Act (defendant neither convicted nor acquitted absconds) shall not have effect where the offence, or any of the offences, in respect of which proceedings have been started but not concluded was committed before 24th March 2003.

**Transitional provisions relating to confiscation orders—Northern Ireland**

4.—(1) Section 156 of the Act (making of confiscation order) shall not have effect where the offence, or any of the offences, mentioned in section 156(2) was committed before 24th March 2003.

(2) Section 177 of the Act (defendant convicted or committed absconds) shall not have effect where the offence, or any of the offences, mentioned in section 177(2) was committed before 24th March 2003.

(3) Section 178 of the Act (defendant neither convicted nor acquitted absconds) shall not have effect where the offence, or any of the offences, in respect of which proceedings have been started but not concluded was committed before 24th March 2003.

**Transitional provisions relating to restraint orders and enforcement abroad—England and Wales**

5. Sections 41 (restraint orders) and 74 (enforcement abroad) of the Act shall not have effect where—

- (a) the powers in those sections would otherwise be exercisable by virtue of a condition in section 40(2) or (3) of the Act being satisfied; and
- (b) the offence mentioned in section 40(2)(a) or 40(3)(a), as the case may be, was committed before 24th March 2003.

**Transitional provisions relating to restraint orders and enforcement abroad—Northern Ireland**

6. Sections 190 (restraint orders) and 222 (enforcement abroad) of the Act shall not have effect where—

- (a) the powers in those sections would otherwise be exercisable by virtue of a condition in section 189(2) or (3) of the Act being satisfied; and
- (b) the offence mentioned in section 189(2)(a) or 189(3)(a), as the case may be, was committed before 24th March 2003.

**Transitional provisions relating to criminal lifestyle—England and Wales**

7.—(1) This article applies where the court is determining under section 6(4)(a) of the Act whether the defendant has a criminal lifestyle.

(2) The tests in section 75(2)(a) and (c) of the Act shall not be satisfied where the offence (or any of the offences) concerned was committed before 24th March 2003.

(3) In applying the rule in section 75(5) of the Act on the calculation of relevant benefit for the purposes of section 75(2)(b) and (4), the court must not take into account benefit from conduct constituting an offence which was committed before 24th March 2003.

(4) Conduct shall not form part of a course of criminal activity under section 75(3)(a) of the Act where—

- (a) the offence (or any of the offences) concerned; or
  - (b) any one of the three or more offences mentioned in section 75(3)(a),
- was committed before 24th March 2003.

(5) Conduct shall form part of a course of criminal activity under section 75(3)(b) of the Act, notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period mentioned in section 75(3)(b) were committed before 24th March 2003.

### **Transitional provisions relating to criminal lifestyle—Northern Ireland**

**8.—(1)** This article applies where the court is determining under section 156(4)(a) of the Act whether the defendant has a criminal lifestyle.

(2) The tests in section 223(2)(a) and (c) of the Act shall not be satisfied where the offence (or any of the offences) concerned was committed before 24th March 2003.

(3) In applying the rule in section 223(5) of the Act on the calculation of relevant benefit for the purposes of section 223(2)(b) and (4) of the Act, the court must not take into account benefit from conduct constituting an offence which was committed before 24th March 2003.

(4) Conduct shall not form part of a course of criminal activity under section 223(3)(a) of the Act where—

- (a) the offence (or any of the offences) concerned; or
- (b) any one of the three or more offences mentioned in section 223(3)(a),

was committed before 24th March 2003.

(5) Conduct shall form part of a course of criminal activity under section 223(3)(b) of the Act, notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period mentioned in section 223(3)(b) was committed before 24th March 2003.

### **Transitional provisions relating to particular criminal conduct**

**9.** Conduct which constitutes an offence which was committed before 24th March 2003 is not particular criminal conduct under section 76(3) or 224(3) of the Act.

### **Savings for England and Wales**

**10.—(1)** Where, under article 3 or 5, a provision of the Act does not have effect, the following provisions shall continue to have effect—

- (a) sections 71 to 89 (including Schedule 4) and 102 of the Criminal Justice Act 1988(2);
- (b) paragraphs 83 and 84 of Schedule 17 to the Housing Act 1988(3);
- (c) sections 21(3)(e) to (g), 27, 28 and 34 of the Criminal Justice Act 1993(4);
- (d) paragraph 36 of Schedule 9 to the Criminal Justice and Public Order Act 1994(5);
- (e) sections 1 to 36 and 41 of the Drug Trafficking Act 1994(6);
- (f) sections 1 to 10, 15(1) and (3) (including Schedule 1), 16(2), (5) and (6) of the Proceeds of Crime Act 1995(7);
- (g) section 4(3) of the Private International Law (Miscellaneous Provisions) Act 1995(8);

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(2) 1988 c. 33.  
(3) 1988 c. 50.  
(4) 1993 c. 36.  
(5) 1994 c. 33.  
(6) 1994 c. 37.  
(7) 1995 c. 11.  
(8) 1995 c. 42.

- (h) sections 35 to 38 of the Proceeds of Crime (Scotland) Act 1995<sup>(9)</sup>;
  - (i) the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997<sup>(10)</sup> and the Proceeds of Crime (Northern Ireland) Order 1996<sup>(11)</sup>, so far as necessary for the continued operation of the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997;
  - (j) paragraphs 23 and 36 of Schedule 5 to the Justices of the Peace Act 1997<sup>(12)</sup>;
  - (k) section 83 of, paragraph 114 of Schedule 8 to and paragraph 8 of Schedule 9 to the Crime and Disorder Act 1998<sup>(13)</sup>;
  - (l) paragraphs 139 and 172 of Schedule 13 to the Access to Justice Act 1999<sup>(14)</sup>;
  - (m) paragraphs 105 to 113 and 163 to 173 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000<sup>(15)</sup>;
  - (n) paragraphs 6(1) to (3) and 10 of Schedule 15 to the Terrorism Act 2000<sup>(16)</sup>.
- (2) Where under article 3 or 5, a provision of the Act does not have effect, the following provisions shall continue to have effect as if they had not been amended by Schedule 11 to the Act—
- (a) section 13(6) of the Criminal Justice (International Co-operation) Act 1990<sup>(17)</sup>;
  - (b) paragraph 17(3) of Schedule 8 to the Terrorism Act 2000.

### Savings for Northern Ireland

**11.** Where, under article 4 or 6, a provision of the Act does not have effect, the following provisions shall continue to have effect—

- (a) the Criminal Justice Act 1988 (Enforcement of Northern Ireland Confiscation Orders) Order 1995<sup>(18)</sup> and the Criminal Justice Act 1988, so far as necessary for the continued operation of that Order;
- (b) the Drug Trafficking Act 1994 (Enforcement of Northern Ireland Confiscation Orders) Order 1995<sup>(19)</sup> and the Drug Trafficking Act 1994, so far as necessary for the continued operation of that Order;
- (c) the Proceeds of Crime (Scotland) Act 1995 (Enforcement of Northern Ireland Orders) Order 1998<sup>(20)</sup> and the Proceeds of Crime (Scotland) Act 1995, so far as necessary for the continued operation of that Order;
- (d) the definitions in article 2(2) of the Proceeds of Crime (Northern Ireland) Order 1996 which are repealed by paragraph 31 of Schedule 11 to the Act and Schedule 12 to the Act;
- (e) articles 3 to 40 of, and paragraph 18 of Schedule 3 to, the Proceeds of Crime (Northern Ireland) Order 1996.

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<sup>(9)</sup> 1995 c. 43.

<sup>(10)</sup> S.R. 1997/403.

<sup>(11)</sup> S.I. 1996/1299 (N.I. 9).

<sup>(12)</sup> 1997 c. 25.

<sup>(13)</sup> 1998 c. 37.

<sup>(14)</sup> 1999 c. 22.

<sup>(15)</sup> 2000 c. 6.

<sup>(16)</sup> 2000 c. 11.

<sup>(17)</sup> 1990 c. 5.

<sup>(18)</sup> S.I. 1995/1968.

<sup>(19)</sup> S.I. 1995/1967.

<sup>(20)</sup> S.I. 1998/752 (S. 42).

### **Savings for enforcement of Scottish orders in England, Wales and Northern Ireland**

12. Where the Proceeds of Crime (Scotland) Act 1995 continues to have effect by virtue of saving provision in an order made by Scottish Ministers under section 458(3) of the Act for the commencement of Part 3 of the Act, the following provisions shall continue to have effect—

- (a) the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997 and the Proceeds of Crime (Northern Ireland) Order 1996, so far as necessary for the continued operation of the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997;
- (b) the Proceeds of Crime (Scotland) Act 1995 (Enforcement of Scottish Confiscation Orders in England and Wales) Order 2001(21).

### **Savings in relation to external orders**

13. The following provisions shall continue to have effect—

- (a) the Criminal Justice Act 1988, so far as necessary for the continued operation of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991(22);
- (b) the Drug Trafficking Act 1994, so far as necessary for the continued operation of the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996(23);
- (c) the Proceeds of Crime (Scotland) Act 1995, so far as necessary for the continued operation of the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999(24);
- (d) the Proceeds of Crime (Northern Ireland) Order 1996, so far as necessary for the continued operation of the Proceeds of Crime (Countries and Territories designated under the Drug Trafficking Act 1994) Order (Northern Ireland) 1997(25) and the Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998(26).

### **Amendment of Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003**

14.—(1) The Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003(27) is amended as follows.

(2) In articles 3 and 5(1), for “and ended after that date”, there is substituted “and ended on or after that date”.

Home Office  
20th February 2003

*Filkin*  
Parliamentary Under-Secretary of State

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(21) S.I. 2001/953.

(22) S.I. 1991/2873, amended by S.I. 1993/1790, S.I. 1993/3147, S.I. 1994/1639, S.I. 1996/278, S.I. 1996/2877, S.I. 1997/1316, S.I. 1997/2976, S.I. 1999/282, S.I. 2001/960, S.I. 2002/256 and S.I. 2002/2844.

(23) S.I. 1996/2880, amended by S.I. 1997/1318, S.I. 1997/2980, S.I. 2001/956, S.I. 2002/257 and S.I. 2002/2846.

(24) S.I. 1999/673 (S. 44).

(25) S.R. 1997/270, amended by S.R. 1998/461.

(26) S.R. 1998/88, amended by S.R. 1998/462.

(27) S.I. 2003/120 (C. 6).

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## THE SCHEDULE

Article 2

<i>Column 1</i>	<i>Column 2</i>
Part 2 (sections 6 to 91, including Schedule 2) (Confiscation: England and Wales).	So far as not already in force.
Part 4 (sections 156 to 239, including Schedule 5) (Confiscation: Northern Ireland).	
Part 9 (sections 417 to 434) (Insolvency etc.).	
Part 10 (sections 435 to 442) (Information).	So far as not already in force.
Section 444 (External requests and orders).	
Section 445 (External investigations).	
Section 447 (Interpretation).	
Section 456 (Amendments).	Commenced for the purposes of the provisions of Schedule 11 to the Act commenced by this Order.
Section 457 (Repeals).	Commenced for the purposes of the provisions of Schedule 12 to the Act commenced by this Order.
In Schedule 11, paragraphs 1, 4, 5, 7, 8, 9, 11, 14(2) and (3), 15, 16, 17(2), (4) and (6), 19(2) and (3), 20, 21, 25(2)(a) and (h) to (j), 26, 27, 28(1) and (2)(e) and (g), 31(2) and (3)(a) to (c), 32, 37 and 39.	Paragraphs 7, 11, 15, 16, 20, 21 and 39 are commenced except to the extent that they relate to Part 3 of the Act. Paragraph 17(2) is commenced so far as it repeals sections 71 to 89, 94 and 99 to 102 of the Criminal Justice Act 1988. Paragraph 25(2)(a) is commenced so far as it repeals sections 1 to 38 and 41 of the Drug Trafficking Act 1994. Paragraph 27 is commenced so far as not already in force. Paragraph 31(2) is commenced so far as it repeals articles 4 to 41 of the Proceeds of Crime (Northern Ireland) Order 1996.
In Schedule 12, the following entries; the entry relating to the Criminal Appeal (Northern Ireland) Act 1980; <b>(28)</b> the entry relating to the Police and Criminal Evidence Act 1984; <b>(29)</b> the entry relating to the Criminal Justice Act 1988; the entry relating to the Housing Act 1988; the entry relating to the Police and Criminal Evidence (Northern Ireland) Order 1989; <b>(30)</b> in the entry relating to the Criminal Justice (International Co-operation) Act 1990, the entry in the second column concerning section 13 of that Act; the entry relating to the Criminal Justice (Confiscation) (Northern	The entry relating to sections 71 to 102 of the Criminal Justice Act 1988 is commenced so far as it repeals sections 71 to 89, 94 and 99 to 102 of that Act. The entries relating to the Criminal Justice Act 1993, the Proceeds of Crime Act 1995 and the Access to Justice Act 1999 are commenced so far as not already in force. The entry relating to sections 1 to 54 of the Drug Trafficking Act 1994 is commenced so far as it repeals sections 1 to 38 and 41 of that Act. The entry relating to Parts II and III of the Proceeds of Crime (Northern Ireland) Order 1996 is commenced so far as it repeals articles

**(28)** 1980 c. 47.

**(29)** 1984 c. 60.

**(30)** S.I. 1989/1341 (N.I. 12).

<i>Column 1</i>	<i>Column 2</i>
Ireland) Order 1990; <b>(31)</b> the entry relating to the Criminal Justice Act 1993; <b>(32)</b> the entry relating to the Drug Trafficking Act 1994; the entry relating to the Proceeds of Crime Act 1995; in the entry relating to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 <b>(33)</b> , the entry in the second column concerning Schedule 4 of that Act; the entry relating to the Private International Law (Miscellaneous Provisions) Act 1995; in the entry relating to the Proceeds of Crime (Scotland) Act 1995, the entry in the second column concerning sections 35 to 39 of that Act, the entry in the second column concerning section 40 of that Act and the entry in the second column concerning section 42 of that Act; the entry relating to the Proceeds of Crime (Northern Ireland) Order 1996; the entry relating to the Justices of the Peace Act 1997; in the entry relating to the Crime and Disorder Act 1998, the entry in the second column concerning section 83 of that Act, the entry in the second column concerning Schedule 8 of that Act and the entry in the second column concerning Schedule 9 of that Act; the entry relating to the Access to Justice Act 1999; the entry relating to the Powers of Criminal Courts (Sentencing) Act 2000; the entry relating to the Terrorism Act 2000; and the entry relating to the Criminal Justice and Police Act 2001 <b>(34)</b> .	4 to 41 of that Order. The entry relating to the Terrorism Act 2000 is commenced so far as it repeals paragraphs 6 and 10 of Schedule 15 to that Act.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force, on 24th March 2003, the following provisions of the Proceeds of Crime Act (“the Act”):

- (a) Part 2, which replaces the existing scheme of criminal confiscation in England and Wales;
- (b) Part 4, which replaces the existing scheme of criminal confiscation in Northern Ireland;

**(31)** S.I. 1990/2588 (N.I. 17).

**(32)** 1993 c. 36.

**(33)** 1995 c. 40.

**(34)** 2001 c. 16.

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- (c) Part 9, which makes provision about the interaction of insolvency proceedings and criminal confiscation proceedings in England, Wales, Northern Ireland and Scotland;
- (d) Part 10, which provides for the disclosure of information to and by the Director of the Assets Recovery Agency (so far as it relates to the disclosure of information to and by the Lord Advocate in connection with the exercise of any of his functions under Part 3 of the Act);
- (e) sections 444, 445 and 447 which give power to make Orders in Council about external requests, orders and investigations;
- (f) certain minor and consequential amendments in Schedule 11, together with entries in the repeals Schedule, Schedule 12.

Articles 3 to 13 make transitional provision and savings in relation to the existing confiscation schemes in England and Wales and Northern Ireland and about the schemes for enforcement of overseas confiscation orders.

Article 14 amends the Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003 to make it clear that the transitional provisions and savings in that Order also apply to offences which end on the commencement date.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Proceeds of Crime Act 2002 have been brought into force by commencement order made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Part 1 (sections 1 to 5, together with Schedule 1) (Assets Recovery Agency)	13th January 2003	<a href="#">2002/3055</a>
Section 89 (Procedure on appeal to the Court of Appeal) (for the purposes of making secondary legislation)	30th December 2002	<a href="#">2002/3015</a>
Section 90 (Procedure on appeal to the House of Lords) (for the purposes of making secondary legislation)	30th December 2002	<a href="#">2002/3015</a>
Chapter 1 of Part 5 (sections 240 to 242) (Civil recovery of the proceeds etc. of unlawful conduct—introductory)	30th December 2002	<a href="#">2002/3015</a>
Chapter 2 of Part 5 (sections 243 to 288, including Schedules 6 and 7) (Civil Recovery in the High Court or Court of Session), except for section 270(4) and (5)	24th February 2003	<a href="#">2003/120</a>
Section 270(4) and (5) (Associated and joint property)	30th December 2002	<a href="#">2002/3015</a>



<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Chapter 3 of Part 5 (sections 289 to 303) (Civil recovery of the proceeds etc. of unlawful conduct—recovery of cash in summary proceedings)	30th December 2002	<a href="#">2002/3015</a>
Sections 304 to 311 (Civil recovery of the proceeds etc. of unlawful conduct—general)	30th December 2002	<a href="#">2002/3015</a>
Section 312 (Performance of functions of Scottish Ministers by constables in Scotland)	24th February 2003	<a href="#">2003/120</a>
Section 313 (Restriction on performance of Director’s functions by police)	24th February 2003	<a href="#">2003/120</a>
Sections 314 to 316 (Interpretation)	30th December 2002	<a href="#">2002/3015</a>
Part 6 (sections 317 to 326, including Schedule 8) (Revenue Functions)	24th February 2003	<a href="#">2003/120</a>
Part 7 (sections 327 to 340, including Schedule 9) (Money Laundering)	24th February 2003	<a href="#">2003/120</a>
Part 8 (sections 341 to 416) (Investigations)	24th February 2003	<a href="#">2003/120</a>
Part 10 (sections 435 to 442) (Information) (in part)	24th February 2003	<a href="#">2003/120</a>
Section 443 (Enforcement in different parts of the United Kingdom)	24th February 2003	<a href="#">2003/120</a>
Section 446 (Rules of court)	24th February 2003	<a href="#">2003/120</a>
Section 448, including Schedule 10 (Tax)	24th February 2003	<a href="#">2003/120</a>
Section 449 (Agency staff: pseudonyms)	24th February 2003	<a href="#">2003/120</a>
Section 450 (Pseudonyms: Scotland)	24th February 2003	<a href="#">2003/120</a>
Section 451 (Customs and Excise prosecutions)	24th February 2003	<a href="#">2003/120</a>
Section 452 (Crown servants)	24th February 2003	<a href="#">2003/120</a>
Section 453 (References to financial investigators)	24th February 2003	<a href="#">2003/120</a>
Section 454 (Customs officers)	30th December 2002	<a href="#">2002/3015</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 455 (Enactment)	30th December 2002	<a href="#">2002/3015</a>
Section 456 (Amendments) (in part)	30th December 2002 and 24th February 2003	<a href="#">2002/3015</a> , <a href="#">2002/3145</a> and <a href="#">2003/120</a>
Section 457 (Repeals) (in part)	30th December 2002 and 24th February 2003	<a href="#">2002/3015</a> and <a href="#">2003/120</a>
Paragraphs 2; 3; 6; 10(2); 13; 14(1) and (4); 17(1), (2) (in part), (3) and (5); 18; 19(1) and (4); 22; 23; 24; 25(2)(a) to (g) (in part), (3), (4), (5), (6) and (7); 27 (in part); 28(1) and (2)(a) (in part); 30; 31(1), (2) (in part), (3)(c) to (h) and (4) to (18); 34; 35; 38 and 40 of Schedule 11	24th February 2003	<a href="#">2003/120</a>
Paragraph 10(1), (3) and (4) of Schedule 11	30th December 2002	<a href="#">2002/3145</a>
Paragraphs 25(1) and (2)(a) (in part) and 36 of Schedule 11	30th December 2002	<a href="#">2002/3015</a>