



# Proceeds of Crime Act 1995

## 1995 CHAPTER 11

### *Making of confiscation orders*

#### **1 Duty to make confiscation orders**

- (1) Section 71 of the Criminal Justice Act 1988 (“the 1988 Act”) shall be amended as follows.
- (2) For subsections (1) to (3) (orders confiscating the proceeds of an offence) there shall be substituted the following subsections—
  - “(1) Where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of an offence of a relevant description, it shall be the duty of the court—
    - (a) if the prosecutor has given written notice to the court that he considers that it would be appropriate for the court to proceed under this section, or
    - (b) if the court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed,to act as follows before sentencing or otherwise dealing with the offender in respect of that offence or any other relevant criminal conduct.
  - (1A) The court shall first determine whether the offender has benefited from any relevant criminal conduct.
  - (1B) Subject to subsection (1C) below, if the court determines that the offender has benefited from any relevant criminal conduct, it shall then—
    - (a) determine in accordance with subsection (6) below the amount to be recovered in his case by virtue of this section, and
    - (b) make an order under this section ordering the offender to pay that amount.
  - (1C) If, in a case falling within subsection (1B) above, the court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute,

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civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—

- (a) the court shall have a power, instead of a duty, to make an order under this section;
- (b) subsection (6) below shall not apply for determining the amount to be recovered in that case by virtue of this section; and
- (c) where the court makes an order in exercise of that power, the sum required to be paid under that order shall be of such amount, not exceeding the amount which (but for paragraph (b) above) would apply by virtue of subsection (6) below, as the court thinks fit.

(1D) In this Part of this Act “relevant criminal conduct”, in relation to a person convicted of an offence in any proceedings before a court, means (subject to section 72AA(6) below) that offence taken together with any other offences of a relevant description which are either—

- (a) offences of which he is convicted in the same proceedings, or
- (b) offences which the court will be taking into consideration in determining his sentence for the offence in question.

(1E) For the purposes of this Part of this Act an offence is an offence of a relevant description—

- (a) in the case of an offence of which a person is convicted in any proceedings before the Crown Court or which is or will be taken into consideration by the Crown Court in determining any sentence, if it is an offence to which this Part of this Act applies; and
- (b) in the case of an offence of which a person is convicted in any proceedings before a magistrates' court or which is or will be taken into consideration by a magistrates' court in determining any sentence, if it is an offence listed in Schedule 4 to this Act.”

(3) In subsection (6) (amount to be paid under a confiscation order)—

- (a) at the beginning there shall be inserted “Subject to subsection (1C) above”; and
- (b) for “must be at least the minimum amount, but must not exceed” there shall be substituted “shall be equal to”.

(4) Subsections (7) and (8) (minimum amount of confiscation order) shall cease to have effect.

(5) In subsection (7A) (standard of proof required to determine matters under Part VI)—

- (a) in paragraph (a), for “as mentioned in subsection (2)(b)(i) above” there shall be substituted “from any offence”, and at the end there shall be inserted “or”;
- (b) paragraph (b) shall be omitted; and
- (c) in paragraph (c), the words “by virtue of section 72 below” shall be omitted.

## 2 **Confiscation relating to a course of criminal conduct**

The following section shall be inserted in the 1988 Act after section 72—

### **“72AA Confiscation relating to a course of criminal conduct**

- (1) This section applies in a case where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of a qualifying offence which is an offence of a relevant description, if—
  - (a) the prosecutor gives written notice for the purposes of subsection (1) (a) of section 71 above;
  - (b) that notice contains a declaration that it is the prosecutor's opinion that the case is one in which it is appropriate for the provisions of this section to be applied; and
  - (c) the offender—
    - (i) is convicted in those proceedings of at least two qualifying offences (including the offence in question); or
    - (ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.
- (2) In this section “qualifying offence”, in relation to proceedings before the Crown Court or a magistrates' court, means any offence in relation to which all the following conditions are satisfied, that is to say—
  - (a) it is an offence to which this Part of this Act applies;
  - (b) it is an offence which was committed after the commencement of section 2 of the Proceeds of Crime Act 1995; and
  - (c) that court is satisfied that it is an offence from which the defendant has benefited.
- (3) When proceeding under section 71 above in pursuance of the notice mentioned in subsection (1)(a) above, the court may, if it thinks fit, determine that (subject to subsection (5) below) the assumptions specified in subsection (4) below are to be made for the purpose—
  - (a) of determining whether the defendant has benefited from relevant criminal conduct; and
  - (b) if he has, of assessing the value of the defendant's benefit from such conduct.
- (4) Those assumptions are—
  - (a) that any property appearing to the court—
    - (i) to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question, or
    - (ii) to have been transferred to him at any time since the beginning of the relevant period,  
was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Part of this Act applies;
  - (b) that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences to which this Part of this Act applies; and

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- (c) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.
- (5) Where the court has determined that the assumptions specified in subsection (4) above are to be made in any case it shall not in that case make any such assumption in relation to any particular property or expenditure if—
- (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
  - (b) that assumption, so far as it so relates, is shown to be correct in relation to an offence the defendant's benefit from which has been the subject of a previous confiscation order; or
  - (c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.
- (6) Where the assumptions specified in subsection (4) above are made in any case, the offences from which, in accordance with those assumptions, the defendant is assumed to have benefited shall be treated as if they were comprised, for the purposes of this Part of this Act, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.
- (7) In this section "the date of conviction" means—
- (a) in a case not falling within paragraph (b) below, the date on which the defendant is convicted of the offence in question, or
  - (b) where he is convicted of that offence and one or more other offences in the proceedings in question and those convictions are not all on the same date, the date of the latest of those convictions; and
- "the relevant period" means the period of six years ending when the proceedings in question were instituted against the defendant."