



Proceeds of Crime (Scotland) Act 1995

1995 CHAPTER 43

PART II

FORFEITURE OF PROPERTY USED IN CRIME

21 Suspended forfeiture order.

- (1) This section applies where in respect of any offence—
 - (a) the accused is convicted, whether in solemn or summary proceedings; or
 - (b) in the case of summary proceedings, (without proceeding to conviction) an order is made discharging him absolutely.
- (2) Where this section applies, the court may, if it is satisfied on the application of the prosecutor that any property which was at the time of the offence or of the accused's apprehension in his ownership or possession or under his control—
 - (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
 - (b) was intended to be used for that purpose,make an order (a "suspended forfeiture order") in respect of that property.
- (3) Any application under this section shall be made—
 - (a) in proceedings on indictment, when the prosecutor moves for sentence or if the accused is remitted for sentence under section 195 of the 1995 Act, before sentence is pronounced; and
 - (b) in summary proceedings, following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.
- (4) If the prosecutor knows or reasonably suspects the identity of a person (other than the accused) as being the owner of, or otherwise having an interest in, the property to which the suspended forfeiture order relates, he shall intimate that fact to the court on making the application and the order shall name that person as a person having an interest or suspected of having an interest in the property.

Changes to legislation: There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 21. (See end of Document for details)

- (5) Any reference in this Part of this Act to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.
- (6) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (2)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.
- (7) Subject to subsection (8) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making a suspended forfeiture order in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.
- (8) Subsection (7) above shall not apply—
- (a) if the enactment concerned expressly excludes the application of this section; or
 - (b) to any property which has been used or has been intended to be used as mentioned in subsection (2)(a) or (b) above in relation to the offence of which the accused has been convicted, if the enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.
- (9) Where the court makes both a suspended forfeiture order and a compensation order under section 249 of the 1995 Act against the same accused in the same proceedings, it may order that, in the event of the property subject to the suspended forfeiture order being forfeited under section 24 of this Act, the proceeds of sale of that property shall be first directed towards satisfaction of the compensation order.
- (10) As soon as may be after a suspended forfeiture order has been made, the prosecutor—
- (a) shall notify in writing any person named in the order in pursuance of subsection (4) above that the order has been made, and that the person so notified may be entitled to apply to the court for—
 - (i) the order to be recalled under section 25 of this Act; or
 - (ii) a direction under section 26 of this Act; and
 - (b) if the property in respect of which the order has been made includes heritable property in Scotland, shall cause a certified copy of the order to be recorded in the General Register of Sasines or as the case may be registered in the Land Register of Scotland; and
 - (c) if the court directs him to do so, shall insert a notice in the Edinburgh Gazette or in such other newspaper or journal as appears to the court to be appropriate specifying the terms of the suspended forfeiture order.
- (11) Any property in respect of which a suspended forfeiture order is made shall be taken into the possession of or placed under the control of the clerk of court until—
- (a) the order is recalled; or
 - (b) the property is forfeited to the Crown and disposed of under section 24 of this Act or forfeited to another person under that section.
- (12) For the purposes of any appeal or review a suspended forfeiture order is a sentence.

Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 21. (See end of Document for details)*

- (13) In this section “the court” does not include a district court, whether or not constituted by a stipendiary magistrate.

Changes to legislation:

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