

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Confiscation: England and Wales

Exercise of powers

Section 69: Powers of court and receiver

124. *Section 69* makes provision about how the Crown Court and receivers appointed under the Act are to exercise their powers. It largely re-enacts earlier legislation in that it emphasises, for example, that the satisfaction of a confiscation order takes precedence over any other obligations of the defendant or the recipient of a tainted gift from the defendant.
125. *Subsections (2)(b), (3)(c), (4) and (5)* are new. Where a confiscation order has not yet been made, they require the powers to be exercised with a view to maintaining the value of the amount available for confiscation. This will enable management receivers to dispose of depreciating assets. *Subsection (4)*, however, enables the defendant or the recipient of a tainted gift to challenge the management receiver's decision to dispose of a particular asset on the grounds that the asset is irreplaceable. The provision has regard to the fact that the defendant has not been convicted at this stage and should not, therefore, be obliged to lose irreplaceable assets. It does not apply to enforcement receivers because at the enforcement stage, any realisable property can be used to satisfy a confiscation order.