



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Interpretation

75 Criminal lifestyle

- (1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.
- (2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—
 - (a) it is specified in Schedule 2;
 - (b) it constitutes conduct forming part of a course of criminal activity;
 - (c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.
- (3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—
 - (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
 - (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.
- (4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.
- (5) Relevant benefit for the purposes of subsection (2)(b) is—
 - (a) benefit from conduct which constitutes the offence;

- (b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;
 - (c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).
- (6) Relevant benefit for the purposes of subsection (2)(c) is—
- (a) benefit from conduct which constitutes the offence;
 - (b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).
- (7) The Secretary of State may by order amend Schedule 2.
- (8) The Secretary of State may by order vary the amount for the time being specified in subsection (4).

76 Conduct and benefit

- (1) Criminal conduct is conduct which—
 - (a) constitutes an offence in England and Wales, or
 - (b) would constitute such an offence if it occurred in England and Wales.
- (2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—
 - (a) whether conduct occurred before or after the passing of this Act;
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.
- (3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs—
 - (a) conduct which constitutes the offence or offences concerned;
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;
 - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

77 Tainted gifts

- (1) Subsections (2) and (3) apply if—
 - (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
 - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the relevant day.
- (3) A gift is also tainted if it was made by the defendant at any time and was of property—
 - (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
 - (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.
- (4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.
- (5) A gift is tainted if it was made by the defendant at any time after—
 - (a) the date on which the offence concerned was committed, or
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.
- (7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (9) The relevant day is the first day of the period of six years ending with—
 - (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

78 Gifts and their recipients

- (1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.
- (2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
 - (a) whose numerator is the difference between the two values mentioned in subsection (1), and
 - (b) whose denominator is the value of the property at the time of the transfer.
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

79 Value: the basic rule

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person.
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).
- (4) The provisions are—
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (5) This section has effect subject to sections 80 and 81.

80 Value of property obtained from conduct

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.
- (2) The value of the property at the material time is the greater of the following—
 - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (3).
- (3) The property found under this subsection is as follows—
 - (a) if the person holds the property obtained, the property found under this subsection is that property;
 - (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;
 - (c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 79.

81 Value of tainted gifts

- (1) The value at any time (the material time) of a tainted gift is the greater of the following—
 - (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (2).

- (2) The property found under this subsection is as follows—
- (a) if the recipient holds the property given, the property found under this subsection is that property;
 - (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
 - (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 79.

82 Free property

Property is free unless an order is in force in respect of it under any of these provisions—

- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
- (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);
- (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);
- (d) section 143 of the Sentencing Act (deprivation orders);
- (e) section 23 or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);
- (f) section 246, 266, 295(2) or 298(2) of this Act.

83 Realisable property

Realisable property is—

- (a) any free property held by the defendant;
- (b) any free property held by the recipient of a tainted gift.

84 Property: general provisions

- (1) Property is all property wherever situated and includes—
- (a) money;
 - (b) all forms of real or personal property;
 - (c) things in action and other intangible or incorporeal property.
- (2) The following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to property vested in his trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) or liquidator;

- (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
- (f) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
- (g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
- (h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

85 Proceedings

- (1) Proceedings for an offence are started—
 - (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (c. 43) in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) in a case falling within subsection (2)(b) of that section (preferment by Court of Appeal or High Court judge).
- (2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.
- (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.
- (4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned.
- (5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded—
 - (a) when the order is satisfied or discharged, or
 - (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.
- (6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply—
 - (a) if an application for leave to appeal under section 31(2) is refused, the proceedings are concluded when the decision to refuse is made;
 - (b) if the time for applying for leave to appeal under section 31(2) expires without an application being made, the proceedings are concluded when the time expires;
 - (c) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and an application for leave to appeal under section 33 is refused, the proceedings are concluded when the decision to refuse is made;

- (d) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 33 expires without an application being made, the proceedings are concluded when the time expires;
 - (e) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 33 the House of Lords confirms the Court of Appeal's decision, the proceedings are concluded when the House of Lords confirms the decision;
 - (f) if on appeal under section 31(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision;
 - (g) if on appeal under section 33 the House of Lords directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision.
- (7) In applying subsection (6) any power to extend the time for making an application for leave to appeal must be ignored.
- (8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

86 Applications

- (1) An application under section 19, 20, 27 or 28 is concluded—
- (a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.
- (2) An application under section 21 or 22 is concluded—
- (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
 - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

87 Confiscation orders

- (1) A confiscation order is satisfied when no amount is due under it.

- (2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored.

88 Other interpretative provisions

- (1) A reference to the offence (or offences) concerned must be construed in accordance with section 6(9).
- (2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
- (3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).
- (4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.
- (5) The Sentencing Act is the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
- (6) The following paragraphs apply to references to orders—
- (a) a confiscation order is an order under section 6;
 - (b) a restraint order is an order under section 41.
- (7) Sections 75 to 87 and this section apply for the purposes of this Part.