



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Restraint orders

40 Conditions for exercise of powers

- (1) The Crown Court may exercise the powers conferred by section 41 if any of the following conditions is satisfied.
- (2) The first condition is that—
 - (a) a criminal investigation has been started in England and Wales with regard to an offence, and
 - (b) there [^{F1}are reasonable grounds to suspect] that the alleged offender has benefited from his criminal conduct.
- (3) The second condition is that—
 - (a) proceedings for an offence have been started in England and Wales and not concluded, and
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (4) The third condition is that—
 - (a) an application by the prosecutor ^{F2}... has been made under section 19, 20, 27 or 28 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (5) The fourth condition is that—
 - (a) an application by the prosecutor ^{F3}... has been made under section 21 and not concluded, or the court believes that such an application is to be made, and

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- (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant’s benefit exceeds the relevant amount (as defined in that section).
- (6) The fifth condition is that—
 - (a) an application by the prosecutor ^{F4}... has been made under section 22 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (7) The second condition is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
- (8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor ^{F5}... does not intend to proceed.
- (9) If the first condition is satisfied—
 - (a) references in this Part to the defendant are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;
 - (c) section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

Textual Amendments

- F1** Words in s. 40(2)(b) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 11(1)**, 88(1); S.I. 2015/820, reg. 3(h)
- F2** Words in s. 40(4)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F3** Words in s. 40(5)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F4** Words in s. 40(6)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F5** Words in s. 40(8)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(5), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Modifications etc. (not altering text)

- C1** Pt. 2 applied by Terrorism Act 2000 (c. 11), Sch. 8 paras. 8(5A), **34(3A)** (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7); S.I. 2003/333, art. 2, **Sch.**)
- C2** Pt. 2 applied by Police and Criminal Evidence Act 1984 (c. 60), **ss. 56(5B)**, 58(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, **Sch.**)
- C3** Pt. 2 applied (with modifications) (1.6.2015) by The Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015 (S.I. 2015/868), regs. 1, **5** (with reg. 4)

Commencement Information

- I1** S. 40 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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41 Restraint orders

(1) If any condition set out in section 40 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.

(2) A restraint order may provide that it applies—

- (a) to all realisable property held by the specified person whether or not the property is described in the order;
- (b) to realisable property transferred to the specified person after the order is made.

[^{F6}(2A) A restraint order must be made subject to an exception enabling relevant legal aid payments to be made (a legal aid exception).

(2B) A relevant legal aid payment is a payment that the specified person is obliged to make—

- (a) by regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and
- (b) in connection with services provided in relation to an offence which falls within subsection (5),

whether the obligation to make the payment arises before or after the restraint order is made.]

(3) A restraint order may be made subject to [^{F7} other] exceptions, and an exception may in particular—

- (a) make provision for reasonable living expenses and reasonable legal expenses;
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

^{F8}(c)

(4) [^{F9}But where an exception to a restraint order is made under subsection (3), it] must not make provision for any legal expenses which—

- (a) relate to an offence which falls within subsection (5), and
- (b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

- (a) the offence mentioned in section 40(2) or (3), if the first or second condition (as the case may be) is satisfied;
- (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

[^{F10}(5A) A legal aid exception—

- (a) must be made subject to prescribed restrictions (if any) on—
 - (i) the circumstances in which payments may be made in reliance on the exception, or
 - (ii) the amount of the payments that may be made in reliance on the exception,
- (b) must be made subject to other prescribed conditions (if any), and
- (c) may be made subject to other conditions.

(5B) Any other exception to a restraint order may be made subject to conditions.]

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- (6) Subsection (7) applies if—
- (a) a court makes a restraint order, and
 - (b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).
- (7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- [^{F11}(7A) Subsections (7B) and (7C) apply where the Crown Court makes a restraint order (by virtue of the first condition in section 40) as a result of a criminal investigation having been started in England and Wales with regard to an offence.
- (7B) The court—
- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
 - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 42(3)).
- (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—
- (a) must give reasons for its decision, and
 - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 42(3)).]

[^{F12}(7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.]

(8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—

 - (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)).

(9) Dealing with property includes removing it from England and Wales.

[^{F13}(10) In this section “prescribed” means prescribed by regulations made by the Secretary of State.]

Textual Amendments

- F6** S. 41(2A)(2B) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), ss. **46(2)**, 61(2); S.I. 2015/813, art. 3(b)

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- F7** Word in s. 41(3) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(3\)\(a\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F8** S. 41(3)(c) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(3\)\(b\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F9** Words in s. 41(4) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(4\)](#), 61(2); S.I. 2015/813, art. 3(b)
- F10** S. 41(5A)(5B) inserted (20.3.2015 for specified purposes, 1.6.2015 in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(5\)](#), 61(2); S.I. 2015/813, arts. 2(a)(ii), 3(b)
- F11** S. 41(7A)-(7C) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 11\(2\)](#), 88(1); S.I. 2015/820, reg. 3(h)
- F12** S. 41(7D) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), [Sch. 4 para. 31](#); S.I. 2015/820, reg. 3(q)(iii)
- F13** S. 41(10) inserted (20.3.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 46\(6\)](#), 61(2); S.I. 2015/813, art. 2(a)(iii)

Commencement Information

- I2** S. 41 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#) (with arts. 5, 10-13)

[^{F14}41A Restraint orders: power to retain seized property etc.

- (1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
- is seized by an appropriate officer under a relevant seizure power, or
 - is produced to an appropriate officer in compliance with a production order under section 345.
- (2) Provision under subsection (1) may, in particular—
- relate to specified property, to property of a specified description or to all property to which the restraint order applies;
 - relate to property that has already been seized or produced or to property that may be seized or produced in future.
- (3) “Appropriate officer” means—
- an accredited financial investigator;
 - a constable;
 - an officer of Revenue and Customs;
 - [an immigration officer;]
- ^{F15}(ca)
- [^{F16}(d) a National Crime Agency officer,]
 - a member of staff of the relevant director (within the meaning of section 352(5A)).
- (4) “Relevant seizure power” means a power to seize property which is conferred by or by virtue of—
- section 47C,
 - section 352, or
 - Part 2 or 3 of the Police and Criminal Evidence Act 1984 (including as applied by order under section 114(2) of that Act).
- (5) The Secretary of State may by order amend the definition of “relevant seizure power”.]

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Textual Amendments

- F14** S. 41A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 52(2)**, 116(1); [S.I. 2015/983](#), art. 2(2)(a)
- F15** S. 41A(3)(ca) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), Sch. 21 para. 15 (with Sch. 21 para. 40); [S.I. 2014/3098](#), art. 2(e)
- F16** S. 41A(3)(d) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), Sch. 8 para. 112; [S.I. 2013/1682](#), art. 3(v)

42 Application, discharge and variation

- (1) A restraint order—
- (a) may be made only on an application by an applicant falling within subsection (2);
 - (b) may be made on an ex parte application to a judge in chambers.
- (2) These applicants fall within this subsection—
- (a) the prosecutor;
 - ^{F17}(b)
 - (c) an accredited financial investigator.
- (3) An application to discharge or vary a restraint order or an order under section 41(7) may be made to the Crown Court by—
- (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) Subsections (5) to [^{F18}(8)] apply to an application under subsection (3).
- (5) The court—
- (a) may discharge the order;
 - (b) may vary the order.
- (6) If the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).
- [^{F19}(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—
- (a) the proceedings are concluded by reason of a defendant's conviction for an offence being quashed,
 - (b) the order is in force at the time when the conviction is quashed, and
 - (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.
- (6B) But the court must discharge the restraint order—
- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
 - (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
 - (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.]

[^{F20}(7) If the condition in section 40 which was satisfied was that an investigation was started—

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- (a) the court must discharge the order if within a reasonable time proceedings for the offence are not started;
 - (b) otherwise, the court must discharge the order on the conclusion of the proceedings.
- (8) If the condition in section 40 which was satisfied was that an application was to be made—
- (a) the court must discharge the order if within a reasonable time the application is not made;
 - (b) otherwise, the court must discharge the order on the conclusion of the application.]

Textual Amendments

- F17** S. 42(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 23, **Sch. 14**; [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F18** Word in s. 42(4) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 32(2)**; [S.I. 2015/820](#), reg. 3(q)(iii)
- F19** S. 42(6A)(6B) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 12**, 88(1); [S.I. 2015/820](#), reg. 3(i)
- F20** S. 42(7)(8) substituted for s. 42(7) (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 32(3)**; [S.I. 2015/820](#), reg. 3(q)(iii)

Modifications etc. (not altering text)

- C4** S. 42(2)(c) modified (1.4.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) Order 2018 \(S.I. 2018/196\)](#), arts. 1(2), 3, **Sch. para. 1**

Commencement Information

- I3** S. 42 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

43 Appeal to Court of Appeal

- (1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If an application is made under section 42(3) in relation to a restraint order or an order under section 41(7) the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application—
- (a) the person who applied for the order;
 - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may—
- (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

Commencement Information

- I4** S. 43 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

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44 Appeal to [^{F21}Supreme Court]

- (1) An appeal lies to the [^{F22}Supreme Court] from a decision of the Court of Appeal on an appeal under section 43.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the [^{F23}Supreme Court] may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

Textual Amendments

- F21** Words in s. 44 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(3\)](#); S.I. 2009/1604, art. 2(d)
- F22** Words in s. 44(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(3\)](#); S.I. 2009/1604, art. 2(d)
- F23** Words in s. 44(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 77\(3\)](#); S.I. 2009/1604, art. 2(d)

Commencement Information

- I5** S. 44 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

[^{F24}44A Detention of property pending appeal

- (1) This section applies where—
 - (a) a restraint order includes provision under section 41A authorising the detention of property, and
 - (b) the restraint order is discharged under section 42(5) or 43(3)(b).
- (2) This section also applies where—
 - (a) a restraint order includes provision under section 41A authorising the detention of property, and
 - (b) the restraint order is varied under section 42(5) or 43(3)(b) so as to omit any such provision.
- (3) The property may be detained until there is no further possibility of an appeal against—
 - (a) the decision to discharge or vary the restraint order, or
 - (b) any decision made on an appeal against that decision.]

Textual Amendments

- F24** S. 44A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), ss. 52\(3\), 116\(1\)](#); S.I. 2015/983, art. 2(2)(a)

^{F25}45 Seizure

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Textual Amendments

F25 S. 45 repealed (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. 55(3), 116(1), [Sch. 8 Pt. 4](#); [S.I. 2015/983](#), art. 2(2)(a)(f) (with art. 4(1)(2))

Commencement Information

I6 S. 45 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

46 Hearsay evidence

- (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).
- (2) Sections 2 to 4 of the Civil Evidence Act 1995 (c. 38) apply in relation to restraint proceedings as those sections apply in relation to civil proceedings.
- (3) Restraint proceedings are proceedings—
 - (a) for a restraint order;
 - (b) for the discharge or variation of a restraint order;
 - (c) on an appeal under section 43 or 44.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

Commencement Information

I7 S. 46 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

47 Supplementary

- (1) The registration Acts—
 - (a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;
 - (b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions.
- (2) The registration Acts are—
 - (a) the Land Registration Act 1925 (c. 21);
 - (b) the Land Charges Act 1972 (c. 61);
 - (c) the Land Registration Act 2002 (c. 9).
- (3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a restraint order.
- (4) The person applying for a restraint order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—

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- (a) the application relates, or
- (b) a restraint order made in pursuance of the application relates.

Modifications etc. (not altering text)

C5 S. 47 extended (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **7(1)**

Commencement Information

18 S. 47 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)