
STATUTORY INSTRUMENTS

2003 No. 333

**The Proceeds of Crime Act 2002 (Commencement No. 5,
Transitional Provisions, Savings and Amendment) Order 2003**

Citation and interpretation

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Commencement No. 5, Transitional Provisions, Savings and Amendment) Order 2003.

(2) In this Order, “the Act” means the Proceeds of Crime Act 2002.

(3) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this Order to have been committed on the earliest of those days.

Commencement of provisions

2.—(1) The provisions of the Act listed in column 1 of the Schedule to this Order shall come into force on 24th March 2003, subject to the transitional provisions and savings contained in this Order.

(2) But where a particular purpose is specified in relation to any such provision in column 2 of that Schedule, the provision concerned shall come into force only for that purpose.

Transitional provisions relating to confiscation orders—England and Wales

3.—(1) Section 6 of the Act (making of confiscation order) shall not have effect where the offence, or any of the offences, mentioned in section 6(2) was committed before 24th March 2003.

(2) Section 27 of the Act (defendant convicted or committed absconds) shall not have effect where the offence, or any of the offences, mentioned in section 27(2) was committed before 24th March 2003.

(3) Section 28 of the Act (defendant neither convicted nor acquitted absconds) shall not have effect where the offence, or any of the offences, in respect of which proceedings have been started but not concluded was committed before 24th March 2003.

Transitional provisions relating to confiscation orders—Northern Ireland

4.—(1) Section 156 of the Act (making of confiscation order) shall not have effect where the offence, or any of the offences, mentioned in section 156(2) was committed before 24th March 2003.

(2) Section 177 of the Act (defendant convicted or committed absconds) shall not have effect where the offence, or any of the offences, mentioned in section 177(2) was committed before 24th March 2003.

(3) Section 178 of the Act (defendant neither convicted nor acquitted absconds) shall not have effect where the offence, or any of the offences, in respect of which proceedings have been started but not concluded was committed before 24th March 2003.

Transitional provisions relating to restraint orders and enforcement abroad—England and Wales

5. Sections 41 (restraint orders) and 74 (enforcement abroad) of the Act shall not have effect where—

- (a) the powers in those sections would otherwise be exercisable by virtue of a condition in section 40(2) or (3) of the Act being satisfied; and
- (b) the offence mentioned in section 40(2)(a) or 40(3)(a), as the case may be, was committed before 24th March 2003.

Transitional provisions relating to restraint orders and enforcement abroad—Northern Ireland

6. Sections 190 (restraint orders) and 222 (enforcement abroad) of the Act shall not have effect where—

- (a) the powers in those sections would otherwise be exercisable by virtue of a condition in section 189(2) or (3) of the Act being satisfied; and
- (b) the offence mentioned in section 189(2)(a) or 189(3)(a), as the case may be, was committed before 24th March 2003.

Transitional provisions relating to criminal lifestyle—England and Wales

7.—(1) This article applies where the court is determining under section 6(4)(a) of the Act whether the defendant has a criminal lifestyle.

(2) The tests in section 75(2)(a) and (c) of the Act shall not be satisfied where the offence (or any of the offences) concerned was committed before 24th March 2003.

(3) In applying the rule in section 75(5) of the Act on the calculation of relevant benefit for the purposes of section 75(2)(b) and (4), the court must not take into account benefit from conduct constituting an offence which was committed before 24th March 2003.

(4) Conduct shall not form part of a course of criminal activity under section 75(3)(a) of the Act where—

- (a) the offence (or any of the offences) concerned; or
- (b) any one of the three or more offences mentioned in section 75(3)(a),

was committed before 24th March 2003.

(5) Conduct shall form part of a course of criminal activity under section 75(3)(b) of the Act, notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period mentioned in section 75(3)(b) were committed before 24th March 2003.

Transitional provisions relating to criminal lifestyle—Northern Ireland

8.—(1) This article applies where the court is determining under section 156(4)(a) of the Act whether the defendant has a criminal lifestyle.

(2) The tests in section 223(2)(a) and (c) of the Act shall not be satisfied where the offence (or any of the offences) concerned was committed before 24th March 2003.

(3) In applying the rule in section 223(5) of the Act on the calculation of relevant benefit for the purposes of section 223(2)(b) and (4) of the Act, the court must not take into account benefit from conduct constituting an offence which was committed before 24th March 2003.

(4) Conduct shall not form part of a course of criminal activity under section 223(3)(a) of the Act where—

- (a) the offence (or any of the offences) concerned; or
- (b) any one of the three or more offences mentioned in section 223(3)(a),

was committed before 24th March 2003.

(5) Conduct shall form part of a course of criminal activity under section 223(3)(b) of the Act, notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period mentioned in section 223(3)(b) was committed before 24th March 2003.

Transitional provisions relating to particular criminal conduct

9. Conduct which constitutes an offence which was committed before 24th March 2003 is not particular criminal conduct under section 76(3) or 224(3) of the Act.

Savings for England and Wales

10.—(1) Where, under article 3 or 5, a provision of the Act does not have effect, the following provisions shall continue to have effect—

- (a) sections 71 to 89 (including Schedule 4) and 102 of the Criminal Justice Act 1988**(1)**;
- (b) paragraphs 83 and 84 of Schedule 17 to the Housing Act 1988**(2)**;
- (c) sections 21(3)(e) to (g), 27, 28 and 34 of the Criminal Justice Act 1993**(3)**;
- (d) paragraph 36 of Schedule 9 to the Criminal Justice and Public Order Act 1994**(4)**;
- (e) sections 1 to 36 and 41 of the Drug Trafficking Act 1994**(5)**;
- (f) sections 1 to 10, 15(1) and (3) (including Schedule 1), 16(2), (5) and (6) of the Proceeds of Crime Act 1995**(6)**;
- (g) section 4(3) of the Private International Law (Miscellaneous Provisions) Act 1995**(7)**;
- (h) sections 35 to 38 of the Proceeds of Crime (Scotland) Act 1995**(8)**;
- (i) the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997**(9)** and the Proceeds of Crime (Northern Ireland) Order 1996**(10)**, so far as necessary for the continued operation of the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997;
- (j) paragraphs 23 and 36 of Schedule 5 to the Justices of the Peace Act 1997**(11)**;
- (k) section 83 of, paragraph 114 of Schedule 8 to and paragraph 8 of Schedule 9 to the Crime and Disorder Act 1998**(12)**;
- (l) paragraphs 139 and 172 of Schedule 13 to the Access to Justice Act 1999**(13)**;

(1) 1988 c. 33.

(2) 1988 c. 50.

(3) 1993 c. 36.

(4) 1994 c. 33.

(5) 1994 c. 37.

(6) 1995 c. 11.

(7) 1995 c. 42.

(8) 1995 c. 43.

(9) S.R. 1997/403.

(10) S.I.1996/1299 (N.I. 9).

(11) 1997 c. 25.

(12) 1998 c. 37.

(13) 1999 c. 22.

(m) paragraphs 105 to 113 and 163 to 173 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000(14);

(n) paragraphs 6(1) to (3) and 10 of Schedule 15 to the Terrorism Act 2000(15).

(2) Where under article 3 or 5, a provision of the Act does not have effect, the following provisions shall continue to have effect as if they had not been amended by Schedule 11 to the Act—

(a) section 13(6) of the Criminal Justice (International Co-operation) Act 1990(16);

(b) paragraph 17(3) of Schedule 8 to the Terrorism Act 2000.

Savings for Northern Ireland

11. Where, under article 4 or 6, a provision of the Act does not have effect, the following provisions shall continue to have effect—

(a) the Criminal Justice Act 1988 (Enforcement of Northern Ireland Confiscation Orders) Order 1995(17) and the Criminal Justice Act 1988, so far as necessary for the continued operation of that Order;

(b) the Drug Trafficking Act 1994 (Enforcement of Northern Ireland Confiscation Orders) Order 1995(18) and the Drug Trafficking Act 1994, so far as necessary for the continued operation of that Order;

(c) the Proceeds of Crime (Scotland) Act 1995 (Enforcement of Northern Ireland Orders) Order 1998(19) and the Proceeds of Crime (Scotland) Act 1995, so far as necessary for the continued operation of that Order;

(d) the definitions in article 2(2) of the Proceeds of Crime (Northern Ireland) Order 1996 which are repealed by paragraph 31 of Schedule 11 to the Act and Schedule 12 to the Act;

(e) articles 3 to 40 of, and paragraph 18 of Schedule 3 to, the Proceeds of Crime (Northern Ireland) Order 1996.

Savings for enforcement of Scottish orders in England, Wales and Northern Ireland

12. Where the Proceeds of Crime (Scotland) Act 1995 continues to have effect by virtue of saving provision in an order made by Scottish Ministers under section 458(3) of the Act for the commencement of Part 3 of the Act, the following provisions shall continue to have effect—

(a) the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997 and the Proceeds of Crime (Northern Ireland) Order 1996, so far as necessary for the continued operation of the Proceeds of Crime (Enforcement of Confiscation Orders made in England and Wales or Scotland) Order (Northern Ireland) 1997;

(b) the Proceeds of Crime (Scotland) Act 1995 (Enforcement of Scottish Confiscation Orders in England and Wales) Order 2001(20).

Savings in relation to external orders

13. The following provisions shall continue to have effect—

(14) 2000 c. 6.

(15) 2000 c. 11.

(16) 1990 c. 5.

(17) S.I. 1995/1968.

(18) S.I. 1995/1967.

(19) S.I. 1998/752 (S. 42).

(20) S.I. 2001/953.

- (a) the Criminal Justice Act 1988, so far as necessary for the continued operation of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991(21);
- (b) the Drug Trafficking Act 1994, so far as necessary for the continued operation of the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996(22);
- (c) the Proceeds of Crime (Scotland) Act 1995, so far as necessary for the continued operation of the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999(23);
- (d) the Proceeds of Crime (Northern Ireland) Order 1996, so far as necessary for the continued operation of the Proceeds of Crime (Countries and Territories designated under the Drug Trafficking Act 1994) Order (Northern Ireland) 1997(24) and the Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998(25).

Amendment of Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003

14.—(1) The Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003(26) is amended as follows.

(2) In articles 3 and 5(1), for “and ended after that date”, there is substituted “and ended on or after that date”.

Home Office
20th February 2003

Filkin
Parliamentary Under-Secretary of State

(21) S.I. 1991/2873, amended by S.I. 1993/1790, S.I. 1993/3147, S.I. 1994/1639, S.I. 1996/278, S.I. 1996/2877, S.I. 1997/1316, S.I. 1997/2976, S.I. 1999/282, S.I. 2001/960, S.I. 2002/256 and S.I. 2002/2844.

(22) S.I. 1996/2880, amended by S.I. 1997/1318, S.I. 1997/2980, S.I. 2001/956, S.I. 2002/257 and S.I. 2002/2846.

(23) S.I. 1999/673 (S. 44).

(24) S.R. 1997/270, amended by S.R. 1998/461.

(25) S.R. 1998/88, amended by S.R. 1998/462.

(26) S.I. 2003/120 (C. 6).