Criminal Justice (Scotland) Act 1995

1995 CHAPTER 20

PART II

PROCEEDS OF CRIME AND PROPERTY USED IN CRIME

CHAPTER I

CONFISCATION OF THE PROCEEDS OF CRIME

Compensation

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(1) Subject to subsection (3) below, if proceedings are instituted against a person for an offence to which this Chapter applies and either—

(a) the proceedings do not result in his conviction for any such offence, or

(b) where he is convicted of one or more such offences—

(i) the conviction or convictions concerned are quashed (and no conviction for any such offence is substituted); or

(ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.

(2) Subsection (1) above is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) and (b) of subsection (3) below.

(3) The court shall not order compensation to be paid under subsection (1) above in any case unless satisfied—

(a) that there has been some serious default on the part of a person concerned in the investigation of the offence or offences concerned, being a person mentioned in subsection (5) below, and that, but for that default, the proceedings would not have been instituted or continued; and

(b) that the applicant has suffered loss or damage in consequence of anything done in relation to the property under section 94, 95, 97, 98, 99 or 108 of or Schedule 3 to this Act.

(4) The amount of compensation to be paid under this section shall be such as the court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be paid, where the person in default was—

(a) a constable of a police force within the meaning of the Police (Scotland) Act 1967, by the police authority or joint police board for the police area for which that force is maintained;

(b) a constable other than is mentioned in paragraph (a) above, but with the powers of such a constable, by the body under whose authority he acts;

(c) a procurator fiscal or was acting on behalf of the Lord Advocate, by the Lord Advocate;

(d) a person commissioned by the Commissioners of Customs and Excise, by those Commissioners; and

(e) an officer of the Commissioners of Inland Revenue, by those Commissioners.

(6) An application for compensation under this section shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made; and subsection (6) of section 95 of this Act shall apply for the purpose of determining when proceedings are concluded for the purposes of this subsection as it applies for the purposes of that section.

(7) In this section, “the court” means the Court of Session or the sheriff exercising his civil jurisdiction.

(8) Until the date on which paragraph 71 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 comes into force, the reference in subsection (5)(a) above to a joint police board shall be construed as a reference to a joint police committee.