These notes refer to the Proceeds of Crime Act 2002 (c.29) which received Royal Assent on 24 July 2002

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Confiscation: Scotland

Confiscation orders

Section 96: Assumptions as to benefit from general criminal conduct

163. *Section 96* applies where the court has decided that the accused has a criminal lifestyle and it is, accordingly, considering the accused's benefit from general criminal conduct. The section requires the court to make certain specified assumptions to establish whether the accused has benefited from general criminal conduct, and, if so, by how much. The court is not, however, permitted to make an assumption in relation to particular property or expenditure if it is shown to be incorrect. The current legislation provides for similar assumptions to be made. Where for any reason the court does not make any of the assumptions specified in the legislation, it must nevertheless continue to decide whether the accused has benefited from general criminal conduct and decide the recoverable amount, albeit without the assistance of the assumptions.

164. The earlier confiscation legislation provides for similar assumptions to be made. They are mandatory in confiscation proceedings following a conviction for a drug trafficking offence, but discretionary in all other confiscation cases (and, in the latter case, other criteria must be satisfied before they can be made). *Section 97* creates a single scheme under which the assumptions are mandatory in all cases where a person has a criminal lifestyle (defined in *section 142*).