Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Reconsideration

19 No order made: reconsideration of case

(1) This section applies if—

(a) the first condition in section 6 is satisfied but no court has proceeded under that section,

(b) there is evidence which was not available to the prosecutor on the relevant date,

(c) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and

(d) after considering the evidence the court believes it is appropriate for it to proceed under section 6.

(2) If this section applies the court must proceed under section 6, and when it does so subsections (3) to (8) below apply.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Section 8(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(6) The recoverable amount for the purposes of section 6 is such amount as—

(a) the court believes is just, but

(b) does not exceed the amount found under section 7.

(7) In arriving at the just amount the court must have regard in particular to—

(a) the amount found under section 7;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).

(8) If an order for the payment of compensation under section 130 of the Sentencing Act has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply.

(9) The relevant date is—

(a) if the court made a decision not to proceed under section 6, the date of the decision;

(b) if the court did not make such a decision, the date of conviction.

(10) The date of conviction is—

(a) the date on which the defendant was convicted of the offence concerned, or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

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.**)

Commencement Information

I1 S. 19 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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20 No order made: reconsideration of benefit

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that in proceeding under section 6 the court has decided that—
- (a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or
- (b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct.

(3) If the court proceeded under section 6 because the Director asked it to, the second condition is that—
- (a) the Director has evidence which was not available to him when the court decided that the defendant had not benefited from his general or particular criminal conduct,
- (b) before the end of the period of six years starting with the date of conviction the Director applies to the Crown Court to consider the evidence, and
- (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.

(4) If the court proceeded under section 6 because the prosecutor asked it to or because it believed it was appropriate for it to do so, the second condition is that—
- (a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct,
- (b) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and
- (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.

(5) If this section applies the court—
- (a) must make a fresh decision under section 6(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);
- (b) may make a confiscation order under that section.

(6) Subsections (7) to (12) below apply if the court proceeds under section 6 in pursuance of this section.

(7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(8) Section 8(2) does not apply, and the rules applying instead are that the court must—
- (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
- (b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(10) The recoverable amount for the purposes of section 6 is such amount as—

(a) the court believes is just, but

(b) does not exceed the amount found under section 7.

(11) In arriving at the just amount the court must have regard in particular to—

(a) the amount found under section 7;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).

(12) If an order for the payment of compensation under section 130 of the Sentencing Act has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply.

(13) The date of conviction is the date found by applying section 19(10).

Commencement Information

I2 S. 20 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

21 Order made: reconsideration of benefit

(1) This section applies if—

(a) a court has made a confiscation order,

(b) there is evidence which was not available to the prosecutor or the Director at the relevant time,

(c) the prosecutor or the Director believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,

(d) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and

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(e) after considering the evidence the court believes it is appropriate for it to proceed under this section.

(2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply.

(3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Section 8(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;

(b) take account of property obtained up to that time;

(c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(5) In applying section 8(5) the confiscation order must be ignored.

(6) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order;

(b) the third assumption does not apply with regard to expenditure incurred by him after that time;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.

(7) If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court—

(a) must make a new calculation of the recoverable amount for the purposes of section 6, and

(b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(8) In applying subsection (7)(a) the court must—

(a) take the new calculation of the defendant's benefit;

(b) apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(9) In applying subsection (7)(b) the court must have regard in particular to—

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

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(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).

(10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) if a court has made a direction under section 13(6).

(11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(12) The relevant time is—

(a) when the court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) when the court last calculated the defendant's benefit in pursuance of this section, if this section has applied previously.

(13) The relevant amount is—

(a) the amount found as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the defendant's benefit in pursuance of this section, if this section has applied previously.

(14) The date of conviction is the date found by applying section 19(10).

Commencement Information

I3 S. 21 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

22 Order made: reconsideration of available amount

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the amount required to be paid was the amount found under section 7(2), and

(c) an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.

(2) These applicants fall within this subsection—

(a) the prosecutor;

(b) the Director;

(c) a receiver appointed under section 50 or 52.

(3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(4) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—

(a) it believes is just, but

(b) does not exceed the amount found as the defendant's benefit from the conduct concerned.

(5) In deciding what is just the court must have regard in particular to—

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(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).

(6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) if a court has made a direction under section 13(6).

(7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(8) The relevant amount is—

(a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.

(9) The amount found as the defendant's benefit from the conduct concerned is—

(a) the amount so found when the confiscation order was made, or

(b) if one or more new calculations of the defendant's benefit have been made under section 21 the amount found on the occasion of the last such calculation.

Commencement Information

I4 S. 22 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

23 Inadequacy of available amount: variation of order

(1) This section applies if—

(a) a court has made a confiscation order, and

(b) the defendant, or a receiver appointed under section 50 or 52, applies to the Crown Court to vary the order under this section.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.

(4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

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(5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

(6) In subsection (4) "company" means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

Commencement Information

I5 S. 23 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

24 Inadequacy of available amount: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) a justices' chief executive applies to the Crown Court for the discharge of the order, and

(c) the amount remaining to be paid under the order is less than £1,000.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court—

(a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and

(b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,

it may discharge the confiscation order.

(4) The specified reasons are—

(a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;

(b) any reason specified by the Secretary of State by order.

(5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).

Commencement Information

I6 S. 24 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

25 Small amount outstanding: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) a justices' chief executive applies to the Crown Court for the discharge of the order, and

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(c) the amount remaining to be paid under the order is £50 or less.

(2) In such a case the court may discharge the order.

(3) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).

Commencement Information

I7 S. 25 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

26 Information

(1) This section applies if—

(a) the court proceeds under section 6 in pursuance of section 19 or 20, or

(b) the prosecutor or the Director applies under section 21.

(2) In such a case—

(a) the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders;

(b) section 16 applies accordingly (with appropriate modifications where the prosecutor or the Director applies under section 21);

(c) section 17 applies accordingly;

(d) section 18 applies as it applies in the circumstances mentioned in section 18(1).

Commencement Information

I8 S. 26 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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