



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

Changes to legislation: *Proceeds of Crime Act 2002, Section 40 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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.](#)

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\(4\)](#)