

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

BACKGROUND

Confiscation

3. Powers to confiscate from convicted defendants their benefit from crime were first introduced following the failure to recover funds in a drug trafficking case in 1978 known as Operation Julie. In this case, some £750,000 of drug trafficking proceeds were traced into the hands of the offenders and restrained. These funds had to be released after the House of Lords held that existing powers to forfeit items used in the commission of an offence could not be used “to strip the drug traffickers of the total profits of their unlawful enterprises.” The confiscation regime was introduced in England & Wales by the Drug Trafficking Offences Act 1986. A similar regime was introduced in Scotland by the Criminal Justice (Scotland) Act 1987. Although confiscation was initially available only in drug trafficking cases, it was extended by the Criminal Justice Act 1988 and the Criminal Justice (Scotland) Act 1995 to cover non-drug indictable offences and specified summary offences. In Northern Ireland, powers to confiscate both the proceeds of drug trafficking and other crime were introduced in the Criminal Justice (Confiscation) (Northern Ireland) Order 1990. Most of this legislation has been amended since its introduction and, while some has been consolidated (in, for example, the Drug Trafficking Act 1994, the Proceeds of Crime (Scotland) Act 1995 and the Proceeds of Crime (Northern Ireland) Order 1996), much has not.
4. Confiscation orders are available following a conviction. The purpose of confiscation proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation). Proceedings are conducted according to the civil standard of proof, i.e. on the balance of probabilities. In certain circumstances the court is empowered to assume that the defendant’s assets, and his income and expenditure during the period of six years before proceedings were brought, have been derived from criminal conduct and to calculate the confiscation order accordingly. In England, Wales and Northern Ireland the court is required to make this assumption following a conviction for drug trafficking, unless to do so would give rise to a serious risk of injustice.