

Proceeds of Crime Act 2002

2002 CHAPTER 29

An Act to establish the Assets Recovery Agency and make provision about the appointment of its Director and his functions (including Revenue functions), to provide for confiscation orders in relation to persons who benefit from criminal conduct and for restraint orders to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering, to make provision about investigations relating to benefit from criminal conduct or to property which is or represents property obtained through unlawful conduct or to money laundering, to make provision to give effect to overseas requests and orders made where property is found or believed to be obtained through criminal conduct, and for connected purposes.

[24th July 2002]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[emphasis added]

(...)

Part 2

Confiscation: England and Wales

Confiscation orders

6 Making of order

- (1) The Crown Court must proceed under this section if the following two conditions are satisfied.
- (2) The first condition is that a defendant falls within any of the following paragraphs—
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court;
 - (b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 4 or 6 of the Sentencing Act;
 - (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).
- (3) The second condition is that—
 - (a) the prosecutor or the Director asks the court to proceed under this section, or
 - (b) the court believes it is appropriate for it to do so.
- (4) The court must proceed as follows—
 - (a) it must decide whether the defendant has a criminal lifestyle;
 - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
 - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—
 - (a) decide the recoverable amount, and

(b) make an order (a confiscation order) requiring him to pay that amount.

(6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) The first condition is not satisfied if the defendant absconds (but section 27 may apply).

(9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

(...)