

Proceeds of Crime Bill

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DRAFT CLAUSES/SCHEDULES

PART I

CRIMINAL ASSETS RECOVERY AGENCY

- 1.—(1) There shall be a Criminal Assets Recovery Agency (referred to in the following provisions of this Act as the Agency). The Agency and its Director.
- 5 (2) The Secretary of State must appoint a Director of the Agency (referred to in the following provisions of this Act as the Director).
- (3) The Director is a corporation sole.
- (4) The Director may—
- (a) appoint such persons as members of staff of the Agency, and
- 10 (b) make such arrangements for the provision of services, as he considers appropriate for or in connection with the exercise of his functions.
- (5) Anything which the Director is authorised or required to do may be done by—
- 15 (a) a member of staff of the Agency, or
- (b) a person providing services under arrangements made by him, if authorised by the Director (generally or specifically) for that purpose.
- (6) Schedule 1 contains further provisions about the Agency and the Director.
- 20 2.—(1) The Director must exercise his functions efficiently and effectively. Director's functions: general.
- (2) Subject to that, the Director must exercise his functions in the way which, having regard to his current annual plan (as approved by the Secretary of State in accordance with Schedule 1), he considers is best calculated to
- 25 contribute to the reduction of crime.
- (3) The Director must give advice and assistance to the Secretary of State in connection with the formulation by the Secretary of State of strategies for the reduction of crime.
- (4) The Director and other persons with functions—
- 30 (a) relating to the investigation or prosecution of offences, or
- (b) otherwise relating to crime, must co-operate with each other in the exercise of their respective functions.
- (5) The Director may do anything (apart from borrowing money) which he considers is—
- 35 (a) appropriate for facilitating, or
- (b) incidental or conducive to, the exercise of his functions.
- 3.—(1) The Director must establish a system for the accreditation of financial investigators. Accreditation and training.

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- (2) A person who is accredited as a financial investigator in accordance with the system is referred to in the following provisions of this Act as an accredited financial investigator.
- (3) The system of accreditation must include provision for—
- (a) the monitoring of the performance of accredited financial 5
investigators, and
 - (b) the withdrawal of accreditation from any person who contravenes or fails to comply with any condition subject to which he was accredited.
- (4) The Director may charge a person— 10
- (a) for being accredited as a financial investigator, and
 - (b) for the monitoring of his performance as an accredited financial investigator.
- (5) The Director must make provision for the training of persons in—
- (a) financial investigation, and 15
 - (b) the operation of the provisions of this Act and any other provisions conferring or imposing functions on the Director.
- (6) The Director may charge the persons who receive the training.

PART II

CONFISCATION: ENGLAND AND WALES

Confiscation orders

4.—(1) The Crown Court must proceed under this section if the following Making of order.
5 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;
- 10 (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 67 below (committal with a view to a confiscation order being considered).

15 (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—

- 20 (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.

25 (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.

30 (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.

35 (7) The standard of proof required to decide any question arising under subsection (4) or (5) is the standard applicable in civil proceedings.

(8) The first condition is not satisfied if the defendant absconds (but section 26 may apply).

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

40 5. A confiscation order must be made before the court sentences the Time for making order.
defendant for the offence (or any of the offences) concerned.

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PART II
Recoverable
amount.

- 6.—(1) The recoverable amount for the purposes of section 4 is an amount equal to the defendant's benefit from the conduct concerned.
- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—
- (a) the available amount, or 5
 - (b) a nominal amount, if the available amount is nil.
- (3) But if section 4(6) applies the recoverable amount is such amount as—
- (a) the court believes is just, but
 - (b) does not exceed the amount found under subsection (1) or (2) (as the case may be). 10
- (4) The court—
- (a) must include in the confiscation order a statement of its findings as to the matters relevant for deciding the available amount, if that amount is less than the defendant's benefit from the conduct concerned; 15
 - (b) may include such a statement, in any other case.

Defendant's
benefit.

- 7.—(1) If the court is proceeding under section 4 this section applies for the purpose of—
- (a) deciding whether the defendant has benefited from conduct, and
 - (b) deciding his benefit from the conduct. 20
- (2) The court must—
- (a) take account of conduct occurring up to the time it makes its decision;
 - (b) take account of property obtained up to that time.
- (3) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts— 25
- (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
 - (b) the amount ordered to be paid under each confiscation order previously made against him under the Drug Trafficking Offences Act 1986, Part I of the Criminal Justice (Scotland) Act 1987, Part VI of the Criminal Justice Act 1988, Part I of the Drug Trafficking Act 1994, Part I of the Proceeds of Crime (Scotland) Act 1995 or Part III of this Act. 30

1986 c. 32.
1987 c. 41.
1988 c. 33.
1994 c. 37.
1995 c. 43.

Available amount.

- 8.—(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of— 35
- (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and 40
 - (b) the total of the values (at that time) of all tainted gifts.
- (2) An obligation has priority if it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or 45

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(b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.

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(3) "Preferential debts" has the meaning given by section 386 of the Insolvency Act 1986. 1986 c. 45.

9.—(1) If the court decides under section 4 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of— Assumptions to be made in case of criminal lifestyle.

(a) deciding whether he has benefited from his general criminal conduct, and
10 (b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—

(a) as a result of his general criminal conduct, and
15 (b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—

(a) as a result of his general criminal conduct, and
20 (b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.
25

(6) But the court must not make a required assumption in relation to particular property or expenditure if—

(a) the assumption is shown to be incorrect, or
30 (b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of the required assumptions it must state its reasons.

(8) The relevant day is the first day of the period of six years ending with—

(a) the day when proceedings for the offence concerned were started against the defendant, or
35 (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(9) The date of conviction is—

(a) the date on which the defendant was convicted of the offence concerned, or
40 (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

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PART II Time for payment.	10. —(1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section. (2) If the defendant shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period. (3) The specified period— (a) must start with the day on which the confiscation order is made, and (b) must not exceed six months. (4) If within the specified period the defendant applies to the Crown Court for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period. (5) The extended period— (a) must start with the day on which the confiscation order is made, and (b) must not exceed 12 months.	5 10 15
Interest on unpaid sums. 1838 c. 110.	11. —(1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid. (2) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (interest on civil judgment debts). (3) For the purposes of enforcement the amount of the interest must be treated as part of the amount to be paid under the confiscation order.	20
Effect of order on court's other powers. 1971 c. 38. 2000 c. 11.	12. —(1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned. (2) The court must take account of the confiscation order before— (a) it imposes a fine on the defendant, or (b) it makes an order falling within subsection (3). (3) These orders fall within this subsection— (a) an order involving payment by the defendant, other than an order under section 130 of the Sentencing Act (compensation orders); (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); (c) an order under section 143 of the Sentencing Act (deprivation orders); (d) an order under section 23 of the Terrorism Act 2000 (forfeiture orders). (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant. (5) Subsection (6) applies if— (a) a court makes both a confiscation order and an order for the payment of compensation under section 130 of the Sentencing Act against the same person in the same proceedings, and	25 30 35 40

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(b) the court believes he will not have sufficient means to satisfy both the orders in full.

PART II

(6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

(7) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it believes is appropriate in respect of an offence.

Procedural matters

13.—(1) The court may postpone proceedings under section 4 for a specified period; and a period of postponement may be extended.

Postponement.

(2) A period of postponement (including one as extended) must not end after the permitted period ends.

(3) But subsection (2) does not apply if there are exceptional circumstances.

(4) The permitted period is the period of two years starting with the date of conviction.

(5) But if—

(a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and

(b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (4),

the permitted period is that period of three months.

(6) A postponement or extension may be made—

(a) on application by the defendant;

(b) on application by the prosecutor or the Director (as the case may be);

(c) by the court of its own motion.

(7) 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.

(8) References to appealing include references to applying under section 111 of the Magistrates' Courts Act 1980 (statement of case).

1980 c. 43.

14.—(1) If the court postpones proceedings under section 4 it may proceed to sentence the defendant for the offence (or any of the offences) concerned.

Effect of postponement.

(2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not—

(a) impose a fine on him, or

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(b) make an order falling within section 12(3).

(3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by imposing a fine or making an order falling within section 12(3). 5

(4) But the court may proceed under subsection (3) only within the period which—

(a) corresponds to that allowed by section 155(1) or (2) of the Sentencing Act (time allowed for varying a sentence), but

(b) starts with the end of the postponement period. 10

(5) If the court proceeds to sentence the defendant under subsection (1)—

(a) section 4 has effect as if the defendant's 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; 15

(b) section 5 must be ignored.

(6) The postponement period is the period for which proceedings under section 4 are postponed.

Statement of information.

15.—(1) If the court is proceeding under section 4 in a case where section 4(3)(a) applies, the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders. 20

(2) If the court is proceeding under section 4 in a case where section 4(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders. 25

(3) If the prosecutor or the Director (as the case may be) believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues—

(a) whether the defendant has a criminal lifestyle; 30

(b) whether he has benefited from his general criminal conduct;

(c) his benefit from the conduct.

(4) A statement under subsection (3)—

(a) must include information the prosecutor or Director believes is relevant in connection with applying the assumptions in section 9; 35

(b) must, if the prosecutor or Director believes there would be a serious risk of injustice if a required assumption were made, include information he believes is relevant in connection with deciding whether it should not be made.

(5) If the prosecutor or the Director (as the case may be) does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues—

(a) whether the defendant has benefited from his particular criminal conduct; 45

(b) his benefit from the conduct.

(6) If the prosecutor or the Director gives the court a statement of information—

(a) he may at any time give the court a further statement of information;

5 (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders.

(7) If the court makes an order under this section it may at any time vary it by making another one.

10 **16.**—(1) If the prosecutor or the Director gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—

Defendant's response to statement of information.

(a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and

15 (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.

(2) If the defendant accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 15(3) or (5) (as the case may be).

20 (3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—

(a) any allegation in respect of which he has complied with the requirement;

25 (b) any allegation that he has a criminal lifestyle;

(c) any allegation that he has benefited from his general or particular criminal conduct.

(4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.

30 (5) If the court makes an order under this section it may at any time vary it by making another one.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

17.—(1) This section applies if—

35 (a) the court is proceeding under section 4 in a case where section 4(3)(a) applies, or

(b) it is proceeding under section 4 in a case where section 4(3)(b) applies or it is considering whether to proceed.

Provision of information by defendant.

40 (2) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.

(3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

PART II

(4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) If the prosecutor or the Director (as the case may be) accepts to any extent an allegation made by the defendant— 5

(a) in giving information required by an order under this section, or

(b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 8,

the court may treat the acceptance as conclusive of the matters to which it relates. 10

(6) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(7) If the court makes an order under this section it may at any time vary it by making another one.

Reconsideration

15

No order made:
reconsideration of
case.

18.—(1) This section applies if—

(a) the first condition in section 4 is satisfied but the court has not proceeded under that section,

(b) there is evidence which was not available to the prosecutor on the relevant date, 20

(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 4. 25

(2) The court must proceed under section 4, and when it does so subsections (3) to (7) below apply.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—

(a) section 4 has effect as if his particular criminal conduct included 30 conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned;

(b) section 5 must be ignored.

(4) Section 7(2) does not apply, and the rules applying instead are that the 35 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 40 before that date.

(5) In section 9—

(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.
- 5 (6) The recoverable amount for the purposes of section 4 is such amount as—
- (a) the court believes is just, but
- (b) does not exceed the amount found under section 6.
- 10 (7) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 6;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- 15 (c) any order which falls within section 12(3) and has been made against him in respect of the offence (or any of the offences) concerned;
- (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).
- 20 (8) The relevant date is—
- (a) if the court made a decision not to proceed under section 4, the date of the decision;
- (b) if the court did not make such a decision, the date of conviction.
- (9) The date of conviction is—
- 25 (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.

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

- 30 (2) The first condition is that in proceeding under section 4 the court has decided that—
- (a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or
- 35 (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 4 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,
- 40 (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
- 45 (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or

No order made:
reconsideration of
benefit.

particular criminal conduct (as the case may be) if the evidence had been available to it.

(4) If the court proceeded under section 4 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 4(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 (11) below apply if the court proceeds under section 4 in pursuance of this section.

(7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—

- (a) section 4 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;
- (b) section 5 must be ignored.

(8) Section 7(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 9—

- (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 4 is such amount as—

- (a) the court believes is just, but
- (b) does not exceed the amount found under section 6.

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

- (a) the amount found under section 6;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- 10 (c) any order which falls within section 12(3) and has been made against him in respect of the offence (or any of the offences) concerned;
- (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).

15 (12) The date of conviction is the date found by applying section 18(9).

20.—(1) This section applies if—

- (a) a court has made a confiscation order,
- (b) 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 amount found as his benefit for the purposes of the order,
- 20 (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 on which his belief is based, and
- 25 (d) after considering the evidence the court believes it is appropriate for it to proceed under this section.

Order made:
reconsideration of
benefit.

(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.

30 (3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned section 4 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.

35 (4) Section 7(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;
- 40 (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 7(3) the confiscation order must be ignored.

(6) In section 9—

- 45 (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;

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(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 amount found as his benefit for the purposes of the confiscation order the court—

(a) must make a new calculation of the recoverable amount for the purposes of section 4, 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 8 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 12(3) and has been made against him in respect of the offence (or any of the offences) concerned.

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

(11) The date of conviction is the date found by applying section 18(9).

Order made:
reconsideration of
available amount.

21.—(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 6(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 45, 47(3) or 53 or in pursuance of a charging order.

(3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 8 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 amount found as the available amount for the purposes of the confiscation order the

court may vary the order by substituting for the amount required to be paid such amount as—

PART II

- (a) it believes is just, but
- 5 (b) does not exceed the amount found (when the confiscation order was made) as the defendant's benefit from the conduct concerned.
- (5) In deciding what is just the court must have regard in particular to—
 - (a) any fine imposed on the defendant for the offence (or any of the offences) concerned;
 - 10 (b) any order which falls within section 12(3) and has been made against him in respect of the offence (or any of the offences) concerned.
- (6) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

22.—(1) This section applies if—

Inadequacy of available amount: variation of order.

- (a) a court has made a confiscation order, and
- 15 (b) the defendant, or a receiver appointed under section 45, 47(3) or 53 or in pursuance of a charging order, applies to the Crown Court to vary the order under this section.

(2) In such a case the court must calculate the available amount under section 8, but substituting for references to the time the confiscation order is made references to the time the calculation is made.

(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.

25 (4) If a person has been adjudged bankrupt or his estate has been sequestrated the court must take into account the extent to which realisable property held by him may be distributed among creditors.

30 (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.

23.—(1) This section applies if—

Inadequacy of available amount: discharge of order.

- (a) a court has made a confiscation order,
- 35 (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 under section 8, but substituting for references to the time the confiscation order is made references to the time the calculation is made.

40 (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,
- 45 it may discharge the confiscation order.

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PART II	(4) The specified reasons are— (a) in a case where any of the realisable property is situated outside the United Kingdom, that fluctuations in currency exchange rates have occurred; (b) any reason specified by the Secretary of State by order.	5
	(5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).	
Small amount outstanding: discharge of order.	24. —(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 £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).	15
Information.	25. —(1) This section applies if— (a) the court proceeds under section 4 in pursuance of section 18 or 19, or (b) the prosecutor or the Director applies under section 20. (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 15 applies accordingly (with appropriate modifications where the prosecutor or the Director applies under section 20); (c) section 16 applies accordingly; (d) section 17 applies as it applies in the circumstances mentioned in section 17(1).	
	<i>Defendant absconds</i>	
Defendant convicted or committed.	26. —(1) This section applies if the following two conditions are satisfied. (2) The first condition is that a defendant absconds after— (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, or (c) he is committed to the Crown Court in respect of an offence or offences under section 67 below (committal with a view to a confiscation order being considered). (3) The second condition is that— (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and (b) the court believes it is appropriate for it to do so.	40

(4) If this section applies the court must proceed under section 4 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

5 (5) If the court proceeds under section 4 as applied by this section, this Part has effect with these modifications—

- (a) any person the court believes is likely to be affected by an order under section 4 is entitled to appear before the court and make representations;
- 10 (b) the court must not make an order under section 4 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
- (c) section 4(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
- (d) sections 9, 15(4), 16 and 17 must be ignored;
- 15 (e) sections 18, 19 and 20 must be ignored while the defendant is still an absconder.

(6) Once the defendant has ceased to be an absconder section 18 has effect as if subsection (1)(a) read—

20 “(a) at a time when the first condition in section 26 was satisfied the court did not proceed under section 4.”

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

Defendant neither convicted nor acquitted.

(2) The first condition is that—

- (a) proceedings for an offence or offences are started against a defendant but are not concluded,
- 25 (b) he absconds, and
- (c) the period of two years (starting with the day the court believes he absconded) has ended.

(3) The second condition is that—

- 30 (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
- (b) the court believes it is appropriate for it to do so.

(4) If this section applies the court must proceed under section 4 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

35 (5) If the court proceeds under section 4 as applied by this section, this Part has effect with these modifications—

- (a) any person the court believes is likely to be affected by an order under section 4 is entitled to appear before the court and make representations;
- 40 (b) the court must not make an order under section 4 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
- (c) section 4(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

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- (d) sections 9, 15(4), 16 and 17 must be ignored;
 - (e) sections 18, 19 and 20 must be ignored while the defendant is still an absconder.
 - (6) Subsections (7) and (8) apply once the defendant has ceased to be an absconder. 5
 - (7) Section 18 has effect as if subsection (1)(a) read—
“(a) at a time when the first condition in section 27 was satisfied the court did not proceed under section 4.”
 - (8) Sections 18, 19 and 20 have effect as if references to the date of conviction were— 10
 - (a) to the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
 - (9) If— 15
 - (a) the court makes an order under section 4 as applied by this section, and
 - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned, section 4 does not apply so far as that conviction is concerned. 20
- Variation of order. 28.—(1) This section applies if—
- (a) the court makes a confiscation order under section 4 as applied by section 27,
 - (b) the defendant ceases to be an absconder,
 - (c) he believes that the amount required to be paid was too large (taking 25 the circumstances prevailing when the amount was found for the purposes of the order), and
 - (d) before the end of the period of six years starting with the date on which the order was made he applies to the Crown Court to consider the evidence on which his belief is based. 30
- (2) If (after considering the evidence) the court concludes that the defendant’s belief is well founded—
- (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and 35
 - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- Discharge of order. 29.—(1) Subsection (2) applies if—
- (a) the court makes a confiscation order under section 4 as applied by section 27, 40
 - (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and
 - (c) he applies to the Crown Court to discharge the order.

Proceeds of Crime

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

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(3) Subsection (4) applies if—

(a) the court makes a confiscation order under section 4 as applied by section 27,

5 (b) the defendant ceases to be an absconder,

(c) subsection (1)(b) does not apply, and

(d) he applies to the Crown Court to discharge the order.

(4) In such a case the court may discharge the order if it finds that—

10 (a) there has been undue delay in continuing the proceedings mentioned in section 27(2), or

(b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

Appeals

15 **30.**—(1) If the Crown Court makes a confiscation order the prosecutor or the Director may appeal to the Court of Appeal in respect of the order.

Appeal by
prosecutor or
Director.

(2) If the Crown Court decides not to make a confiscation order the prosecutor or the Director may appeal to the Court of Appeal against the decision.

20 (3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 18, 19, 26 or 27.

31.—(1) On an appeal under section 30(1) the Court of Appeal may confirm, quash or vary the confiscation order.

Court's powers on
appeal.

25 (2) On an appeal under section 30(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

(a) itself proceed under section 4 (ignoring subsections (1) to (3)), or

(b) direct the Crown Court to proceed afresh under section 4.

(3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.

30 (4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must—

(a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

35 (b) have regard to any order which falls within section 12(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 8.

40 (5) If the Court of Appeal proceeds under section 4 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section and a court has already sentenced the defendant for the offence (or

- PART II any of the offences) concerned—
- (a) section 4 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; 5
 - (b) section 5 must be ignored.
- (6) If the Court of Appeal proceeds under section 4 subsections (7) to (11) also apply.
- (7) The court must have regard to any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders). 10
- (8) Section 7(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; 15
 - (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 9—
- (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date; 20
 - (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. 25
- (10) Section 25 applies as it applies in the circumstances mentioned in subsection (1) of that section.
- (11) If the Court of Appeal—
- (a) makes a confiscation order, and 30
 - (b) appoints the Director as the enforcement authority for the order under section 33
- it must direct the Crown Court to proceed under section 53.
- (12) The relevant date is the date on which the Crown Court decided not to make a confiscation order. 35
- Appeal to House of Lords. **32.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 30.
- (2) An appeal under this section lies at the instance of—
- (a) the defendant or the prosecutor (if the prosecutor appealed under section 30); 40
 - (b) the defendant or the Director (if the Director appealed under section 30).
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the House of Lords may confirm, quash or vary the order. 45

(4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the House of Lords may—

- 5 (a) confirm the decision, or
(b) itself proceed under section 4 (ignoring subsections (1) to (3)) if it believes the decision was wrong.

(5) If the House of Lords makes or varies a confiscation order under this section it must have regard to—

- 10 (a) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
(b) any order which falls within section 12(3) and has been made against him in respect of the offence (or any of the offences) concerned.

15 (6) If the House of Lords makes a confiscation order under this section it must have regard to any order for the payment of compensation under section 130 of the Sentencing Act made against the defendant in respect of the offence (or any of the offences) concerned.

(7) If the House of Lords—

- (a) makes a confiscation order under this section, and
20 (b) appoints the Director as the enforcement authority for the order under section 33,

it must direct the Crown Court to proceed under section 53.

Enforcement authority

25 **33.**—(1) Subsection (2) applies if a court makes a confiscation order and any of the following paragraphs applies— Enforcement authority.

- (a) the court proceeded under section 4 after being asked to do so by the Director;
(b) the court proceeded under section 4 by virtue of an application by the Director under section 18, 19, 26 or 27;
30 (c) before the court made the order the Director applied to the court to appoint him as the enforcement authority for the order.

(2) In any such case the court must appoint the Director as the enforcement authority for the order.

Enforcement as fines etc

35 **34.**—(1) This section applies if a court— Director not appointed as enforcement authority.
(a) makes a confiscation order, and
(b) does not appoint the Director as the enforcement authority for the order.

40 (2) Sections 139(2) to (4) and (9) and 140(1) to (4) of the Sentencing Act (functions of court as to fines and enforcing fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.

(3) In the application of Part III of the Magistrates' Courts Act 1980 to an 1980 c. 43.

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PART II	amount payable under a confiscation order— (a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines) of that Act; (b) in section 87 of that Act ignore subsection (3) (inquiry into means).	5
Director appointed as enforcement authority.	35. —(1) This section applies if a court— (a) makes a confiscation order, and (b) appoints the Director as the enforcement authority for the order. (2) Section 139(2) to (4) and (9) of the Sentencing Act (functions of court as to fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.	10
Director's application for enforcement.	36. —(1) If the Director believes that the conditions set out in subsection (2) are satisfied he may make an ex parte application to the Crown Court for the issue of a summons against the defendant. (2) The conditions are that— (a) a confiscation order has been made; (b) the Director has been appointed as the enforcement authority for the order; (c) because of the defendant's wilful refusal or culpable neglect the order is not satisfied; (d) the order is not subject to appeal; (e) the Director has done all that is practicable (apart from this section) to enforce the order. (3) If it appears to the Crown Court that the conditions are satisfied it may issue a summons ordering the defendant to appear before the court at the time and place specified in the summons. (4) If the defendant fails to appear before the Crown Court in pursuance of the summons the court may issue a warrant for his arrest. (5) If— (a) the defendant appears before the Crown Court in pursuance of the summons or of a warrant issued under subsection (4), and (b) the court is satisfied that the conditions set out in subsection (2) are satisfied, it may issue a warrant committing the defendant to prison or detention for default in payment of the amount ordered to be paid by the confiscation order. (6) Subsection (7) applies if the amount remaining to be paid under the confiscation order when the warrant under subsection (5) is issued is less than the amount ordered to be paid. (7) In such a case the court must substitute for the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act such term as bears to the original term the same proportion as the amount remaining to be paid bears to the amount ordered to be paid.	15 20 30 35 40

(8) Subsections (9) and (10) apply if—

(a) the defendant has been committed to prison or detention in pursuance of a warrant issued under subsection (5), and

5 (b) a payment is made in respect of some or all of the amount remaining to be paid under the confiscation order.

(9) If the payment is for the whole amount remaining to be paid the defendant must be released unless he is in custody for another reason.

10 (10) If the payment is for less than that amount, the period of commitment is reduced so that it bears to the term fixed under section 139(2) of the Sentencing Act the same proportion as the amount remaining to be paid bears to the amount ordered to be paid.

37.—(1) Subsection (2) applies if—

15 (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and

(b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).

20 (2) In such a case the term of imprisonment or of detention under section 108 of the Sentencing Act (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above.

25 (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences).

(4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—

30 (a) any sentence suspended under section 118(1) of the Sentencing Act which has not taken effect at the time the warrant is issued;

35 (b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison;

(c) any term of imprisonment or detention fixed under section 139(2) of the Sentencing Act (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued at that time.

40 (5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned.

38.—(1) Subsection (2) applies if—

45 (a) a court varies a confiscation order under section 20, 21, 22, 28, 31 or 32,

Provisions about imprisonment or detention.

1977 c. 45.

Reconsideration etc: variation of prison term.

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PART II

- (b) the effect of the variation is to vary the maximum period applicable in relation to the order under section 139(4) of the Sentencing Act, and
- (c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act.

(2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under section 139(2) of the Sentencing Act in place of the term previously fixed.

(3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.

(4) In such a case the court may fix a reduced term of imprisonment or detention in respect of the confiscation order under section 139(2) of the Sentencing Act in place of the term previously fixed.

(5) If the effect of section 11 is to increase the maximum period applicable in relation to a confiscation order under section 139(4) of the Sentencing Act, on the application of the appropriate person the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 139(2) of that Act.

(6) The appropriate person is— 20

- (a) the Director, if he was appointed as the enforcement authority for the order under section 33;
- (b) the prosecutor, in any other case.

Restraint orders and charging orders

Conditions for exercise of powers.

39.—(1) The Crown Court may exercise the powers conferred by sections 25 40 and 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 is reasonable cause to believe 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. 35

(4) The third condition is that—

- (a) an application by the prosecutor or the Director has been made under section 18, 19, 26 or 27 and not concluded, or the court believes that such an application is to be made, and 40
- (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 or the Director has been made under section 20 and not concluded, or the court believes that such an application is to be made, and 45

- (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 amount found as his benefit for the purposes of the confiscation order.
- 5 (6) The fifth condition is that—
- (a) an application by the prosecutor or the Director has been made under section 21 and not concluded, or the court believes that such an application is to be made, and
- 10 (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 amount found as the available amount for the purposes of the confiscation order.
- (7) The second condition is not satisfied if the court believes that—
- (a) there has been undue delay in continuing the proceedings, or
- 15 (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
- 20 (b) the prosecutor or the Director (as the case may be) 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;
- 25 (c) section 74(7) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.
- 40.**—(1) If any condition set out in section 39 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.
- 30 (2) A restraint order may provide that it applies—
- (a) to all realisable property held by the specified person whether or not the property is described in the order;
- (b) to realisable property transferred to the specified person after the order is made.
- 35 (3) A restraint order may be made subject to exceptions, and an exception may in particular—
- (a) make provision for living expenses and legal expenses;
- (b) be made subject to conditions.
- (4) Subsection (5) applies if—
- 40 (a) the court makes a restraint order, and
- (b) the applicant for the order asks the court to proceed under subsection (5) (whether as part of the application for the restraint order or at any time afterwards).

Restraint orders.

Proceeds of Crime

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(5) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(6) A restraint order does not affect—

- (a) property for the time being subject to a charging order;
- (b) property for the time being subject to a charge under section 9 of the Drug Trafficking Offences Act 1986, section 78 of the Criminal Justice Act 1988 or section 27 of the Drug Trafficking Act 1994.

(7) Dealing with property includes removing it from England and Wales.

Charging orders.

41.—(1) If any condition set out in section 39 is satisfied the Crown Court may make an order (a charging order) imposing on specified interests in specified realisable property a charge for securing the payment of money to the Crown.

(2) The amount whose payment is secured is as follows—

- (a) if a confiscation order has not been made against the defendant, it is an amount equal to the value from time to time of the interests charged;
- (b) if a confiscation order has been made against the defendant, it is an amount equal to the smaller of the amount mentioned in paragraph (a) and the amount required to be paid by the confiscation order.

(3) A charging order may be imposed only on interests falling within subsection (4) or (5).

(4) An interest falls within this subsection if—

- (a) it is held beneficially by the defendant or a recipient of a tainted gift, and
- (b) it is an interest in an asset falling within subsection (6) or an interest under a trust.

(5) An interest falls within this subsection if—

- (a) it is held by a person as trustee of a trust,
- (b) it is an interest in an asset falling within subsection (6) or an interest under another trust, and
- (c) the whole beneficial interest under the trust mentioned in paragraph (a) falls within subsection (4).

(6) The assets falling within this subsection are—

- (a) land in England and Wales;
- (b) securities falling within subsection (7).

(7) The securities falling within this subsection are—

- (a) government stock;
- (b) stock of a body (other than a building society) incorporated in England and Wales;
- (c) stock of a body incorporated outside England and Wales if the stock is registered in a register kept at a place in England and Wales;
- (d) stock of a country or territory outside the United Kingdom if the stock is registered in a register kept at a place in England and Wales;

(e) units of a unit trust if a register of the unit holders is kept at a place in England and Wales.

PART II

5 (8) If a charge is imposed on an interest in securities falling within subsection (7) and the charging order provides that the charge extends to any interest or dividend payable in respect of the securities, the charge has effect accordingly.

(9) A charging order may be made subject to conditions (such as a condition about the time when it becomes effective).

10 (10) The Secretary of State may by order amend subsections (6) and (7) so as to add or remove assets.

(11) The expressions "building society", "dividend", "government stock", "stock" and "unit trust" have the same meanings as in the Charging Orders Act 1979. 1979 c. 53.

42.—(1) A restraint order or a charging order—

Application,
discharge and
variation.

15 (a) may be made only on an application by an applicant falling within subsection (2);

(b) may be made on an ex parte application to a judge in chambers.

(2) These applicants fall within this subsection—

20 (a) the prosecutor;

(b) the Director;

(c) an accredited financial investigator.

(3) A person affected by a restraint order or a charging order may apply to the Crown Court to discharge it or to vary it; and subsections (4) to (7) apply in such a case.

25 (4) The court—

(a) may discharge the order;

(b) may vary the order.

30 (5) If the condition in section 39 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).

35 (6) If the condition in section 39 which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

(7) If the order is a charging order the court must discharge it on payment into court of the amount whose payment is secured by the charge.

40 (8) An accredited financial investigator is a person accredited as a financial investigator by the Director or by a person authorised by the Director.

(9) An accredited financial investigator may not make an application for a restraint order unless he is authorised to do so by—

(a) a police officer who is not below the rank of superintendent, or

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PART II	(b) a person who is commissioned by the Commissioners of Customs and Excise and who is not below such grade as is designated by the Commissioners as equivalent to that rank.	
Appeal to Court of Appeal.	43. —(1) If on an application for a restraint order or a charging order the court decides not to make one, the person who applied for it may appeal to the Court of Appeal against the decision. 5 (2) If an application is made under section 42(3) in relation to a restraint order or a charging order the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application— (a) the person who applied for the order; 10 (b) any person affected by the order. (3) On an appeal under subsection (1) the Court of Appeal may— (a) confirm the decision, or (b) make such order as the Crown Court could have made. (4) On an appeal under subsection (2) the Court of Appeal may— 15 (a) confirm the decision, or (b) make such order as it believes is appropriate.	
Appeal to House of Lords.	44. —(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 43. (2) An appeal under this section lies at the instance of— 20 (a) the person who applied for a restraint order or a charging order; (b) any person affected by the decision of the Court of Appeal. (3) On an appeal under this section the House of Lords may— (a) confirm the decision of the Court of Appeal, or (b) make such order as it believes is appropriate. 25	
Restraint orders: receivers and seizure.	45. —(1) Subsection (2) applies if— (a) the Crown Court makes a restraint order, and (b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards). 30 (2) The Crown Court may by order— (a) appoint a receiver to take possession of any realisable property to which the restraint order applies and (in accordance with the court's directions) to manage or otherwise deal with the property; (b) require a person who has possession of property in respect of which a receiver is appointed to give him possession of it. 35 (3) An appointment of a receiver may be made subject to exceptions or conditions. (4) If a restraint order is in force a constable may seize any realisable property to which it applies to prevent its removal from England and Wales. 40	

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(5) Property seized under subsection (4) must be dealt with in accordance with the directions of the court which made the order.

PART II

46.—(1) The Land Registration Act 1925 and the Land Charges Act 1972—

Orders:
supplementary.

- 5 (a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;
- (b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions.

1925 c. 21.
1972 c. 61.

10 (2) The person applying for a restraint order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—

- (a) the application relates, or
(b) a restraint order made in pursuance of the application relates.

15 (3) The Land Registration Act 1925 and the Land Charges Act 1972 apply in relation to charging orders as they apply in relation to orders or writs made or issued for the purpose of enforcing judgments.

(4) If a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration) does not apply to an order which appoints a receiver and is made in pursuance of the charging order.

20 (5) A charge imposed by a charging order has the same effect and is enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or (as the case may be) the trustees by writing under their hand; but this is subject to anything done under section 47 or 53.

(6) If a charging order has been protected by an entry registered under the Land Registration Act 1925 or the Land Charges Act 1972, an order discharging the charging order may require the entry to be cancelled.

30 *Realisation of property: general*

47.—(1) This section applies if—

Confiscation order
made: receivers.

- (a) a confiscation order is made,
(b) it is not satisfied, and
(c) it is not subject to appeal.
- 35 (2) In such a case the Crown Court may on the application of the prosecutor exercise the powers conferred on it by this section.
- (3) The court may by order appoint a receiver in respect of realisable property.
- (4) The court may by order confer the powers listed in subsection (5) on
40 any of these receivers—
- (a) a receiver appointed under section 45;
(b) a receiver appointed under subsection (3) above;
(c) a receiver appointed in pursuance of a charging order.

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- (5) These are the powers—
- (a) power to enforce a charge imposed by a charging order;
 - (b) power to take possession of any realisable property, subject to any conditions or exceptions the court specifies;
 - (c) power to realise any realisable property, in such manner as the court may specify. 5

(6) The court may order any person who has possession of realisable property to give possession of it to a receiver listed in subsection (4).

(7) The court—

- (a) may order a person holding an interest in realisable property to make to a receiver listed in subsection (4) such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; 10
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property. 15

(8) Subsections (5)(b) and (c), (6) and (7) do not apply to—

1986 c. 32.
1988 c. 33.
1994 c. 37.

- (a) property for the time being subject to a charging order;
- (b) property for the time being subject to a charge under section 9 of the Drug Trafficking Offences Act 1986, section 78 of the Criminal Justice Act 1988 or section 27 of the Drug Trafficking Act 1994. 20

(9) The court must not—

- (a) confer the power mentioned in subsection (5)(a) or (c) in respect of property, or
- (b) exercise the power conferred on it by subsection (7) in respect of property, 25

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

Application of
sums by receiver.

48.—(1) This section applies to the sums which—

- (a) are in the hands of any of the receivers listed in subsection (2), and
- (b) fall within subsection (3). 30

(2) These are the receivers—

- (a) a receiver appointed under section 45;
- (b) a receiver appointed under section 47(3);
- (c) a receiver appointed in pursuance of a charging order.

(3) These sums fall within this subsection— 35

- (a) the proceeds of the enforcement of a charge imposed by a charging order;
- (b) the proceeds of the realisation (other than by the enforcement of such a charge) of property under section 45 or 47;
- (c) any sums (other than those mentioned in paragraph (a) or (b)) in which the defendant holds an interest. 40

(4) The sums must be applied as follows—

- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 66(5) or (6); 45

- (b) second, they must be applied in making any payments directed by the Crown Court;
- (c) third, they must be applied on the defendant's behalf towards satisfaction of any confiscation order that has been or may be made against him.
- 5 (5) If the amount payable under any confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—
- (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
- 10 (b) in such proportions as it directs.
- (6) Before making a direction under subsection (5) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (7) For the purposes of subsections (5) and (6) the property concerned
- 15 is—
- (a) the property represented by the proceeds mentioned in subsection (3)(a) or (b);
- (b) the sums mentioned in subsection (3)(c).
- (8) If a confiscation order has been made against the defendant a receiver
- 20 applies sums as mentioned in subsection (4)(c) by paying them to the appropriate justices' chief executive on account of the amount payable under the order.
- (9) The appropriate justices' chief executive is the one for the magistrates' court responsible for enforcing the confiscation order as if the amount
- 25 ordered to be paid were a fine.

49.—(1) This section applies if a justices' chief executive receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 48 or otherwise).

Sums received by justices' chief executive.

- 30 (2) The chief executive's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
- (a) are payable under this subsection by virtue of section 66(5) or (6), but
- 35 (b) are not already paid under section 48(4)(a).
- (4) If the justices' chief executive received the sums under section 48 he must next apply them in payment of the receiver's remuneration and expenses.
- (5) If a direction was made under section 12(6) for an amount of
- 40 compensation to be paid out of sums recovered under the confiscation order, the justices' chief executive must next apply the sums in payment of that amount.
- (6) If any amount remains after the justices' chief executive makes any payments required by the preceding provisions of this section, the amount
- 45 must be treated for the purposes of section 60 of the Justices of the Peace Act

Proceeds of Crime

PART II	1997 (application of fines etc) as if it were a fine imposed by a magistrates' court.	
	(7) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters—	5
	(a) the justices' chief executive must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 12(6) bears to the total amount payable under the confiscation order;	10
	(b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it;	
1997 c. 25.	(c) the amount deducted must be treated for the purposes of section 60 of the Justices of the Peace Act 1997 as if it were a fine imposed by a magistrates' court.	15
	(8) Subsection (4) does not apply if the receiver is a member of the staff of the Crown Prosecution Service or of the Commissioners of Customs and Excise; and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere.	20
Appeal to Court of Appeal.	50. —(1) If on an application for an order under section 45 or 47 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.	
	(2) If on an application for an order under section 45 or 47 the court makes an order, the following persons may appeal to the Court of Appeal in respect of the order—	25
	(a) the person who applied for the order;	
	(b) any person affected by the order.	
	(3) On an appeal under subsection (1) the Court of Appeal may—	
	(a) confirm the decision, or	30
	(b) make such order as the Crown Court could have made.	
	(4) On an appeal under subsection (2) the Court of Appeal may confirm, quash or vary the order.	
Appeal to House of Lords.	51. —(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 50.	35
	(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.	
	(3) On an appeal under this section the House of Lords may make such order as it believes is appropriate.	
Seized money.	52. —(1) This section applies to money which—	40
	(a) is held by a person, and	
	(b) is held in an account maintained by him with a bank or a building society.	

Proceeds of Crime

- (2) This section also applies to money which is held by a person and which—
- (a) has been seized by a constable under section 19 of the Police and Criminal Evidence Act 1984 (general power of seizure etc), and
- 5 (b) is held in an account maintained by a police force with a bank or a building society.
- (3) This section also applies to money which is held by a person and which—
- 10 (a) has been seized by an officer of Customs and Excise under section 19 of the 1984 Act as applied by order made under section 114(2) of that Act, and
- (b) is held in an account maintained by the Commissioners of Customs and Excise with a bank or a building society.
- (4) This section applies if the following conditions are satisfied—
- 15 (a) a restraint order has effect in relation to money to which this section applies;
- (b) a receiver has not been appointed under section 47(3) in relation to the money;
- 20 (c) a confiscation order is made against the person by whom the money is held;
- (d) the Director has not been appointed as the enforcement authority for the confiscation order;
- (e) any period allowed under section 10 for payment of the amount ordered to be paid under the confiscation order has ended.
- 25 (5) In such a case a magistrates' court may order the bank or building society to pay the money to the justices' chief executive for the court on account of the amount payable under the confiscation order.
- (6) If a bank or building society fails to comply with an order under subsection (5)—
- 30 (a) the magistrates' court may order it to pay an amount not exceeding £5,000, and
- (b) for the purposes of the Magistrates' Courts Act 1980 the sum is to be treated as adjudged to be paid by a conviction of the court. 1980 c. 43.
- (7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)(a).
- 35 (8) For the purposes of this section—
- (a) a bank is a deposit-taking business within the meaning of the Banking Act 1987; 1987 c. 22.
- 40 (b) "building society" has the same meaning as in the Building Societies Act 1986; 1986 c. 53.
- (c) an officer of Customs and Excise is an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979. 1979 c. 2.

PART II
Director as
enforcement
authority:
receivers.

Realisation of property: Director

- 53.—(1) This section applies if—
- (a) a confiscation order is made, and
 - (b) the Director is appointed as the enforcement authority for the order under section 33;
- 5
- and if this section applies section 47 does not apply.
- (2) The Crown Court must make an order for the appointment of a receiver.
- (3) An order under subsection (2)—
- (a) must confer power on the Director to nominate the person who is to be the receiver, and
 - (b) takes effect when the Director nominates that person.
- (4) The Director must not nominate a person under subsection (3) unless at the time he does so the confiscation order—
- (a) is not satisfied, and
 - (b) is not subject to appeal.
- 15
- (5) In an order under subsection (2) the court may confer the following powers on a receiver appointed under this section—
- (a) power to enforce a charge imposed by a charging order;
 - (b) power to take possession of any realisable property, subject to any conditions or exceptions the court specifies;
 - (c) power to realise any realisable property, in such manner as the court may specify.
- (6) An order under subsection (2) may require any person who has possession of realisable property to give possession of it to a receiver appointed under this section.
- 25
- (7) On the application of the Director, the court—
- (a) may order a person holding an interest in realisable property to make to a receiver appointed under this section such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (8) Subsections (5)(b) and (c), (6) and (7) do not apply to—
- (a) property for the time being subject to a charging order;
 - (b) property for the time being subject to a charge under section 9 of the Drug Trafficking Offences Act 1986, section 78 of the Criminal Justice Act 1988 or section 27 of the Drug Trafficking Act 1994.
- 35
- (9) The court must not—
- (a) confer the power mentioned in subsection (5)(a) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (7),
- 40
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

1986 c. 32.
1988 c. 33.
1994 c. 37.

Proceeds of Crime

(10) A person nominated to be the receiver under subsection (3) may be a member of the staff of the Agency.

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54.—(1) This section applies to sums which—

- (a) are in the hands of a receiver appointed under section 53, and
- (b) fall within subsection (2).

Application of sums by Director's receiver.

(2) These sums fall within this subsection—

- (a) the proceeds of the enforcement of a charge imposed by a charging order;
- (b) the proceeds of the realisation (other than by the enforcement of such a charge) of property under section 45 or 53;
- (c) any sums (other than those mentioned in paragraph (a) or (b)) in which the defendant holds an interest.

(3) The sums must be applied as follows—

- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 66(5) or (6);
- (b) second, they must be applied in making any payments directed by the Crown Court;
- (c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order by being paid to the Director on account of the amount payable under it.

(4) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—

- (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
- (b) in such proportions as it directs.

(5) Before making a direction under subsection (4) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(6) For the purposes of subsections (4) and (5) the property concerned is—

- (a) the property represented by the proceeds mentioned in subsection (2)(a) or (b);
- (b) the sums mentioned in subsection (2)(c).

55.—(1) This section applies if the Director receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 54 or otherwise).

Sums received by Director.

(2) The Director's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—

- (a) are payable under this subsection by virtue of section 66(5) or (6), but

- PART II
- (b) are not already paid under section 54(3)(a).
 - (4) If—
 - (a) the Director received the sums under section 54, and
 - (b) the receiver is not a member of the staff of the Agency,he must next apply them in payment of the receiver's remuneration and 5 expenses.
 - (5) If a direction was made under section 12(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the Director must next apply the sums in payment of that amount.
 - (6) The following rules apply if under the preceding provisions of this 10 section sums are to be applied in payment both of compensation and of other matters—
 - (a) the Director must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters 15 the same proportion as the amount specified in the direction under section 12(6) bears to the total amount payable under the confiscation order;
 - (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it. 20

Appeal to Court of Appeal. **56.**—(1) If the court makes an order under section 53(2) or (7), the following persons may appeal to the Court of Appeal in respect of the order—

- (a) the Director;
- (b) any person affected by the order. 25

(2) On an appeal under subsection (1) relating to section 53(2), the Court of Appeal may confirm or vary the order.
(3) On an appeal under subsection (1) relating to section 53(7), the Court of Appeal may confirm, quash or vary the order.

Appeal to House of Lords. **57.**—(1) An appeal lies to the House of Lords from a decision of the 30 Court of Appeal on an appeal under section 56.
(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
(3) On an appeal from a decision of the Court of Appeal under this section the House of Lords may confirm or vary the order referred to in section 35 56(1), if the appeal relates to section 53(2).
(4) On an appeal from a decision of the Court of Appeal under this section the House of Lords may confirm, quash or vary the order referred to in section 56(1), if the appeal relates to section 53(7).

Exercise of powers 40

Powers of court and receiver. **58.**—(1) This section applies to—

- (a) the powers conferred on a court by sections 39 to 57;

(b) the powers of a receiver appointed under section 45, 47(3) or 53 or in pursuance of a charging order.

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(2) The powers—

5 (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;

10 (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property or of the proceeds of realisation;

(c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;

15 (d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—

(a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;

20 (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;

25 (c) in a case where a confiscation order has not been made against the defendant, property must not be realised if the court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be realised.

(5) An order under subsection (4) may be revoked.

30 **59.** If a receiver appointed under section 45, 47(3) or 53 or in pursuance of a charging order—

Protection of receivers.

(a) takes action in relation to property which is not realisable property,
(b) would be entitled to take the action if it were realisable property, and
(c) believes on reasonable grounds that he is entitled to take the action,

35 he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

60.—(1) This section applies to—

(a) a receiver appointed under section 45, 47(3) or 53;
(b) a receiver appointed in pursuance of a charging order.

Receivers:
incidental
applications.

40 (2) The receiver may apply to the Crown Court for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the Crown Court—

(a) any person affected by action taken by the receiver;

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PART II	(b) any person who may be affected by action the receiver proposes to take.	
	(4) On an application under subsection (2) or (3) the court may make such order as it believes is appropriate.	
Appeal to Court of Appeal.	61. —(1) If on an application for an order under section 60 the court makes an order, the following persons may appeal to the Court of Appeal in respect of the order—	5
	(a) the person who applied for the order;	
	(b) any person affected by the order;	
	(c) the receiver.	10
	(2) On an appeal under subsection (1) the Court of Appeal may—	
	(a) confirm the order, or	
	(b) make such order as it believes is appropriate.	
Appeal to House of Lords.	62. —(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 61.	15
	(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.	
	(3) On an appeal under this section the House of Lords may make such order as it believes is appropriate.	
	<i>Insolvency</i>	20
Bankruptcy. 1986 c. 45.	63. —(1) If a person who holds realisable property is adjudged bankrupt the following property is excluded from his estate for the purposes of Part IX of the Insolvency Act 1986 (the 1986 Act)—	
	(a) property for the time being subject to a restraint order which was made before the order adjudging him bankrupt;	25
	(b) any proceeds of property realised by virtue of section 45(2), 47(5)(c) or (7) or 53(5)(c) or (7) if the proceeds are for the time being in the hands of a receiver appointed under section 45, 47(3) or 53.	
	(2) If a person is adjudged bankrupt the powers conferred on a court by sections 39 to 57, and the powers of a receiver appointed under section 45, 47(3) or 53, must not be exercised in relation to the following property—	30
	(a) property which is for the time being comprised in the bankrupt's estate for the purposes of Part IX of the 1986 Act;	
	(b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the 1986 Act (after-acquired property, tools, tenancies etc);	35
	(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the 1986 Act.	
	(3) But—	40
	(a) nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (2);	

- (b) subsection (2) does not affect the enforcement of a charging order made before the order adjudging the person bankrupt;
- (c) subsection (2) does not affect the enforcement of a charging order in respect of property which was subject to a restraint order when the order adjudging the person bankrupt was made.

5 (4) If in the case of a debtor an interim receiver stands at any time appointed under section 286 of the 1986 Act and any property of the debtor is then subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.

10 (5) Subsections (6) and (7) apply if a person who is adjudged bankrupt has made a tainted gift (whether directly or indirectly).

(6) No order may be made under section 339 or 423 of the 1986 Act (avoidance of certain transactions) in respect of the making of the gift at any time when—

- 15 (a) proceedings for an offence have been started against the person and have not been concluded,
- (b) an application has been made in respect of him under section 18, 19, 20, 21, 26 or 27 and has not been concluded, or
- 20 (c) any property of the recipient of the tainted gift is subject to a restraint order or a charging order.

(7) Any order made under section 339 or 423 of the 1986 Act after the conclusion of the proceedings or application mentioned in subsection (6) must take into account any realisation under this Part of property held by the recipient of the tainted gift.

25 (8) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with these modifications—

- 30 (a) for references to the bankrupt's estate for the purposes of Part IX of that Act substitute references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914 (the 1914 Act);
- (b) for references to the 1986 Act and sections 280(2)(c), 286, 339 and 423 of that Act substitute (respectively) references to the 1914 Act and sections 26(2), 8, 27 and 42 of that Act;
- 35 (c) the references in subsection (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, references to the receiver constituted by virtue of section 7 of the 1914 Act;
- (d) omit subsection (2)(b).

1914 c. 59.

40 **64.**—(1) If the estate of a person who holds realisable property is sequestrated the following property is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985 (the 1985 Act)-

Sequestration.
1985 c. 66.

- (a) property for the time being subject to a restraint order which was made before the award of sequestration;
- 45 (b) any proceeds of property realised by virtue of section 45(2), 47(5)(c) or (7) or 53(5)(c) or (7) if the proceeds are for the time being in the hands of a receiver appointed under section 45, 47(3) or 53.

PART II

(2) If an award of sequestration is made the powers conferred on a court by sections 39 to 57, and the powers of a receiver appointed under section 45, 47(3) or 53, must not be exercised in relation to the following property—

- (a) property which is for the time being comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act; 5
- (b) any income of the debtor which has been ordered under section 32(2) of that Act to be paid to the permanent trustee;
- (c) any estate which under section 31(10) or 32(6) of that Act vests in the permanent trustee.

(3) But— 10

- (a) nothing in the 1985 Act must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (2);
- (b) subsection (2) does not affect the enforcement of a charging order made before the award of sequestration;
- (c) subsection (2) does not affect the enforcement of a charging order in respect of property which was subject to a restraint order when the award of sequestration was made. 15

(4) If an award of sequestration is made it shall not be competent to submit a claim in relation to a confiscation order to the permanent trustee in accordance with section 48 of the 1985 Act; and the reference here to a confiscation order is to any confiscation order that has been or may be made against the debtor. 20

(5) If at any time in the period before sequestration is awarded an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is at that time subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order. 25

(6) Subsections (7) and (8) apply if a person whose estate is sequestrated has made a tainted gift (whether directly or indirectly).

(7) No decree may be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when—

- (a) proceedings for an offence have been started in England and Wales against the person and have not been concluded,
- (b) an application has been made in respect of him under section 18, 19, 20, 21, 26 or 27 and has not been concluded, or 35
- (c) any property of the recipient of the tainted gift is subject to a restraint order or a charging order.

(8) Any decree made under section 34 or 36 of the 1985 Act after the conclusion of the proceedings or application mentioned in subsection (7) must take into account any realisation under this Act of property held by the recipient of the tainted gift. 40

1913 c. 20.

(9) In a case where (despite the coming into force of the 1985 Act) the Bankruptcy (Scotland) Act 1913 (the 1913 Act) applies to a sequestration, subsection (2) above has effect as if for paragraphs (a) to (c) there were substituted— 45

- “(a) property which is for the time being comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913;

- (b) any income of the bankrupt which has been ordered under section 98 (2) of that Act to be paid to the trustee;
- (c) any estate which under section 98(1) of that Act vests in the trustee."

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5 (10) In a case where subsection (9) applies, subsection (3)(a) has effect as if for the reference to the 1985 Act there were substituted a reference to the 1913 Act.

65.—(1) If a company holds realisable property, and an order for its winding up is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—

Winding up.

- (a) property for the time being subject to a restraint order which was made before the relevant time;
- (b) any proceeds of property realised by virtue of section 45(2), 47(5)(c) or (7) or 53(5)(c) or (7) if the proceeds are for the time being in the hands of a receiver appointed under section 45, 47(3) or 53.

15 (2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers conferred on a court by sections 39 to 57, and the powers of a receiver appointed under section 45, 47(3) or 53, must not be exercised in the way mentioned in subsection (3) below in relation to any realisable property—

- (a) which is held by the company, and
- (b) in relation to which the functions of the liquidator are exercisable.

(3) The powers must not be exercised—

- 25 (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(4) But—

- (a) nothing in the Insolvency Act 1986 must be taken to restrict (or enable the restriction of) the exercise of the powers mentioned in subsections (2) and (3);
- 35 (b) subsections (2) and (3) do not affect the enforcement of a charging order made before the relevant time;
- (c) subsections (2) and (3) do not affect the enforcement of a charging order in respect of property which was subject to a restraint order at the relevant time.

40 (5) For the purposes of the application of Parts IV and V of the Insolvency Act 1986 (winding up) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order.

45 (6) In this section "company" means any company which may be wound up under the Insolvency Act 1986.

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(7) The relevant time is—

- (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;
- (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.

1985 c. 6. (8) In a case where a winding up of a company commenced or is treated as having commenced before 29 December 1986, this section has effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985.

Insolvency practitioners.

66.—(1) Subsections (2) and (3) apply if—

- (a) a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order, and
- (b) at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.

(2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.

(3) He has a lien on the property or the proceeds of its sale—

- (a) for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which he purported to make the seizure or disposal, and
- (b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.

1986 c. 45. (4) Subsection (2) does not prejudice the generality of any provision of the Insolvency Act 1986 or any other Act which confers protection from liability on him.

(5) If a person acting as an insolvency practitioner incurs expenses in respect of property subject to a restraint order and does not know (and has no reasonable grounds to believe) that the property is subject to a restraint order, he is entitled to payment of the expenses under section 48(4), 49(3), 54(3) or 55(3) (whether or not he has seized or disposed of the property).

(6) If a person acting as an insolvency practitioner incurs expenses which are not expenses in respect of property subject to a restraint order and which (but for the effect of a restraint order) might have been met by taking possession of and realising property subject to the restraint order, he is entitled to payment of the expenses under section 48(4), 49(3), 54(3) or 55(3) (whether or not he has seized or disposed of any property).

(7) The expression “person acting as an insolvency practitioner” includes the official receiver acting as receiver or manager of the property concerned.

(8) Subject to subsection (7), the expression “person acting as an insolvency practitioner” must be construed in accordance with section 388 of the Insolvency Act 1986 (interpretation) except that for the purposes of such construction—

- 5 (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration;
- (b) section 388(5) (which includes provision to the effect that nothing in the section is to apply to anything done by the official receiver)
- 10 must be ignored.

Committal

67.—(1) This section applies if—

Committal by
magistrates’ court.

- (a) a defendant is convicted of an offence by a magistrates’ court, and
- 15 (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 4.
- (2) In such a case the magistrates’ court—
- (a) must commit the defendant to the Crown Court in respect of the offence, and
- 20 (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).
- (3) An offence falls within this subsection if—
- (a) the defendant has been convicted of it by the magistrates’ court or any other court, and
- 25 (b) the magistrates’ court has power to deal with him in respect of it.
- (4) If a committal is made under this section in respect of an offence or offences—
- (a) section 4 applies accordingly, and
- 30 (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 68.
- (5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates’ court could have committed the defendant for sentence under section 3(2) of the Sentencing Act (offences triable either way) the court must state whether it would have done so.
- 35 (6) A committal under this section may be in custody or on bail.

68.—(1) If a defendant is committed to the Crown Court under section 67 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 4).

Sentencing by
Crown Court.

- (2) In the case of an offence in respect of which the magistrates’ court has stated under section 67(5) that it would have committed the defendant for sentence, the Crown Court—
- 40 (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment
- 45 before it.

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- (3) In the case of any other offence the Crown Court—
- (a) must inquire into the circumstances of the case, and
 - (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

5

Compensation

Serious default.

69.—(1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.

(2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.

(3) The first condition is also satisfied if proceedings for an offence are started against a person and—

- (a) they do not result in his conviction for the offence, or
- (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.

(4) If subsection (2) applies the second condition is that—

- (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
- (b) the investigation would not have continued if the default had not occurred.

(5) If subsection (3) applies the second condition is that—

- (a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and
- (b) the proceedings would not have been started or continued if the default had not occurred.

(6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it—

- (a) by or in pursuance of an order under this Part, or
- (b) by or in pursuance of an order under section 121, 122, 123 or 124(3) or an order under section 35 of the Proceeds of Crime (Scotland) Act 1995.

1995 c. 43.

(7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.

(8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.

(9) Compensation under this section is payable to the applicant and—

- (a) if the person in default was or was acting as a member of a police force, the compensation is payable out of the police fund from which the expenses of that force are met;
- (b) if the person in default was a member of the Crown Prosecution Service or was acting on its behalf, the compensation is payable by the Director of Public Prosecutions;

45

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- (c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office; PART II
- (d) if the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, the compensation is payable by the Commissioners of Customs and Excise; 1979 c. 2.
- 5 (e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.

- 70.—(1) This section applies if—
- 10 (a) the court varies a confiscation order under section 28 or discharges one under section 29, and
- (b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.
- 15 (2) The court may order the payment of such compensation as it believes is just.
- (3) Compensation under this section is payable—
- (a) to the applicant;
- (b) by the Lord Chancellor.

Enforcement abroad

- 20 71.—(1) This section applies if—
- (a) any of the conditions in section 39 is satisfied, Enforcement abroad.
- (b) the prosecutor or the Director believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
- 25 (c) the prosecutor or the Director (as the case may be) sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.
- (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.
- 30 (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—
- 35 (a) any person is prohibited from dealing with realisable property;
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.
- 40 (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

Proceeds of Crime

PART II

(6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states— 5

- (a) that property has been realised in pursuance of a request under subsection (3),
- (b) the date of realisation, and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation. 10

Interpretation

Criminal lifestyle. 72.—(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied. 15

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—

- (a) it is a drug trafficking offence;
- (b) it is a money laundering offence; 20
- (c) it is specified in regulations under this section by the Secretary of State;
- (d) it constitutes conduct forming part of a course of criminal activity;
- (e) it is an offence committed over a period of at least six months.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and— 25

- (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
- (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited. 30

Conduct and benefit.

73.—(1) Criminal conduct is conduct which—

- (a) constitutes an offence in England and Wales, or 35
- (b) would constitute such an offence if it occurred in England and Wales.

(2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—

- (a) whether conduct occurred before or after the passing of this Act; 40
- (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

(3) Particular criminal conduct of the defendant is all his criminal conduct

which falls within the following paragraphs—

- (a) conduct which constitutes the offence or offences concerned;
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence (or any of the offences) concerned;
 - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

74.—(1) Subsections (2) and (3) apply if—

Tainted gifts.

- (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
 - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the relevant day.
- (3) A gift is also tainted if it was made by the defendant at any time and was of property—
- (a) which was obtained by the defendant in connection with his general criminal conduct, or
 - (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him in connection with his general criminal conduct.
- (4) Subsection (3) applies if a court has decided that the defendant does not have a criminal lifestyle.
- (5) A gift is tainted if it was made by the defendant at any time after—
- (a) the date on which the offence concerned was committed, or
 - (b) if there are two or more offences and they were committed on different dates, the date of the earliest.
- (6) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (7) The relevant day is the first day of the period of six years ending with—
- (a) the day when proceedings for the offence concerned were started against the defendant, or

Proceeds of Crime

PART II	(b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.	
Gifts and their recipients.	<p>75.—(1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the consideration provided by the defendant, he is to be treated as making a gift. 5</p> <p>(2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—</p> <p>(a) whose numerator is the difference between the two values mentioned in subsection (1), and</p> <p>(b) whose denominator is the value of the consideration provided by the defendant. 10</p> <p>(3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.</p>	
Value: the basic rule.	<p>76.—(1) This section applies for the purpose of deciding the value at any time of property then held by a person. 15</p> <p>(2) Its value is the market value of the property at that time.</p> <p>(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any order listed in subsection (4).</p> <p>(4) The orders are— 20</p> <p>(a) a charging order;</p> <p>(b) a charging order under section 9 of the Drug Trafficking Offences Act 1986, section 78 of the Criminal Justice Act 1988 or section 27 of the Drug Trafficking Act 1994.</p> <p>(5) This section has effect subject to sections 77 and 6. 25</p>	
Value of property obtained from conduct.	<p>77.—(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.</p> <p>(2) The value of the property at the material time is the greater of the following— 30</p> <p>(a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;</p> <p>(b) the value (at the material time) of the property found under subsection (3). 35</p> <p>(3) The property found under this subsection is as follows—</p> <p>(a) if the person holds the property obtained, the property found under this subsection is that property;</p> <p>(b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly 40 represents it in his hands;</p> <p>(c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.</p>	

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(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 76.

PART II

78.—(1) The value at any time (the material time) of a tainted gift is the greater of the following—

Value of tainted gifts.

- 5 (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
- (b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is as follows—

- 10 (a) if the recipient holds the property given, the property found under this subsection is that property;
- (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
- 15 (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 76.

- 20 **79.** Property is free unless an order is in force in respect of it under—
- (a) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders), 1971 c. 38.
- (b) section 143 of the Sentencing Act (deprivation orders),
- (c) section 23 or 111 of the Terrorism Act 2000 (forfeiture orders), 2000 c. 11.
- 25 (d) section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property), or 1975 c. 21.
- (e) Part II of the Proceeds of Crime (Scotland) Act 1995 (forfeiture of property used in crime). 1995 c. 43.

80. Realisable property is—

Realisable property.

- 30 (a) any free property held by the defendant;
- (b) any free property held by the recipient of a tainted gift.

81.—(1) Property is all property wherever situated and includes—

Property: general provisions.

- (a) money;
- (b) all forms of real, personal, heritable or moveable property;
- (c) things in action and other intangible or incorporeal property.
- 35 (2) The following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
- (b) property is obtained by a person if he obtains an interest in it;
- (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
- 40 (d) references to property held by a person include references to property vested in his trustee in bankruptcy, permanent or interim

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- PART II
1985 c. 66. trustee (within the meaning of the Bankruptcy (Scotland) Act 1985) or liquidator;
- (c) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested; 5
- (f) references to an interest, in relation to property, include references to a right.
- Proceedings.
1980 c. 43. **82.**—(1) Proceedings for an offence are started—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- 1933 c. 36. (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within subsection (2)(b) of that section (preferment by Court of Appeal or High Court judge). 15
- (2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.
- (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted. 20
- (4) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court, the Court of Appeal or the House of Lords) the proceedings are concluded—
- (a) when the order is satisfied or discharged, or 25
- (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.
- (5) If the defendant is convicted on one or more counts in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply— 30
- (a) if an application for leave to appeal under section 30(2) is refused, the proceedings are concluded when the decision to refuse is made;
- (b) if the time for applying for leave to appeal under section 30(2) expires without an application being made, the proceedings are concluded when the time expires; 35
- (c) if on appeal under section 30(2) the Court of Appeal confirms the Crown Court's decision, and an application for leave to appeal under section 32 is refused, the proceedings are concluded when the decision to refuse is made;
- (d) if on appeal under section 30(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 32 expires without an application being made, the proceedings are concluded when the time expires; 40
- (e) if on appeal under section 30(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 32 the House of Lords confirms the Court of Appeal's decision, the proceedings are concluded when the House of Lords confirms the decision; 45

5 (f) if on appeal under section 30(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision.

(6) In applying subsection (5) any power to extend the time for making an application for leave to appeal must be ignored.

(7) In applying subsection (5) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

10 **83.**—(1) An application under section 18, 19, 26 or 27 is concluded— Applications.

(a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;

(b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied;

15 (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

(2) An application under section 20 or 21 is concluded—

20 (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;

(b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied;

25 (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

84.—(1) A confiscation order is satisfied when no amount is due under it. Confiscation orders.

30 (2) In applying section 83 for the purposes of sections 63(6) and (7) and 64(7) and (8) a confiscation order is also satisfied when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.

(3) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored.

35 **85.**—(1) Each of the following offences under the Misuse of Drugs Act 1971 is a drug trafficking offence— Drug trafficking offences.

(a) an offence under section 4(2) or (3) (production and supply of controlled drugs); 1971 c. 38.

(b) an offence under section 5(3) (possession of controlled drugs);

40 (c) an offence under section 8 (permitting certain activities);

(d) an offence under section 20 (assisting in or inducing commission outside UK of offence punishable under a corresponding law).

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PART II	(2) An offence is a drug trafficking offence if—	
1979 c. 2.	(a) it is an offence under section 50(2) or (3), 68(2) or 170 of the Customs and Excise Management Act 1979 (import, export and fraudulent evasion), and	
1971 c. 38.	(b) it is an offence in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971.	5
1990 c. 5.	(3) Each of the following offences under the Criminal Justice (International Co-operation) Act 1990 is a drug trafficking offence—	
	(a) an offence under section 12 (manufacture or supply of substance specified in Schedule 2 to that Act);	
	(b) an offence under section 19 (using ship for illicit traffic in controlled drugs).	
	(4) Each of the following is a drug trafficking offence—	
	(a) an attempt, conspiracy or incitement to commit any of the offences falling within subsections (1) to (3) above;	15
	(b) aiding, abetting, counselling or procuring the commission of any of those offences.	
Money laundering offences.	86. —(1) An offence under section 311, 312 or 313 is a money laundering offence.	20
	(2) Each of the following is a money laundering offence—	
	(a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);	
	(b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).	25
Other interpretative provisions.	87. —(1) A reference to the offence (or offences) concerned must be construed in accordance with section 4(9).	
	(2) A reference to a constable includes a reference to an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.	30
	(3) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.	
	(4) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).	35
	(5) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.	
2000 c. 6.	(6) The Sentencing Act is the Powers of Criminal Courts (Sentencing) Act 2000.	
	(7) The following paragraphs apply to references to orders—	40
	(a) a confiscation order is an order under section 4;	
	(b) a restraint order is an order under section 40;	

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(c) a charging order is an order under section 41.

PART II

(8) Sections 72 to 86 and this section apply for the purposes of this Part.

General

5 **88.**—(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.

Procedure on
appeal to the Court
of Appeal.
1981 c. 54.

(2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (distribution of business between civil and criminal divisions) the criminal division of the Court of Appeal is the division—

- 10 (a) to which an appeal to that Court under this Part is to lie, and
(b) which is to exercise that Court's jurisdiction under this Part.

(3) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

1968 c. 19.

15 **89.**—(1) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal) does not prevent an appeal to the House of Lords under this Part.

Procedure on
appeal to the
House of Lords.

20 (2) In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

1968 c. 19.

90. In relation to—

- 25 (a) proceedings under this Part, or
(b) receivers appointed under this Part,
Crown Court Rules may make provision corresponding to provision in Civil Procedure Rules.

Crown Court
Rules.

PART III

CONFISCATION: SCOTLAND

Confiscation orders

- Making of order. **91.**—(1) The court may act under this section if the following three conditions are satisfied. 5
- (2) The first condition is that an accused falls within either of the following paragraphs—
- (a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or
 - (b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.
- (3) The second condition is that the prosecutor asks the court to act under this section—
- (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the accused is remitted for sentence under section 195 of the Criminal Procedure (Scotland) Act 1995 (“the Procedure Act”), before sentence is pronounced;
 - (b) in summary proceedings, following the conviction of the accused.
- 1995 c. 46. (4) The third condition is that the court decides to order some disposal in respect of the accused; and an absolute discharge is a disposal for the purpose of this subsection.
- (5) If the court acts under this section it must proceed as follows—
- (a) it must decide whether the accused 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; 25
 - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (6) If the court decides under subsection (5)(b) or (c) that the accused has benefited from the conduct referred to— 30
- (a) it must decide the recoverable amount, and
 - (b) it may make an order (a confiscation order) requiring him to pay an amount not exceeding the recoverable amount.
- (7) The standard of proof required to decide any question arising under subsection (5) or (6) is the standard applicable in civil proceedings. 35
- (8) The first condition is not satisfied if the accused absconds (but section 109 may apply).
- (9) For the purposes of any appeal or review, an order under this section is a sentence.
- (10) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

Proceeds of Crime

(11) In this section and sections 92 to 116 “the court” means the High Court of Justiciary or the sheriff. PART III

92. Where the court decides to make a confiscation order, it must make the order before— Time for making order.

5 (a) imposing a fine on the accused, or
(b) making any order involving a payment by him, other than a compensation order under section 249 of the Procedure Act,
in relation to the offence (or any of the offences) concerned.

93.—(1) The recoverable amount for the purposes of section 91 is an amount equal to the accused’s benefit from the conduct concerned. Recoverable amount.

(2) But if the available amount is less than that benefit the recoverable amount is—

- (a) the available amount, or
- (b) a nominal amount, if the available amount is nil.

15 (3) The court—

- (a) must include in the confiscation order a statement of its findings as to the matters relevant for deciding the available amount, if that amount is less than the accused’s benefit from the conduct concerned;

20 (b) may include such a statement, in any other case.

94.—(1) If the court is acting under section 91 this section applies for the purpose of— Accused’s benefit.

- (a) deciding whether the accused has benefited from conduct, and
- (b) deciding his benefit from the conduct.

25 (2) The court must take account of—

- (a) conduct occurring up to the time it makes its decision;
- (b) property obtained up to that time.

(3) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—

- 30 (a) the amount ordered to be paid under each confiscation order previously made against the accused;
- (b) the amount ordered to be paid under each confiscation order previously made against him under the Drug Trafficking Offences Act 1986, Part I of the Criminal Justice (Scotland) Act 1987, Part VI of the Criminal Justice Act 1988, Part I of the Drug Trafficking Act 1994, Part I of the Proceeds of Crime (Scotland) Act 1995 or Part II of this Act. 1986 c. 32.
1987 c. 41.
1988 c. 33.
1994 c. 37.
1995 c. 43.

95.—(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of— Available amount.

- 40 (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the accused minus the total amount payable in pursuance of obligations which then have priority, and

Proceeds of Crime

PART III	(b) the total of the values (at that time) of all tainted gifts.	
	(2) An obligation has priority if it is an obligation of the accused—	
	(a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction for an offence and at any time before the confiscation order is made, or	5
	(b) to pay a sum which would be—	
	(i) a preferred debt if the accused's estate were sequestrated on the date of the confiscation order, or	
	(ii) a preferential debt if his winding up were ordered on that date.	10
	(3) In subsection (2)—	
1985 c. 66.	“preferred debt” has the meaning given by section 51(2) of the Bankruptcy (Scotland) Act 1985;	
1986 c. 45.	“preferential debt” has the meaning given by section 386 of the Insolvency Act 1986.	15
Assumptions as to benefit from general criminal conduct.	96. —(1) Where the court decides under section 91 that the accused has a criminal lifestyle it may make the following four assumptions for the purpose of—	
	(a) deciding whether he has benefited from his general criminal conduct, and	20
	(b) deciding his benefit from the conduct.	
	(2) The first assumption is that any property transferred to the accused at any time after the relevant day was obtained by him—	
	(a) as a result of his general criminal conduct, and	
	(b) at the earliest time he appears to have held it.	25
	(3) The second assumption is that any property held by the accused at any time after the date of conviction was obtained by him—	
	(a) as a result of his general criminal conduct, and	
	(b) at the earliest time he appears to have held it.	
	(4) The third assumption is that any expenditure incurred by the accused at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.	30
	(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the accused, he obtained it free of any other interests in it.	35
	(6) But the court must not make any of those assumptions in relation to particular property or expenditure if the assumption is shown to be incorrect.	
	(7) If the court does not make one or more of those assumptions it must state its reasons.	
	(8) The relevant day is the first day of the period of six years ending with—	40
	(a) the day when proceedings for the offence concerned were instituted against the accused, or	

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(b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days. PART III

(9) The date of conviction is—

- 5 (a) the date on which the accused was convicted of the offence concerned, or
(b) if there are two or more offences and the convictions are on different dates, the date of the latest.

10 **97.**—(1) If the court decides to make a confiscation order it must act as mentioned in subsections (2) and (4) in respect of the offence or offences concerned. Effect of order on court's other powers.

(2) The court must take account of the confiscation order before—

- (a) it imposes a fine on the accused, or
(b) it makes an order falling within subsection (3).

(3) These orders fall within this subsection—

- 15 (a) an order involving payment by the accused, other than a compensation order under section 249 of the Procedure Act;
(b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); 1971 c. 38.
(c) an order under Part II of the Proceeds of Crime (Scotland) Act 1995; 1995 c. 43.
20 (d) an order under section 23 of the Terrorism Act 2000 (forfeiture orders). 2000 c. 11.

(4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the accused.

25 (5) Subsection (6) applies if a court makes both a confiscation order and a compensation order under section 249 of the Procedure Act against the same person in the same proceedings.

(6) In such a case the court must direct that the compensation is to be paid out of any sums recovered under the confiscation order.

30 (7) No enactment restricting the power of a court dealing with an accused in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with the accused in any way it thinks appropriate in respect of an offence.

Procedural matters

35 **98.**—(1) The court may postpone proceedings under section 91 for a specified period; and a period of postponement may be extended. Postponement.

(2) A period of postponement (including one as extended) must not end after the permitted period ends.

(3) But subsection (2) does not apply if there are exceptional circumstances.

40 (4) The permitted period is the period of two years starting with the date of conviction.

(5) But if—

- (a) the accused appeals against his conviction for the offence (or any of the offences) concerned, and

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PART III

(b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (4),

the permitted period is that period of three months.

(6) A postponement or extension may be made— 5

- (a) on application by the accused;
- (b) on application by the prosecutor;
- (c) by the court of its own motion.

(7) The date of conviction is—

- (a) the date on which the accused was convicted of the offence 10 concerned, or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

Effect of
postponement.

99.—(1) If the court postpones proceedings under section 91 it may proceed to sentence the accused for the offence (or any of the offences) 15 concerned.

(2) Subsection (1) is without prejudice to sections 201 and 202 of the Procedure Act.

(3) In sentencing the accused for the offence (or any of the offences) 20 concerned in the postponement period the court must not—

- (a) impose a fine on him, or
- (b) make an order falling within section 97(3).

(4) If the court proceeds to sentence the accused under subsection (1), section 92 does not apply.

(5) Where the court postpones proceedings under section 91 following conviction on indictment, section 109(1) of the Procedure Act (intimation of 25 intention to appeal against conviction or conviction and sentence) has effect as if the reference to the final determination of the proceedings were a reference to the relevant day.

(6) Despite subsection (5), the accused may appeal under section 106 of the Procedure Act against any confiscation order made, or any other sentence passed, after the end of the postponement period, in respect of the conviction.

(7) Where the court postpones proceedings under section 91 following summary conviction— 35

- (a) section 176(1) of the Procedure Act (stated case: manner and time of appeal) has effect in relation to an appeal under section 175(2)(a) or (d) as if the reference to the final determination of the proceedings were a reference to the relevant day, and

- (b) the draft stated case in such an appeal must be prepared and issued 40 within 3 weeks of the relevant day.

(8) Despite subsection (7), the accused may appeal under section 175(2)(b), and the prosecutor may appeal under section 175(3)(b), of the Procedure Act against any confiscation order made, or any other sentence passed, after the end of the postponement period, in respect of the 45 conviction.

(9) The relevant day is—

(a) in the case of an appeal against conviction where the court has sentenced the accused under subsection (1), the day on which the postponement period commenced;

5 (b) in any other case, the day on which sentence is passed in open court.

(10) The postponement period is the period for which proceedings under section 91 are postponed.

100.—(1) If the court is proceeding under section 91 the prosecutor must, within such period as the court may specify, give the court a statement of information.

10 (2) If the prosecutor believes the accused has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues—

(a) whether the accused has a criminal lifestyle;

15 (b) whether he has benefited from his general criminal conduct;

(c) his benefit from the conduct.

(3) A statement under subsection (2) must include information the prosecutor believes is relevant in connection with applying the assumptions in section 96.

20 (4) If the prosecutor does not believe the accused has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues—

(a) whether the accused has benefited from his particular criminal conduct;

25 (b) his benefit from the conduct.

(5) If the prosecutor gives the court a statement of information he may at any time give the court a further statement of information.

101.—(1) If the prosecutor gives the court a statement of information and the court is satisfied that he has served a copy on the accused, the court may order the accused—

(a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and

(b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.

35 (2) If the accused accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 100(2) or (4) (as the case may be).

(3) Subsection (2) is without prejudice to section 256 of the Procedure Act.

(4) If the accused fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—

45 (a) any allegation in respect of which he has complied with the requirement;

Statement of information.

Accused's response to statement of information.

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- (b) any allegation that he has a criminal lifestyle;
- (c) any allegation that he has benefited from his general or particular criminal conduct.

(5) Where—

- (a) an allegation in a statement of information is challenged by the accused, or 5
- (b) the matters referred to in subsection (1)(b) are challenged by the prosecutor,

the court must consider the matters being challenged at a hearing.

(6) The judge presiding at the hearing may, if he is not the trial judge and he considers it in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available. 10

(7) If the court makes an order under this section it may at any time vary it by making another one.

(8) No acceptance under this section that the accused has benefited from 15
conduct is admissible in evidence in proceedings for an offence.

Provision of
information by
accused.

102.—(1) For the purpose of obtaining information to help it in carrying out its functions under section 91 the court may at any time order the accused to give it information specified in the order.

(2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date. 20

(3) If the accused fails without reasonable excuse to comply with an order under this section the court may draw such inference as it thinks appropriate.

(4) If the prosecutor accepts to any extent an assertion made by the accused— 25

- (a) in giving information required by an order under this section, or
- (b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 95,

the court may treat the acceptance as conclusive of the matters to which it relates. 30

(5) If the court makes an order under this section it may at any time vary it by making another order.

Reconsideration

No order made:
reconsideration of
case.

103.—(1) This section applies if—

- (a) the first condition in section 91 is satisfied but the court has not proceeded under that section, 35
- (b) the prosecutor has evidence which was not available to him on the date of conviction,
- (c) as soon as practicable and before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and 40
- (d) after considering the evidence the court thinks it is appropriate for it to proceed under section 91.

(2) The court may proceed under section 91, and when it does so subsections (3) to (6) below apply.

(3) If the court has already sentenced the accused for the offence (or any of the offences) concerned sections 91(4) and 92 do not apply.

5 (4) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before that date;
- (c) property obtained on or after that date if it was obtained as a result of or

10 in connection with conduct occurring before that date.

(5) In relation to the assumptions that the court may make under section 96—

- (a) the first and second assumptions do not apply with regard to property first held by the accused on or after the relevant date;
- 15 (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.

20 (6) In proceeding under section 91(6)(b) the court must have regard in particular to—

- (a) any fine imposed on the accused in respect of the offence (or any of the offences) concerned;
- (b) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned;
- 25 (c) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.

(7) The relevant date is—

- 30 (a) if the court made a decision not to proceed under section 91, the date of the decision;
- (b) if the court did not make such a decision, the date of the conviction.

(8) The date of conviction is—

- 35 (a) the date on which the accused 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.

(9) In this section references to the court are to the court which had jurisdiction in respect of the offence or offences concerned to make a

40 confiscation order.

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

(2) The first condition is that in proceeding under section 91 the court has decided that—

- 45 (a) the accused has a criminal lifestyle but has not benefited from his general criminal conduct, or

No order made:
reconsideration of
benefit.

Proceeds of Crime

PART III

- (b) the accused does not have a criminal lifestyle and has not benefited from his particular criminal conduct.
- (3) The second condition is that—
 - (a) the prosecutor has evidence which was not available to him when the court decided that the accused had not benefited from his general or particular criminal conduct, 5
 - (b) as soon as practicable and before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and
 - (c) after considering the evidence the court concludes that it would have decided that the accused had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it. 10
- (4) If this section applies the court—
 - (a) must make a fresh decision under section 91(5)(b) or (c) as to whether the accused has benefited from his general or particular criminal conduct (as the case may be); 15
 - (b) may make a confiscation order under that section.
- (5) Subsections (6) to (9) below apply if the court proceeds under section 91 in pursuance of this section. 20
- (6) If the court has already sentenced the accused for the offence (or any of the offences) concerned sections 91(4) and 92 do not apply.
- (7) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—
 - (a) conduct occurring before the date of the original decision that the accused had not benefited from his general or particular criminal conduct; 25
 - (b) property obtained before that date;
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date. 30
- (8) In relation to the assumptions that the court may make under section 96—
 - (a) the first and second assumptions do not apply with regard to property first held by the accused on or after the date of the original decision that the accused had not benefited from his general or particular criminal conduct; 35
 - (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. 40
- (9) In proceeding under section 91(6)(b) the court must have regard in particular to—
 - (a) any fine imposed on the accused in respect of the offence (or any of the offences) concerned; 45
 - (b) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned;

(c) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.

(10) The date of conviction is the date found by applying section 103(8).

5 (11) In this section references to the court are to the court which had jurisdiction in respect of the offence or offences concerned to make a confiscation order.

105.—(1) This section applies if—

(a) a court has made a confiscation order,

10 (b) the prosecutor believes that if the court were to find the amount of the accused's benefit in pursuance of this section it would exceed the amount found as his benefit for the purposes of the order,

15 (c) as soon as practicable and before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence on which his belief is based, and

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

(2) The court must make a new calculation of the accused's benefit from the conduct concerned, and when it does so subsections (3) to (5) below apply.

(3) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—

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

25 (b) property obtained up to that time;

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

(4) In applying section 94(3) the confiscation order must be ignored.

(5) In relation to the assumptions that the court may make under section 96—

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

35 (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.

(6) If the amount found under the new calculation of the accused's benefit exceeds the amount found as his benefit for the purposes of the confiscation order the court—

40 (a) must make a new calculation of the recoverable amount for the purposes of section 91, and

45 (b) if it exceeds the amount calculated as the recoverable amount when the confiscation order was made, may vary the order by substituting for the amount required to be paid under it such amount as it thinks is just.

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reconsideration of
benefit.

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- (7) In applying subsection (6)(a) the court must—
- (a) take the new calculation of the accused's benefit;
 - (b) apply section 95 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. 5
- (8) In applying subsection (6)(b) the court must have regard in particular to—
- (a) any fine imposed on the accused for the offence (or any of the offences) concerned; 10
 - (b) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned.
- (9) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
- (10) The date of conviction is the date found by applying section 103(8). 15

Order made:
reconsideration of
available amount.

- 106.**—(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 93(2), and
 - (c) the prosecutor, or an administrator appointed under section 123 or 124(3), applies to the court to make a new calculation of the available amount.
- (2) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 95 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. 25
- (3) If the amount found under the new calculation exceeds the amount found as the available amount for the purposes of the confiscation order the court may vary the order by substituting for the amount required to be paid such amount as— 30
- (a) it thinks is just, but
 - (b) does not exceed the amount found (when the confiscation order was made) as the accused's benefit from the conduct concerned.
- (4) In arriving at the just amount the court must have regard in particular to— 35
- (a) any fine imposed on the accused for the offence (or any of the offences) concerned;
 - (b) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned. 40
- (5) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

Inadequacy of
available amount.

- 107.**—(1) This section applies if—
- (a) a court has made a confiscation order, and

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(b) the accused, the prosecutor or an administrator appointed under section 123 or 124(3) applies to the court to vary or discharge the order under this section.

PART III

5 (2) In such a case the court must recalculate the available amount under section 95, but substituting for references to the time the confiscation order is made references to the time the calculation is made.

(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—

- 10 (a) vary the order by substituting for the amount required to be paid such smaller amount as the court thinks is just, or
(b) discharge the order.

15 (4) If a person's estate has been sequestrated or he has been adjudged bankrupt the court must take into account the extent to which realisable property held by him may be distributed among creditors.

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

20 **108.**—(1) This section applies if—

Information.

- (a) the court proceeds under section 91 in pursuance of section 103 or 104, or
(b) the prosecutor applies under section 105, 106 or 107.

(2) In such a case—

- 25 (a) the prosecutor must give the court a statement of information within such period as the court may specify;
(b) section 100 applies accordingly (with appropriate modifications where the prosecutor applies under section 105, 106 or 107);
(c) sections 101 and 102 apply accordingly.

30 *Accused absconds*

109.—(1) This section applies if an accused absconds after—

Conviction or other disposal of accused.

- 35 (a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or
(b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.

40 (2) If this section applies the court may, on the application of the prosecutor, proceed under section 91 in the same way as it may proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3).

(3) If the court proceeds under section 91 as applied by this section, this Part has effect with these modifications—

- 45 (a) any person the court thinks is likely to be affected by an order under section 91 is entitled to appear before the court and make representations;

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- (b) the court must not make an order under section 91 unless the prosecutor has taken reasonable steps to contact the accused;
- (c) section 91(10) applies as if the reference to subsection (2) were to subsection (1) of this section;
- (d) sections 96, 100(3), 101 and 102 do not apply; 5
- (e) sections 103, 104 and 105 do not apply while the accused is still an absconder.

(4) Once the accused has ceased to be an absconder section 103 has effect as if subsection (1)(a) read—

“(a) in a case where section 109 applies the court did not proceed under section 91.”.

Accused neither convicted nor acquitted.

110.—(1) This section applies if—

- (a) proceedings for an offence or offences are instituted against an accused but are not concluded,
- (b) he absconds, and 15
- (c) the period of two years (starting with the day the court believes he absconded) has ended.

(2) If this section applies the court may, on an application by the prosecutor, proceed under section 91 in the same way as it may proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3).

(3) If the court proceeds under section 91 as applied by this section, this Part has effect with these modifications—

- (a) any person the court thinks is likely to be affected by an order under section 91 is entitled to appear before the court and make 25 representations;
- (b) the court must not make an order under section 91 unless the prosecutor has taken reasonable steps to contact the accused;
- (c) section 91(10) applies as if the reference to subsection (2) were to subsection (1) of this section; 30
- (d) sections 96, 100(3), 101 and 102 do not apply;
- (e) sections 103, 104 and 105 do not apply while the accused is still an absconder.

(4) Subsections (5) and (6) apply once the accused has ceased to be an absconder. 35

(5) Section 103 has effect as if subsection (1)(a) read—

“(a) in a case where section 110 applies the court did not proceed under section 91.”.

(6) Sections 103, 104 and 105 have effect as if references to the date of conviction were to— 40

- (a) the day when proceedings for the offence were instituted against the accused, or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

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(7) If—

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(a) the court makes an order under section 91 as applied by this section, and

5 (b) the accused is later convicted of the offence (or any of the offences) concerned,

section 91 does not apply so far as that conviction is concerned.

111.—(1) This section applies if—

Variation of order.

(a) the court makes a confiscation order under section 91 as applied by section 110,

10 (b) the accused ceases to be an absconder,

(c) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and

15 (d) before the end of the period of six years starting with the date on which the order was made he applies to the court to consider the evidence on which his belief is based.

(2) If (after considering the evidence) the court concludes that the accused's belief is well founded it may vary the order by substituting for the amount required to be paid such amount as it thinks is just.

20 112.—(1) Subsection (2) applies if—

Discharge of order.

(a) the court makes a confiscation order under section 91 as applied by section 110,

(b) the accused is later tried for the offence or offences concerned and acquitted of the offence or offences, and

25 (c) he applies to the court to discharge the order.

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

(3) Subsection (4) applies if—

(a) the court makes a confiscation order under section 91 as applied by section 110,

30 (b) the accused ceases to be an absconder,

(c) subsection (1)(b) does not apply, and

(d) he applies to the court to discharge the order.

(4) In such a case the court may discharge the order if it finds that—

35 (a) there has been undue delay in continuing the proceedings mentioned in section 110(1), or

(b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it thinks is appropriate.

Appeals

40 113.—(1) Section 108 of the Procedure Act (Lord Advocate's right of appeal in solemn proceedings) is amended as provided in subsections (2) to (4).

Appeal by prosecutor.

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- (2) In subsection (1), after paragraph (c) insert—
“(ca) a decision under section 91 of the Proceeds of Crime Act 2001 not to make a confiscation order;”.
- (3) In subsection (2)(b)(ii), for the words “or (c)” substitute “, (c) or (ca)”.
- (4) After subsection (2) insert— 5
“(3) For the purposes of subsection (2)(b)(i) above in its application to a confiscation order by virtue of section 91(9) of the Proceeds of Crime Act 2001, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.” 10
- (5) Section 175 of the Procedure Act (right of appeal in summary proceedings) is amended as provided in subsections (6) to (8).
- (6) In subsection (4), after paragraph (c) insert—
“(ca) a decision under section 91 of the Proceeds of Crime Act 2001 not to make a confiscation order;” 15
- (7) In subsection (4A)(b)(ii), for the words “or (c)” substitute “, (c) or (ca)”.
- (8) After subsection (4A) insert—
“(4B) For the purposes of subsection (4A)(b)(i) above in its application to a confiscation order by virtue of section 91(9) of the Proceeds of Crime Act 2001, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.” 20

Payment and enforcement

- Time for payment. **114.**—(1) The amount ordered to be paid under a confiscation order must 25
be paid on the making of the order; but this is subject to the following provisions of this section.
- (2) If the accused shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period. 30
- (3) The specified period—
(a) must start with the day on which the confiscation order is made, and
(b) must not exceed six months.
- (4) If within the specified period the accused applies to the sheriff court for the period to be extended and the court, after giving the prosecutor an 35
opportunity of being heard, believes there are exceptional circumstances, it may make an order extending the period.
- (5) The extended period—
(a) must start with the day on which the confiscation order is made, and
(b) must not exceed 12 months. 40
- (6) An order under this section does not prevent the exercise by any administrator appointed in relation to the confiscation order of his powers and duties under this Part; and the court may, pending such exercise, postpone any decision as to making any such order.

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115.—(1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether when the order is made or within a period specified under section 114), he must pay interest on the amount for the period for which it remains unpaid.

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Interest on unpaid
sums.

5 (2) The rate of interest is the rate payable under a decree of the Court of Session.

(3) For the purposes of enforcement the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

116.—(1) The provisions of the Procedure Act specified in subsection (2) apply, with the qualifications mentioned in that subsection, in relation to a confiscation order as if the amount ordered to be paid were a fine imposed on the accused by the court making the confiscation order.

Application of
provisions about
fine enforcement.

(2) Those provisions are—

(a) section 211(3) to (6);

15 (b) section 214(4) to (6), but as if the references in subsection (4) to payment by instalments were omitted;

(c) section 216, but as if subsection (1)—

(i) gave the prosecutor an opportunity to be heard at any enquiry under that subsection; and

20 (ii) applied whether the offender was in prison or not;

(d) section 217;

(e) section 218(2) and (3);

(f) section 219, provided that—

25 (i) where a court imposes a period of imprisonment in respect of both a fine and a confiscation order the amounts in respect of which the period is imposed must, for the purposes of subsection (2), be aggregated; and

30 (ii) before imposing a period of imprisonment by virtue of that section the court must require a report from any administrator appointed in relation to the confiscation order as to whether and how he is likely to exercise his powers and duties under this Part and must take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition;

35 (g) section 220, but as if the reference in subsection (1) to payment of a sum by the person included a reference to payment of the sum in respect of the person by an administrator appointed in relation to the confiscation order;

40 (h) section 221, except where an administrator is appointed in relation to the confiscation order;

(i) section 222, except that for the purposes of that section “confiscation order” in subsection (1) above must be construed as including such an order within the meaning of the Drug Trafficking Act 1994 or of

1994 c. 37.

45 (j) section 223;

(k) section 224.

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(3) Where a court, by virtue of subsection (1), orders the amount ordered to be paid under a confiscation order to be recovered by civil diligence under section 221 of the Procedure Act, any arrestment executed by a prosecutor under subsection (3) of section 122 of this Act is to be treated as having been executed by the court as if that subsection authorised such execution. 5

(4) Subsection (5) applies where—

- (a) a warrant for apprehension of the accused is issued for a default in payment of the amount ordered to be paid under a confiscation order in respect of an offence or offences, and
- (b) at the time the warrant is issued the accused is liable to serve a 10 period of imprisonment or detention (other than one of life imprisonment or detention for life) in respect of the offence (or any of the offences).

(5) In such a case any period of imprisonment or detention to which the accused is liable by virtue of section 219 of the Procedure Act runs from the expiry of the period of imprisonment or detention mentioned in subsection (4)(b). 15

Restraint orders etc

Conditions for
exercise of
powers.

117.—(1) The court may exercise the powers conferred by section 118 if any of the following conditions is satisfied. 20

(2) The first condition is that—

- (a) a criminal investigation has been instituted in Scotland with regard to an offence, and
- (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct. 25

(3) The second condition is that—

- (a) proceedings for an offence have been instituted in Scotland and not concluded, and
- (b) there is reasonable cause to believe that the accused has benefited 30 from his criminal conduct. 30

(4) The third condition is that—

- (a) an application by the prosecutor has been made under section 103, 104, 109 or 110 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 accused has benefited 35 from his criminal conduct. 35

(5) The fourth condition is that—

- (a) an application by the prosecutor has been made under section 105 and not concluded, or the court believes that such an application is to be made, and 40
- (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 accused's benefit exceeds the amount found as his benefit for the purposes of the confiscation order. 40

(6) The fifth condition is that— 45

- (a) an application by the prosecutor has been made under section 106 and not concluded, or the court believes that such an application is to be made, and 45

- (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 amount found as the available amount for the purposes of the confiscation order.
- 5 (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—
10 (a) there has been undue delay in continuing the application, or
(b) the prosecutor does not intend to proceed.
- (9) If the first condition is satisfied—
(a) references in this Part to the accused are to the alleged offender;
(b) references in this Part to the prosecutor are to the person the court
15 believes is to have conduct of any proceedings for the offence;
(c) section 140(7) has effect as if proceedings for the offence had been instituted against the accused when the investigation was instituted.
- (10) In this section, sections 118 to 137 and Schedule 2 “the court” means—
20 (a) the Court of Session, where a trial diet or a diet fixed for the purposes of section 76 of the Procedure Act in proceedings for the offence or offences concerned is to be, is being or has been held in the High Court of Justiciary;
(b) the sheriff exercising his civil jurisdiction, where a diet referred to in
25 paragraph (a) is to be, is being or has been held in the sheriff court.

118.—(1) If any condition set out in section 117 is satisfied the court may make an order (a restraint order) interdicting any specified person from dealing with any realisable property held by him.

Restraint orders
etc.

- (2) A restraint order may provide that it applies—
30 (a) to all realisable property held by the specified person whether or not the property is described in the order;
(b) to realisable property transferred to the specified person after the order is made.
- (3) A restraint order may be made subject to conditions and exceptions,
35 and an exception may in particular make provision for reasonable living expenses and reasonable legal expenses.
- (4) Where the court makes a restraint order it may make an order interdicting any person who is not subject to the restraint order from dealing with property to which the restraint order applies.
- 40 (5) An order under subsection (4) may be made subject to conditions and exceptions, and an exception may in particular make provision for reasonable living expenses.
- (6) Dealing with property includes—
(a) making a payment towards a debt;

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PART III	(b) removing the property from Scotland; (c) transferring or disposing of the property.	
Application, recall and variation.	119. —(1) This section applies to— (a) a restraint order; (b) an order under section 118(4). (2) An order may be made only on an ex parte application by the prosecutor, which must be heard in chambers. (3) The prosecutor must intimate an order to every person affected by it. (4) Subsection (3) does not affect the time when the order becomes effective. (5) The prosecutor and any other person having an interest may apply to the court to recall an order or to vary it; and subsections (6) to (11) apply in such a case. (6) If an application under subsection (5) in relation to an order has been made but not determined, realisable property to which the order applies must not be realised. (7) The court may— (a) recall the order; (b) vary the order. (8) In the case of a restraint order, if the condition in section 117 which was satisfied was that proceedings were instituted or an application was made, the court must recall the order on the conclusion of the proceedings or of the application (as the case may be). (9) In the case of a restraint order, if the condition in section 117 which was satisfied was that an investigation was instituted or an application was to be made, the court must recall the order if within a reasonable time proceedings for the offence are not instituted or the application is not made (as the case may be). (10) Where the court recalls an order on the application of a person other than the prosecutor, it may order that property of that person ceases to be realisable property. (11) Where the court recalls a restraint order in a case in which an order has been made under section 118(4), the clerk of court must inform every person affected by the order under that provision.	5 10
Appeals.	120. —(1) If on an application for a restraint order the court decides not to make one, the prosecutor may reclaim or appeal to the Court of Session against the decision. (2) The prosecutor and any person having an interest may reclaim or appeal to the Court of Session against the decision of the court on an application under section 119(5). (3) The prosecutor and any person having an interest in the decision of the Court of Session on a reclaiming motion or an appeal under subsection (1) or (2) may appeal to the House of Lords.	35 40

(4) For the purpose of disposing of an appeal under subsection (3) the House of Lords has the same powers as the Court of Session had on the reclaiming motion or appeal under subsection (1) or (2).

PART III

5 **121.**—(1) On the application of the Lord Advocate, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against—

Inhibition of property affected by order.

- (a) any person specified in a restraint order, or
- (b) any person subject to an order under section 118(4).

10 (2) That property is the heritable realisable property to which the restraint order applies (whether generally or such of it as is specified in the application).

(3) The warrant for inhibition—

- 15 (a) has effect as if granted on the dependence of an action for debt by the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly, and
- (b) has the effect of letters of inhibition and must forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.

20 (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

1868 c. 101.

25 (5) In the application of section 158 of that Act (recall of inhibition) to such an inhibition, references to a particular Lord Ordinary must be read as references to any Lord Ordinary.

(6) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property.

30 (7) An inhibition executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(8) If an inhibition ceases to have effect to any extent by virtue of subsection (7) the Lord Advocate must—

- 35 (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
- (b) ensure that the recall or restriction is reflected in the Register of Inhibitions and Adjudications.

40 **122.**—(1) On the application of the prosecutor the court may, in relation to moveable realisable property to which a restraint order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.

Arrestment of property affected by order.

(2) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

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(3) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.

(4) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an administrator's powers under 5 or for the purposes of this Part in respect of that property.

(5) An arrestment executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of 10 subsection (5) the prosecutor must apply to the court for an order recalling, or as the case may be, restricting the arrestment.

Restraint orders:
administrators and
seizure.

123.—(1) If the court makes a restraint order it may at any time, on the application of the prosecutor—

(a) appoint an administrator to take possession of any realisable property 15 to which the order applies and (in accordance with the court's directions) to manage or otherwise deal with the property;

(b) order a person who has possession of property in respect of which an administrator is appointed to give him possession of it.

(2) An appointment of an administrator may be made subject to 20 conditions or exceptions.

(3) Where the court makes an order under subsection (1)(b), the clerk of court must notify the accused and any person subject to the order of the making of the order.

(4) Any dealing of the accused or any such person in relation to property to 25 which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment.

(5) If a restraint order is in force a constable may seize any realisable property to which it applies to prevent its removal from Scotland. 30

(6) Property seized under subsection (5) must be dealt with in accordance with the directions of the court which made the order.

Realisation of property: general

Confiscation order
made:
administrators.

124.—(1) This section applies if—

(a) a confiscation order is made, 35

(b) it is not satisfied, and

(c) it is not subject to appeal.

(2) In such a case the court may on the application of the prosecutor exercise the powers conferred on it by this section.

(3) The court may appoint an administrator in respect of realisable 40 property.

(4) The court may confer the powers mentioned in subsection (5) on an administrator appointed under section 123 or under subsection (3) above.

- (5) Those powers are—
- (a) power to take possession of any realisable property, subject to any conditions or exceptions specified by the court;
 - (b) power to realise any realisable property, in such manner as the court may specify.
- (6) The court may order any person who has possession of realisable property to give possession of it to an administrator referred to in subsection (4).
- (7) The clerk of court must notify the accused and any person subject to an order under subsection (6) of the making of the order.
- (8) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment.
- (9) The court—
- (a) may order a person holding an interest in realisable property to make to an administrator referred to in subsection (4) such payment as the court specifies in respect of a beneficial interest held by the accused or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (10) The court must not—
- (a) confer the power mentioned in subsection (5)(b) in respect of property, or
 - (b) exercise the power conferred on it by subsection (9) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

- 125.**—(1) This section applies to sums which—
- (a) are in the hands of an administrator appointed under section 123 or 124(3), and
 - (b) fall within subsection (2).
- (2) These sums fall within this subsection—
- (a) the proceeds of the realisation of property under section 123 or 124(5)(b);
 - (b) any sums (other than those mentioned in paragraph (a)) in which the accused holds an interest.
- (3) The sums must be applied as follows—
- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 135(5) or (6);
 - (b) second, they must be applied in payment of any amount of compensation directed under section 97(6) to be paid out of the sums recovered under the confiscation order;

Application of sums by administrator.

Proceeds of Crime

PART III

(c) third, they must be applied on the accused's behalf towards satisfaction of any confiscation order that has been or may be made against him.

(4) If the amount payable under any confiscation order has been fully paid and any sums remain in the administrator's hands he must distribute them— 5

(a) among such persons who held (or hold) interests in the property concerned as the court directs, and

(b) in such proportions as it directs.

(5) Before making a direction under subsection (4) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it. 10

(6) For the purposes of subsections (4) and (5) the property concerned is—

(a) the property represented by the proceeds mentioned in subsection (2)(a); 15

(b) the sums mentioned in subsection (2)(b).

(7) If a confiscation order has been made against the accused an administrator applies sums as mentioned in subsection (3)(c) by paying them to the appropriate clerk of court on account of the amount payable under the order. 20

(8) The appropriate clerk of court is the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 116(1) of this Act.

Sums received by clerk of court.

126.—(1) This section applies if a clerk of court receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 125 or otherwise). 25

(2) The clerk of court's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as— 30

(a) are payable under this subsection by virtue of section 135(5) or (6), but

(b) are not already paid under section 125(3)(a).

(4) If the clerk of court received the sums under section 125 he must next apply them in payment of the administrator's remuneration and expenses. 35

(5) If the Lord Advocate has reimbursed the administrator in respect of remuneration or expenses under section 128 the clerk of court must next apply the sums in reimbursing the Lord Advocate.

(6) If a direction was made under section 97(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount. 40

(7) If any amount remains after the clerk of court makes any payments required by the preceding provisions of this section, the amount must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section 116(1) of this Act. 45

(8) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters—

- 5 (a) the clerk of court must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 97(6) bears to the total amount payable under the confiscation order;
- 10 (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it;
- (c) the amount deducted must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section 116(1) of this Act.

Exercise of powers

15 **127.**—(1) This section applies to—

Powers of court and administrator.

- (a) the powers conferred on a court by sections 117 to 126 and 129 and Schedule 2;
- 20 (b) the powers of an administrator appointed under section 123 or 124(3).

(2) The powers—

- 25 (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the accused;
- (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property or of the proceeds of realisation;
- 30 (c) must be exercised without taking account of any obligation of the accused or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the accused;
- (d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—

- 35 (a) the powers must be exercised with a view to allowing a person other than the accused or a recipient of a tainted gift to retain or recover the value of any interest held by him;
- (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than
40 the value for the time being of the gift;
- (c) in a case where a confiscation order has not been made against the accused, property must not be realised if the court so orders under subsection (4).

45 (4) If on an application by the accused or by the recipient of a tainted gift the court decides that property cannot be replaced it may order that it must not be realised.

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PART III (5) An order under subsection (4) may be revoked.

Administrators: general

Protection of administrators.

- 128.**—(1) If an administrator appointed under section 123 or 124(3)—
- (a) takes action in relation to property which is not realisable property,
 - (b) would be entitled to take the action if it were realisable property, and 5
 - (c) believes on reasonable grounds that he is entitled to take the action,
- he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.
- (2) Subsection (3) applies if an administrator incurs expenses in the exercise of his functions at a time when— 10
- (a) a confiscation order has not been made, or
 - (b) a confiscation order has been made but the administrator has recovered no money.
- (3) As soon as is practicable after they have been incurred the expenses must be reimbursed by the Lord Advocate. 15
- (4) Subsection (5) applies if—
- (a) an amount is due in respect of the administrator's remuneration and expenses, but
 - (b) nothing (or not enough) is available to be applied in payment of them under section 126(4). 20
- (5) The remuneration and expenses must be paid (or must be paid to the extent of the shortfall) by the Lord Advocate.

Protection of persons affected.

- 129.**—(1) This section applies where an administrator is appointed under section 123 or 124(3).
- (2) The following persons may apply to the court— 25
- (a) any person affected by action taken by the administrator;
 - (b) any person who may be affected by action the administrator proposes to take;
 - (c) any person subject to an order under section 124(6).
- (3) On an application under this section the court may make such order as it thinks appropriate (including, in the case of an application under subsection (2)(c), an order removing the administrator from office). 30

Administrators: further provision.

130. Schedule 2, which makes further provision about administrators appointed under section 123 and 124(3), has effect.

Insolvency

Sequestration.
1985 c. 66.

- 131.**—(1) If the estate of a person who holds realisable property is sequestrated the following property is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985 (the 1985 Act)— 35
- (a) property for the time being subject to a restraint order which was made before the award of sequestration; 40

(b) any proceeds of property realised by virtue of section 123(1) or 124(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 123 or 124(3).

5 (2) Subsection (1)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the award of sequestration.

(3) If an award of sequestration is made the powers conferred on a court by sections 117 to 126 and 129 and Schedule 2, and the powers of an administrator appointed under section 123 or 124(3), must not be exercised
10 in relation to the following property—

(a) property which is for the time being comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act;

(b) any income of the debtor which has been ordered under section 32(2) of that Act to be paid to the permanent trustee;

15 (c) any estate which under section 31(10) or 32(6) of that Act vests in the permanent trustee.

(4) But nothing in the 1985 Act must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (3).

(5) If an award of sequestration is made it is not competent to submit to
20 the permanent trustee a claim in accordance with section 48 of the 1985 Act in relation to any confiscation order that has been or may be made against the debtor.

(6) If at any time in the period before sequestration is awarded an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in
25 the debtor's estate is at that time subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order.

(7) Subsections (8) and (9) apply if a person whose estate is sequestrated has made a tainted gift (whether directly or indirectly).

30 (8) No decree may be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when—

(a) proceedings for an offence have been instituted in Scotland against the person and have not been concluded,

35 (b) an application has been made in respect of him under any of sections 103 to 106, 109 and 110 and has not been concluded, or

(c) any property of the recipient of the tainted gift is subject to a restraint order.

(9) Any decree made under section 34 or 36 of the 1985 Act after the
40 conclusion of the proceedings or application mentioned in subsection (8) must take into account any realisation under this Part of property held by the recipient of the tainted gift.

(10) In a case where (despite the coming into force of the 1985 Act) the
45 Bankruptcy (Scotland) Act 1913 (the 1913 Act) applies to a sequestration, subsection (3) above has effect as if for paragraphs (a) to (c) there were substituted—

“(a) property which is for the time being comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913;

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- (b) any income of the bankrupt which has been ordered under section 98(2) of that Act to be paid to the trustee;
- (c) any estate which under section 98(1) of that Act vests in the trustee.”

(11) In a case where subsection (10) applies, subsection (4) has effect as if for the reference to the 1985 Act there were substituted a reference to the 1913 Act. 5

(12) For the purposes of this section an award of sequestration is made on the date of sequestration within the meaning of section 12(4) of the 1985 Act. 10

Bankruptcy,
1986 c. 45.

132.—(1) If a person who holds realisable property is adjudged bankrupt the following property is excluded from his estate for the purposes of Part IX of the Insolvency Act 1986 (the 1986 Act)—

- (a) property for the time being subject to a restraint order which was made before the order adjudging him bankrupt; 15
- (b) any proceeds of property realised by virtue of section 123(1) or 124(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 123 or 124(3).

(2) Subsection (1)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging him bankrupt. 20

(3) If a person is adjudged bankrupt the powers conferred on a court by sections 117 to 126 and 129 and Schedule 2, and the powers of an administrator appointed under section 123 or 124(3), must not be exercised in relation to the following property— 25

- (a) property which is for the time being comprised in the bankrupt’s estate for the purposes of Part IX of the 1986 Act;
- (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the 1986 Act (after-acquired property, tools, tenancies etc); 30
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the 1986 Act.

(4) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (3). 35

(5) If in the case of a debtor an interim receiver stands at any time appointed under section 286 of the 1986 Act and any property of the debtor is then subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.

(6) Subsections (7) and (8) apply if a person who is adjudged bankrupt has made a tainted gift (whether directly or indirectly). 40

(7) No order may be made under section 339 or 423 of the 1986 Act (avoidance of certain transactions) in respect of the making of the gift at any time when—

- (a) proceedings for an offence have been instituted in Scotland against 45 the person and have not been concluded,

- (b) an application has been made in respect of him under any of sections 103 to 106, 109 and 110 and has not been concluded, or
- (c) any property of the recipient of the tainted gift is subject to a restraint order.

5 (8) Any order made under section 339 or 423 of the 1986 Act after the conclusion of the proceedings or application mentioned in subsection (7) must take into account any realisation under this Part of property held by the recipient of the tainted gift.

10 (9) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with these modifications—

- 15 (a) for references to the bankrupt's estate for the purposes of Part IX of that Act substitute references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914 (the 1914 Act); 1914 c. 59.
- (b) for references to the 1986 Act and sections 280(2)(c), 286, 339 and 423 of that Act substitute (respectively) references to the 1914 Act and sections 26(2), 8, 27 and 42 of that Act;
- 20 (c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, references to the receiver constituted by virtue of section 7 of the 1914 Act;
- (d) omit subsection (3)(b).

25 **133.**—(1) If a company holds realisable property, and an order for its winding up is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property— *Winding up.*

- 30 (a) property for the time being subject to a restraint order which was made before the relevant time;
- (b) any proceeds of property realised by virtue of section 123(1) or 124(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 123 or 124(3).

35 (2) Subsection (1)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time.

40 (3) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers conferred on a court by sections 117 to 126 and 129 and Schedule 2, and the powers of an administrator appointed under section 123 or 124(3), must not be exercised in the way mentioned in subsection (4) below in relation to any realisable property—

- (a) which is held by the company, and
 - (b) in relation to which the functions of the liquidator are exercisable.
- (4) The powers must not be exercised—
- 45 (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;

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- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- 1986 c. 45. (5) But nothing in the Insolvency Act 1986 must be taken to restrict (or enable the restriction of) the exercise of the powers mentioned in subsections (3) and (4). 5
- (6) For the purposes of the application of Parts IV and V of the Insolvency Act 1986 (winding up) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order. 10
- (7) In this section "company" means any company which may be wound up under the Insolvency Act 1986.
- (8) The relevant time is—
- (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up; 15
- (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution; 20
- (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.
- (9) In a case where a winding up of a company commenced or is treated as having commenced before 29 December 1986, this section has effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985. 25
- 1985 c. 6.
- Floating charge. **134.**—(1) If a company holds realisable property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to the following property— 30
- (a) property for the time being subject to a restraint order which was made before the appointment of the receiver;
- (b) any proceeds of property realised by virtue of section 123(1) or 124(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 123 or 124(3). 35
- (2) Subsection (1)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the appointment of the receiver.
- (3) If a receiver has been appointed as mentioned in subsection (1), the powers conferred on a court by sections 117 to 126 and 129 and Schedule 2, and the powers of an administrator appointed under section 123 or 124(3), must not be exercised in the way mentioned in subsection (4) below in relation to any realisable property— 40
- (a) which is held by the company, and
- (b) in relation to which the functions of the receiver are exercisable. 45

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- (4) The powers must not be exercised—
- PART III
- (a) so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company's creditors;
- 5 (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property.
- (5) But nothing in the Insolvency Act 1986 must be taken to restrict (or enable the restriction of) the exercise of the powers mentioned in subsections (3) and (4). 1986 c. 45.
- 10 (6) In this section—
- 'company' means any company which may be wound up under the Insolvency Act 1986;
- 'floating charge' includes a floating charge within the meaning of section 462 of the Companies Act 1985. 1985 c. 6.
- 15 **135.**—(1) Subsections (2) and (3) apply if—
- Insolvency practitioners.
- (a) a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order, and
- 20 (b) at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.
- (2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.
- 25 (3) He has a lien on the property or the proceeds of its sale—
- (a) for such of his expenses as were incurred in connection with the sequestration, liquidation or other proceedings in relation to which he purported to make the seizure or disposal, and
- 30 (b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.
- (4) Subsection (2) does not prejudice the generality of any provision of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 or any other Act which confers protection from liability on him. 1985 c. 66.
- (5) If a person acting as an insolvency practitioner incurs expenses in respect of property subject to a restraint order and does not know (and has no reasonable grounds to believe) that the property is subject to a restraint order, he is entitled to payment of the expenses under section 125(3) or 126(3) (whether or not he has seized or disposed of the property).
- 35 (6) If a person acting as an insolvency practitioner incurs expenses which are not expenses in respect of property subject to a restraint order and which (but for the effect of a restraint order) might have been met by taking possession of and realising property subject to the restraint order, he is entitled to payment of the expenses under section 125(3) or 126(3) (whether or not he has seized or disposed of any property).
- 40 (7) The expression 'person acting as an insolvency practitioner' includes the official receiver acting as receiver or manager of the property concerned.
- 45

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1986 c. 45.
- (8) That expression must otherwise be construed in accordance with section 388 of the Insolvency Act 1986 (interpretation), but as if—
- (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration included a reference to a trustee in sequestration;
 - (b) section 388(5) (nothing in the section applies to anything done by the official receiver) were omitted. 5

Compensation

- Serious default.
- 136.**—(1) If the following three conditions are satisfied the court may order the payment of such compensation as it thinks is just.
- (2) The first condition is satisfied if a criminal investigation has been instituted with regard to an offence and proceedings are not instituted for the offence.
- (3) The first condition is also satisfied if proceedings for an offence are instituted against a person and—
- (a) they do not result in his conviction for the offence, or 15
 - (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.
- (4) If subsection (2) applies the second condition is that—
- (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and 20
 - (b) the investigation would not have continued if the default had not occurred.
- (5) If subsection (3) applies the second condition is that—
- (a) in any criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person mentioned in subsection (9), and 25
 - (b) the proceedings would not have been instituted or continued if the default had not occurred.
- (6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it—
- (a) by or in pursuance of an order under this Part, or
 - (b) by or in pursuance of an order under section 45, 47(3) or 53 or an order under section 42 of the Proceeds of Crime (Scotland) Act 1995. 35
- (7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is instituted.
- (8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are instituted.
- (9) Compensation under this section is payable to the applicant and— 40
- (a) if the person in default was a constable of a police force (within the meaning of the Police (Scotland) Act 1967), the compensation is payable by the police authority or joint police board for the police area for which that force is maintained;
- 1995 c. 43.
- 1967 c. 77.

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- (b) if the person in default was a constable not falling within paragraph (a), the compensation is payable by the body under whose authority he acts; PART III
- 5 (c) if the person in default was a procurator fiscal or was acting on behalf of the Lord Advocate, the compensation is payable by the Lord Advocate;
- (d) if the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, the compensation is payable by the Commissioners of Customs and Excise; 1979 c. 2.
- 10 (e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.
- (10) Nothing in this section affects any delictual liability in relation to a serious default.
- 15 **137.**—(1) This section applies if—
- (a) the court varies a confiscation order under section 111 or discharges one under section 112, and
- (b) an application is made to the court by a person who held realisable property and has suffered loss as a result of the making of the order. Confiscation order varied or discharged.
- 20 (2) The court may order the payment to the applicant of such compensation as it thinks is just.

Interpretation

- 25 **138.**—(1) An accused has a criminal lifestyle if (and only if) the offence (or any of the offences) concerned satisfies any of these tests—
- (a) it is a drug trafficking offence;
- (b) it is a money laundering offence;
- (c) it is specified in regulations under this section by the Secretary of State;
- 30 (d) it constitutes conduct forming part of a course of criminal activity;
- (e) it is an offence committed over a period of at least six months.
- (2) Conduct forms part of a course of criminal activity if the accused has benefited from the conduct and—
- 35 (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
- (b) in the period of six years ending with the day when those proceedings were instituted (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited. 40
- 139.**—(1) Criminal conduct is conduct which—
- (a) constitutes an offence in Scotland, or Conduct and benefit.

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(b) would constitute such an offence if it had occurred in Scotland.

(2) General criminal conduct of the accused is all his criminal conduct, and it is immaterial—

- (a) whether conduct occurred before or after the passing of this Act;
- (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act. 5

(3) Particular criminal conduct of the accused is all his criminal conduct which falls within the following paragraphs—

- (a) conduct which constitutes the offence or offences concerned;
- (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence (or any of the offences) concerned. 10

(4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and in some other. 20

(7) If a person benefits from conduct his benefit is the value of the property obtained.

Tainted gifts and their recipients.

140.—(1) Subsections (2) and (3) apply if—

- (a) no court has made a decision as to whether the accused has a criminal lifestyle, or
- (b) a court has decided that the accused has a criminal lifestyle.

(2) A gift is tainted if it was made by the accused at any time after the relevant day.

(3) A gift is also tainted if it was made by the accused at any time and was of property— 30

- (a) which was obtained by the accused in connection with his general criminal conduct, or
- (b) which (in whole or part and whether directly or indirectly) represented in the accused's hands property obtained by him in connection with his general criminal conduct. 35

(4) Subsection (5) applies if a court has decided that an accused does not have a criminal lifestyle.

(5) A gift is tainted if it was made by the accused at any time after—

- (a) the date on which the offence concerned was committed, or 40
- (b) if there are two or more offences and they were committed on different dates, the earliest of those dates.

(6) A gift may be a tainted gift whether it was made before or after the passing of this Act.

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(7) The relevant day is the first day of the period of six years ending with—

- (a) the day when proceedings for the offence concerned were instituted against the accused, or
- 5 (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(8) If the accused transfers property to another person (whether directly or indirectly) for a consideration whose value is significantly less than the value of the consideration provided by the accused, he is to be treated as making a
10 gift.

(9) If subsection (8) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—

- (a) whose numerator is the difference between the two values mentioned in subsection (8), and
- 15 (b) whose denominator is the value of the consideration provided by the accused.

(10) References to a recipient of a tainted gift are to a person to whom the accused has (whether directly or indirectly) made the gift.

141.—(1) This section applies for the purpose of deciding the value at any
20 time of property then held by a person.

Value: the basic rule.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his beneficial interest at that time.

25 (4) This section has effect subject to sections 142 and 143.

142.—(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.

Value of property obtained from conduct.

30 (2) The value of the property at the material time is the greater of the following—

- (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
- 35 (b) the value (at the material time) of the property found under subsection (3).

(3) The property found under this subsection is—

- (a) if the person holds the property obtained, that property;
- (b) if he holds no part of the property obtained, any property which directly or indirectly represents it in his hands;
- 40 (c) if he holds part of the property obtained, that part and any property which directly or indirectly represents the other part in his hands.

(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 141.

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Value of tainted
gifts.

- 143.**—(1) The value at any time (the material time) of a tainted gift is the greater of the following—
- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (2). 5
- (2) The property found under this subsection is—
- (a) if the recipient holds the property given, that property;
 - (b) if the recipient holds no part of the property given, any property which directly or indirectly represents it in his hands; 10
 - (c) if the recipient holds part of the property given, that part and any property which directly or indirectly represents the other part in his hands.
- (3) Where the recipient of a tainted gift of money shows, on the balance of probabilities, that all or any part of the money has not been used to purchase 15 goods or services or to earn interest or any other return, the value of the gift or, as the case may be, that part of it is to be taken as the face value of the money or part of the money.
- (4) In deciding the value of a tainted gift the court may disregard the amount, or part of the amount, of the gift if it considers it improbable that 20 the amount or part could be realised.
- (5) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 141.

Free property.
1971 c. 38.
1995 c. 43.
2000 c. 6.
2000 c. 11.

- 144.** Property is free unless an order is in force in respect of it under—
- (a) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders), 25
 - (b) Part II of the Proceeds of Crime (Scotland) Act 1995 (forfeiture of property used in crime),
 - (c) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (deprivation orders), or
 - (d) section 23 or 111 of the Terrorism Act 2000 (forfeiture orders). 30

Realisable
property.

- 145.**—(1) Realisable property is—
- (a) any free property held by the accused;
 - (b) any free property held by the recipient of a tainted gift.
- (2) Property is not realisable if it is—
- (a) held on trust by the accused or the recipient of a tainted gift for a 35 person other than the accused or such a recipient, or
 - (b) for the time being subject to a restraint order in other proceedings.

Property: general
provisions.

- 146.**—(1) Property is all property wherever situated and includes—
- (a) money;
 - (b) all forms of property whether heritable or moveable and whether 40 corporeal or incorporeal.

- (2) The following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to his property vested in his permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985), trustee in bankruptcy or liquidator;
 - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
 - (f) references to an interest, in relation to property, include references to a right.
- 15 **147.**—(1) Proceedings for an offence are instituted against a person— Proceedings.
- (a) on his arrest without warrant;
 - (b) when he is charged with the offence without being arrested;
 - (c) when a warrant to arrest him is granted;
 - (d) when a warrant to cite him is granted;
 - (e) in summary proceedings, on the first calling of the case;
 - (f) when a petition is intimated to him or an indictment or complaint is served on him.
- (2) If more than one time is found under subsection (1) in relation to proceedings they are instituted at the earliest of those times.
- 25 (3) Proceedings for an offence are concluded when—
- (a) the trial diet is deserted simpliciter,
 - (b) the accused is acquitted or, under section 65 or 147 of the Procedure Act, discharged or liberated,
 - (c) the court sentences the accused without making a confiscation order and without postponing a decision as regards making such an order,
 - (d) the court decides, after such a postponement, not to make a confiscation order, or
 - (e) the accused's conviction is quashed.
- 30 (4) If a confiscation order is made against the accused in proceedings for an offence, the proceedings are concluded—
- (a) when the order is satisfied or discharged, or
 - (b) when the order is quashed.
- 35
- 148.**—(1) An application under section 103, 104, 109 or 110 is Applications.
concluded—
- (a) in a case where the court decides not to make a confiscation order against the accused, when it makes the decision;
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied;
- 40

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PART III	(c) in a case where the application is withdrawn, when the prosecutor notifies the withdrawal to the court to which the application was made.	
	(2) An application under section 105 or 106 is concluded—	
	(a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;	5
	(b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied;	
	(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.	10
Satisfaction of confiscation orders.	149. A confiscation order is satisfied—	
	(a) when no amount is due under it;	
	(b) where the accused against whom it was made serves a term of imprisonment or detention in default of payment of the amount due under the order, on the completion of that term of imprisonment or detention.	15
Drug trafficking offences.	150. —(1) Each of the following offences under the Misuse of Drugs Act 1971 is a drug trafficking offence—	
1971 c. 38.	(a) an offence under section 4(2) or (3) (production and supply of controlled drugs);	
	(b) an offence under section 5(3) (possession of controlled drugs with intent to supply);	
	(c) an offence under section 8 (permitting certain activities);	
	(d) an offence under section 20 (assisting in or inducing commission outside UK of offence punishable under a corresponding law).	25
	(2) An offence is a drug trafficking offence if—	
1979 c. 2.	(a) it is an offence under section 50(2) or (3), 68(2) or 170 of the Customs and Excise Management Act 1979 (import, export and fraudulent evasion), and	30
	(b) it is an offence in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971.	
1990 c. 5.	(3) Each of the following offences under the Criminal Justice (International Co-operation) Act 1990 is a drug trafficking offence—	35
	(a) an offence under section 12 (manufacture or supply of substance specified in Schedule 2 to that Act);	
	(b) an offence under section 14 (concealing or transferring drug trafficking proceeds);	
	(c) an offence under section 19 (using ship for illicit traffic in controlled drugs).	40
	(4) Each of the following offences is a drug trafficking offence—	
1995 c. 39.	(a) an offence under section 37 of the Criminal Law (Consolidation) (Scotland) Act 1995 (acquisition, possession or use of drug trafficking proceeds);	45

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- (b) an offence under section 38 of that Act (assisting another to retain drug trafficking proceeds); PART III
- (c) an offence of conspiring, inciting or attempting to commit an offence falling within subsections (1) to (3) above or paragraph (a) of this subsection. 5
- 151.**—(1) An offence under section 311, 312 or 313 is a money laundering offence. Money laundering offences.
- (2) An offence of conspiring, inciting or attempting to commit any of those offences is a money laundering offence.
- 152.**—(1) In this Part— Other interpretative provisions.
- “accused” means a person against whom proceedings for an offence have been instituted (whether or not he has been convicted);
- “clerk of court” includes the sheriff clerk;
- “confiscation order” means an order under section 91;
- “constable” includes an officer commissioned by the Commissioners of Customs and Excise under the Customs and Excise Management Act 1979; 15 1979 c. 2.
- “conviction”, in relation to an offence, includes a finding that the offence has been committed;
- “court” must be construed in accordance with sections 91(11) and 117(10); 20
- “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence;
- “the Procedure Act” means the Criminal Procedure (Scotland) Act 1995; 25 1995 c. 46.
- “restraint order” means an order under section 118.
- (2) A reference to the offence (or offences) concerned must be construed in accordance with section 91(10).
- (3) A reference to sentencing the accused for an offence includes a reference to dealing with him otherwise in respect of the offence. 30
- General*
- 153.**—(1) Provision may be made by act of sederunt as to— Rules of court.
- (a) giving notice or serving any document for the purposes of this Part;
- (b) the accountant of court’s functions under Schedule 2. 35
- (2) Subsection (1) is without prejudice to section 32 of the Sheriff Court (Scotland) Act 1971 or section 5 of the Court of Session Act 1988. 1971 c. 58. 1988 c. 36.

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PART IV

CONFISCATION: NORTHERN IRELAND

Confiscation orders

- Making of order. **154.**—(1) The Crown Court must proceed under this section if the following two conditions are satisfied. 5
- (2) The first condition is that a defendant falls within either 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 in respect of an offence or offences under section 215 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 15
 - (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; 20
 - (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 25
 - (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. 30
- (7) The standard of proof required to decide any question arising under subsection (4) or (5) is the standard applicable in civil proceedings.
- (8) The first condition is not satisfied if the defendant absconds (but section 176 may apply). 35
- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).
- Time for making order. **155.** A confiscation order must be made before the court sentences the defendant for the offence (or any of the offences) concerned.
- Recoverable amount. **156.**—(1) The recoverable amount for the purposes of section 154 is an amount equal to the defendant's benefit from the conduct concerned. 40

- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—
- (a) the available amount, or
 - (b) a nominal amount, if the available amount is nil.
- 5 (3) But if section 154(6) applies the recoverable amount is such amount as—
- (a) the court believes is just, but
 - (b) does not exceed the amount found under subsection (1) or (2) (as the case may be).
- 10 (4) The court—
- (a) must include in the confiscation order a statement of its findings as to the matters relevant for deciding the available amount, if that amount is less than the defendant's benefit from the conduct concerned;
 - 15 (b) may include such a statement, in any other case.

- 157.**—(1) If the court is proceeding under section 154 this section applies for the purpose of—
- (a) deciding whether the defendant has benefited from conduct, and
 - (b) deciding his benefit from the conduct.
- 20 (2) The court must—
- (a) take account of conduct occurring up to the time it makes its decision;
 - (b) take account of property obtained up to that time.
- (3) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
- 25 (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
 - (b) the amount ordered to be paid under each confiscation order previously made against him under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 or the Proceeds of
 - 30 Crime (Northern Ireland) Order 1996.
- S.I. 1990/2588 (N.I. 17).
S.I. 1996/1299 (N.I. 9).

- 158.**—(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
- 35 (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and
 - (b) the total of the values (at that time) of all tainted gifts.
- (2) An obligation has priority if it is an obligation of the defendant—
- 40 (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or

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- (b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.
- (3) "Preferential debts" has the meaning given by Article 346 of the Insolvency (Northern Ireland) Order 1989. 5
- S.I. 1989/2405
(N.I. 19).
- Assumptions to be made in case of criminal lifestyle.
- 159.**—(1) If the court decides under section 154 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—
- (a) deciding whether he has benefited from his general criminal conduct, and 10
- (b) deciding his benefit from the conduct.
- (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—
- (a) as a result of his general criminal conduct, and
- (b) at the earliest time he appears to have held it. 15
- (3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—
- (a) as a result of his general criminal conduct, and
- (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it. 25
- (6) But the court must not make a required assumption in relation to particular property or expenditure if—
- (a) the assumption is shown to be incorrect, or
- (b) there would be a serious risk of injustice if the assumption were made. 30
- (7) If the court does not make one or more of the required assumptions it must state its reasons.
- (8) The relevant day is the first day of the period of six years ending with—
- (a) the day when proceedings for the offence concerned were started 35 against the defendant, or
- (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (9) The date of conviction is—
- (a) the date on which the defendant was convicted of the offence 40 concerned, or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

- 160.**—(1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section. PART IV
Time for payment.
- (2) If the defendant shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.
- (3) The specified period—
(a) must start with the day on which the confiscation order is made, and
(b) must not exceed six months.
- (4) If within the specified period the defendant applies to the Crown Court for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period.
- (5) The extended period—
(a) must start with the day on which the confiscation order is made, and
(b) must not exceed 12 months.
- 161.**—(1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid. Interest on unpaid sums.
- (2) The rate of interest is the same rate as that for the time being applying to a money judgment of the High Court.
- (3) For the purposes of enforcement the amount of the interest must be treated as part of the amount to be paid under the confiscation order.
- 162.**—(1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned. Effect of order on court's other powers.
- (2) The court must take account of the confiscation order before—
(a) it imposes a fine on the defendant, or
(b) it makes an order falling within subsection (3).
- (3) These orders fall within this subsection—
(a) an order involving payment by the defendant, other than an order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders); S.I. 1994/2795
(N.I. 15).
(b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); 1971 c. 38.
(c) an order under Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (deprivation orders);
(d) an order under section 23 of the Terrorism Act 2000 (forfeiture orders). 2000 c. 11.
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.
- (5) Subsection (6) applies if—
(a) a court makes both a confiscation order and an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 against the same person in the same proceedings, and

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(b) the court believes he will not have sufficient means to satisfy both the orders in full.

(6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means. 5

(7) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it believes is appropriate in respect of an offence. 10

Procedural matters

Postponement.

163.—(1) The court may postpone proceedings under section 154 for a specified period; and a period of postponement may be extended.

(2) A period of postponement (including one as extended) must not end 15 after the permitted period ends.

(3) But subsection (2) does not apply if there are exceptional circumstances.

(4) The permitted period is the period of two years starting with the date of conviction. 20

(5) But if—

(a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and

(b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found 25 under subsection (4),

the permitted period is that period of three months.

(6) A postponement or extension may be made—

(a) on application by the defendant;

(b) on application by the prosecutor or the Director (as the case may be); 30

(c) by the court of its own motion.

(7) 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 35 different dates, the date of the latest.

(8) References to appealing include references to applying under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case).

S.I. 1981/1675
(N.I. 26).

Effect of
postponement.

164.—(1) If the court postpones proceedings under section 154 it may 40 proceed to sentence the defendant for the offence (or any of the offences) concerned.

(2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not—

- (a) impose a fine on him, or
- (b) make an order falling within section 162(3).

5 (3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by imposing a fine or making an order falling within section 162(3).

10 (4) But the court may proceed under subsection (3) only within the period which—

- (a) corresponds to that allowed by section 49(2) or (3) of the Judicature (Northern Ireland) Act 1978 (time allowed for varying a sentence), but 1978 c. 23.
- (b) starts with the end of the postponement period.

15 (5) If the court proceeds to sentence the defendant under subsection (1)—

- (a) section 154 has effect as if the defendant's 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;

20 (b) section 155 must be ignored.

(6) The postponement period is the period for which proceedings under section 154 are postponed.

25 **165.**—(1) If the court is proceeding under section 154 in a case where section 154(3)(a) applies, the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders.

Statement of information.

30 (2) If the court is proceeding under section 154 in a case where section 154(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders.

(3) If the prosecutor or the Director (as the case may be) believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues—

- 35
- (a) whether the defendant has a criminal lifestyle;
 - (b) whether he has benefited from his general criminal conduct;
 - (c) his benefit from the conduct.

(4) A statement under subsection (3)—

40 (a) must include information the prosecutor or Director believes is relevant in connection with applying the assumptions in section 159;

45 (b) must, if the prosecutor or Director believes there would be a serious risk of injustice if a required assumption were made, include information he believes is relevant in connection with deciding whether it should not be made.

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(5) If the prosecutor or the Director (as the case may be) does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues—

- (a) whether the defendant has benefited from his particular criminal conduct; 5
- (b) his benefit from the conduct.

(6) If the prosecutor or the Director gives the court a statement of information—

- (a) he may at any time give the court a further statement of information; 10
- (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders.

(7) If the court makes an order under this section it may at any time vary it by making another one.

Defendant's response to statement of information.

166.—(1) If the prosecutor or the Director gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—

- (a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and
- (b) so far as he does not accept such an allegation, to give particulars of 20 any matters he proposes to rely on.

(2) If the defendant accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 165(3) or (5) (as the case may be). 25

(3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—

- (a) any allegation in respect of which he has complied with the requirement; 30
- (b) any allegation that he has a criminal lifestyle;
- (c) any allegation that he has benefited from his general or particular criminal conduct.

(4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court. 35

(5) If the court makes an order under this section it may at any time vary it by making another one.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

Provision of information by defendant.

167.—(1) This section applies if— 40

- (a) the court is proceeding under section 154 in a case where section 154(3)(a) applies, or
- (b) it is proceeding under section 154 in a case where section 154(3)(b) applies or it is considering whether to proceed.

(2) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.

(3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) If the prosecutor or the Director (as the case may be) accepts to any extent an allegation made by the defendant—

- (a) in giving information required by an order under this section, or
- (b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 158,

the court may treat the acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(7) If the court makes an order under this section it may at any time vary it by making another one.

Reconsideration

168.—(1) This section applies if—

- (a) the first condition in section 154 is satisfied but the court has not 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 154.

(2) The court must proceed under section 154, and when it does so subsections (3) to (7) below apply.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—

- (a) section 154 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;
- (b) section 155 must be ignored.

(4) Section 157(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.

No order made:
reconsideration of
case.

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(5) In section 159—

- (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; 5
- (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 154 is such amount as— 10

- (a) the court believes is just, but
- (b) does not exceed the amount found under section 156.

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

- (a) the amount found under section 156; 15
- (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 162(3) and has been made against him in respect of the offence (or any of the offences) concerned; 20
- (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders).

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(8) The relevant date is—

- (a) if the court made a decision not to proceed under section 154, the date of the decision; 25
- (b) if the court did not make such a decision, the date of conviction.

(9) The date of conviction is—

- (a) the date on which the defendant was convicted of the offence concerned, or 30
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

No order made:
reconsideration of
benefit.

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

(2) The first condition is that in proceeding under section 154 the court has decided that— 35

- (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. 40

(3) If the court proceeded under section 154 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, 45

- (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
- 5 (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 154 because the prosecutor asked it to or because it believed it was appropriate for it to do so, the second
10 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,
- 15 (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
20 been available to it.
- (5) If this section applies the court—
- (a) must make a fresh decision under section 154(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);
- 25 (b) may make a confiscation order under that section.
- (6) Subsections (7) to (11) below apply if the court proceeds under section 154 in pursuance of this section.
- (7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—
- 30 (a) section 154 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;
- (b) section 155 must be ignored.
- 35 (8) Section 157(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;
- 40 (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 159—
- 45 (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;

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- (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. 5

(10) The recoverable amount for the purposes of section 154 is such amount as—

- (a) the court believes is just, but
- (b) does not exceed the amount found under section 156.

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

- (a) the amount found under section 156;
- (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 162(3) and has been made against him in respect of the offence (or any of the offences) concerned; 15
- (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders). 20

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(12) The date of conviction is the date found by applying section 168(9).

Order made:
reconsideration of
benefit.

170.—(1) This section applies if—

- (a) a court has made a confiscation order,
- (b) 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 amount found as his benefit for the purposes of the order, 25
- (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 on which his belief is based, and 30
- (d) 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. 35

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned section 154 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. 40

(4) Section 157(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; 45

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- (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. 5

(10) The recoverable amount for the purposes of section 154 is such amount as—

- (a) the court believes is just, but
- (b) does not exceed the amount found under section 156.

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

- (a) the amount found under section 156;
- (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 162(3) and has been made against him in respect of the offence (or any of the offences) concerned; 15
- (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders). 20

S.I. 1994/2795
(N.I. 15).

(12) The date of conviction is the date found by applying section 168(9).

Order made:
reconsideration of
benefit.

170.—(1) This section applies if—

- (a) a court has made a confiscation order,
- (b) 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 amount found as his benefit for the purposes of the order, 25
- (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 on which his belief is based, and 30
- (d) 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. 35

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned section 154 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. 40

(4) Section 157(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; 45

- (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 157(3) the confiscation order must be ignored.
- (6) In section 159—
- 5 (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;
- 10 (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 amount found as his benefit for the purposes of the confiscation order the court—
- 15 (a) must make a new calculation of the recoverable amount for the purposes of section 154, 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.
- 20 (8) In applying subsection (7)(a) the court must—
- (a) take the new calculation of the defendant's benefit;
- (b) apply section 158 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.
- 25 (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;
- 30 (b) any order which falls within section 162(3) and has been made against him in respect of the offence (or any of the offences) concerned.
- (10) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
- 35 (11) The date of conviction is the date found by applying section 168(9).

171.—(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 156(2), and
- 40 (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;

Order made:
reconsideration of
available amount.

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- (b) the Director;
- (c) a receiver appointed under section 194, 196(3) or 202 or in pursuance of a charging order.

(3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 158 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. 5

(4) If the amount found under the new calculation exceeds the amount found as the available amount for the purposes of the confiscation order the court may vary the order by substituting for the amount required to be paid such amount as— 10

- (a) it believes is just, but
- (b) does not exceed the amount found (when the confiscation order was made) as the defendant's benefit from the conduct concerned. 15

(5) In deciding what is just 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 162(3) and has been made against him in respect of the offence (or any of the offences) 20 concerned.

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

Inadequacy of available amount: variation of order.

172.—(1) This section applies if—

- (a) a court has made a confiscation order, and 25
- (b) the defendant, or a receiver appointed under section 194, 196(3) or 202 or in pursuance of a charging order, applies to the Crown Court to vary the order under this section.

(2) In such a case the court must calculate the available amount under section 158, but substituting for references to the time the confiscation order is made references to the time the calculation is made. 30

(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. 35

(4) If a person has been adjudged bankrupt or his estate has been sequestrated the court must take into account the extent to which realisable property held by him may be distributed among creditors.

(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. 40

Inadequacy of available amount: discharge of order.

173.—(1) This section applies if—

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

- (b) the prosecutor 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.

5 (2) In such a case the court must calculate the available amount under section 158, but substituting for references to the time the confiscation order is made references to the time the calculation is made.

(3) If the court—

- (a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and
- 10 (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—

- 15 (a) in a case where any of the realisable property is situated outside the United Kingdom, 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).

20 **174.**—(1) This section applies if—

- (a) a court has made a confiscation order,
- (b) a chief clerk applies to the Crown Court for the discharge of the order, and
- (c) the amount remaining to be paid under the order is £50 or less.

25 (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).

Small amount
outstanding:
discharge of order.

175.—(1) This section applies if—

- 30 (a) the court proceeds under section 154 in pursuance of section 168 or 169, or
- (b) the prosecutor or the Director applies under section 170.

(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;
- 35 (b) section 165 applies accordingly (with appropriate modifications where the prosecutor or the Director applies under section 170);
- (c) section 166 applies accordingly;
- (d) section 167 applies as it applies in the circumstances mentioned in section 167(1).

Information.

40 *Defendant absconds*

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

Defendant
convicted or
committed.

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- (2) The first condition is that a defendant absconds after—
- (a) he is convicted of an offence or offences in proceedings before the Crown Court, or
 - (b) he is committed to the Crown Court in respect of an offence or offences under section 215 below (committal with a view to a confiscation order being considered).
- (3) The second condition is that—
- (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 154 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 154 as applied by this section, this Part has effect with these modifications—
- (a) any person the court believes is likely to be affected by an order under section 154 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 154 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
 - (c) section 154(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 159, 165(4), 166 and 167 must be ignored;
 - (e) sections 168, 169 and 170 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 168 has effect as if subsection (1)(a) read—
- “(a) at a time when the first condition in section 176 was satisfied the court did not proceed under section 154.”.

Defendant neither convicted nor acquitted.

- 177.**—(1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that—
- (a) proceedings for an offence or offences are started against a defendant but are not concluded,
 - (b) he absconds, and
 - (c) the period of two years (starting with the day the court believes he absconded) has ended.
- (3) The second condition is that—
- (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 154 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 154 as applied by this section, this Part has effect with these modifications—

- 5 (a) any person the court believes is likely to be affected by an order under section 154 is entitled to appear before the court and make representations;
- (b) the court must not make an order under section 154 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
- 10 (c) section 154(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
- (d) sections 159, 165(4), 166 and 167 must be ignored;
- (e) sections 168, 169 and 170 must be ignored while the defendant is still an absconder.
- (6) Subsections (7) and (8) apply once the defendant has ceased to be an
15 absconder.
- (7) Section 168 has effect as if subsection (1)(a) read—
“(a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 154.”
- (8) Sections 168, 169 and 170 have effect as if references to the date of
20 conviction were—
 - (a) to the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- 25 (9) If—
 - (a) the court makes an order under section 154 as applied by this section, and
 - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,
- 30 section 154 does not apply so far as that conviction is concerned.

178.—(1) This section applies if—

Variation of order.

- (a) the court makes a confiscation order under section 154 as applied by section 177,
 - 35 (b) the defendant ceases to be an absconder,
 - (c) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and
 - (d) before the end of the period of six years starting with the date on
40 which the order was made he applies to the Crown Court to consider the evidence on which his belief is based.
- (2) If (after considering the evidence) the court concludes that the defendant's belief is well founded—
- 45 (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and

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

Discharge of order.

179.—(1) Subsection (2) applies if—

- (a) the court makes a confiscation order under section 154 as applied by section 177, 5
- (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and
- (c) he applies to the Crown Court to discharge the order.

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

(3) Subsection (4) applies if— 10

- (a) the court makes a confiscation order under section 154 as applied by section 177,
- (b) the defendant ceases to be an absconder,
- (c) subsection (1)(b) does not apply, and
- (d) he applies to the Crown Court to discharge the order. 15

(4) In such a case the court may discharge the order if it finds that—

- (a) there has been undue delay in continuing the proceedings mentioned in section 177(2), or
- (b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate. 20

Appeals

Appeal by prosecutor or Director.

180.—(1) If the Crown Court makes a confiscation order the prosecutor or the Director may appeal to the Court of Appeal in respect of the order.

(2) If the Crown Court decides not to make a confiscation order the prosecutor or the Director may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 168, 169, 176 or 177.

Court's powers on appeal.

181.—(1) On an appeal under section 180(1) the Court of Appeal may confirm, quash or vary the confiscation order. 30

(2) On an appeal under section 180(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

- (a) itself proceed under section 154 (ignoring subsections (1) to (3)), or
- (b) direct the Crown Court to proceed afresh under section 154. 35

(3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.

(4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must—

- (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; 40

5 (b) have regard to any order which falls within section 162(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 158.

(5) If the Court of Appeal proceeds under section 154 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section and a court has already sentenced the defendant for the offence (or any of the offences) concerned—

10 (a) section 154 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;

(b) section 155 must be ignored.

15 (6) If the Court of Appeal proceeds under section 154 subsections (7) to (11) also apply.

(7) If the Court of Appeal makes a confiscation order under this section it must have regard to any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders).

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20 (8) Section 157(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;

25 (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 159—

30 (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;

35 (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) Section 175 applies as it applies in the circumstances mentioned in subsection (1) of that section.

(11) If the Court of Appeal—

(a) makes a confiscation order, and

40 (b) appoints the Director as the enforcement authority for the order under section 183

it must direct the Crown Court to proceed under section 202.

(12) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

45 **182.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 180.

Appeal to House of
Lords.

Proceeds of Crime

PART IV

(2) An appeal under this section lies at the instance of—

- (a) the defendant or the prosecutor (if the prosecutor appealed under section 180);
- (b) the defendant or the Director (if the Director appealed under section 180).

5

(3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the House of Lords may confirm, quash or vary the order.

(4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the House of Lords may—

- (a) confirm the decision, or
- (b) itself proceed under section 154 (ignoring subsections (1) to (3)) if it believes the decision was wrong.

15

(5) If the House of Lords makes or varies a confiscation order under this section it must have regard to—

- (a) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- (b) any order which falls within section 162(3) and has been made against him in respect of the offence (or any of the offences) concerned.

20

(6) If the House of Lords makes a confiscation order under this section it must have regard to any order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 made against the defendant in respect of the offence (or any of the offences) concerned.

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(7) If the House of Lords—

- (a) makes a confiscation order under this section, and
- (b) appoints the Director as the enforcement authority for the order under section 183,

30

it must direct the Crown Court to proceed under section 154.

Enforcement authority

Enforcement
authority.

183.—(1) Subsection (2) applies if a court makes a confiscation order and any of the following paragraphs applies—

- (a) the court proceeded under section 154 after being asked to do so by the Director;
- (b) the court proceeded under section 154 by virtue of an application by the Director under section 168, 169, 176 or 177;
- (c) before the court made the order the Director applied to the court to appoint him as the enforcement authority for the order.

40

(2) In any such case the court must appoint the Director as the enforcement authority for the order.

Enforcement as fines etc

Enforcement as
fines etc.

184.—(1) This section applies if a court makes a confiscation order.

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- (2) Section 35(1)(c), (2), (4) and (5) of the Criminal Justice Act (Northern Ireland) 1945 (functions of court as to fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the Crown Court. PART IV
1945 c. 15.
- (3) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of Article 35 of the Criminal Justice (Northern Ireland) Order 1998 (parent or guardian to pay fine etc. instead of child). S.I. 1998/1504
(N.I.9).
- 185.**—(1) If the Director believes that the conditions set out in subsection (2) are satisfied he may make an *ex parte* application to the Crown Court for the issue of a summons against the defendant. Director's
application for
enforcement.
- (2) The conditions are that—
- (a) a confiscation order has been made;
- (b) the Director has been appointed as the enforcement authority for the order;
- 15 (c) the order is not satisfied;
- (d) the order is not subject to appeal;
- (e) the Director has done all that is practicable (apart from this section) to enforce the order.
- (3) If it appears to the Crown Court that the conditions are satisfied it may issue a summons ordering the defendant to appear before the court at the time and place specified in the summons.
- (4) If the defendant fails to appear before the Crown Court in pursuance of the summons the court may issue a warrant for his arrest.
- (5) If—
- 25 (a) the defendant appears before the Crown Court in pursuance of the summons or of a warrant issued under subsection (4), and
- (b) the court is satisfied that the conditions set out in subsection (2) are satisfied,
- 30 it may issue a warrant committing the defendant to prison or to detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 for default in payment of the amount ordered to be paid by the confiscation order. 1968 c. 29 (N.I.).
- (6) Subsection (7) applies if the amount remaining to be paid under the confiscation order when the warrant under subsection (5) is issued is less than the amount ordered to be paid.
- 35
- (7) In such a case the court must substitute for the term of imprisonment or detention fixed in respect of the order under section 35(1) of the Criminal Justice Act (Northern Ireland) 1945 such term as bears to the original term the same proportion as the amount remaining to be paid bears to the amount ordered to be paid. 1945 c. 15 (N.I.).
- 40
- 186.**—(1) Subsection (2) applies if—
- (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and
- Provisions about
imprisonment or
detention.

- PART IV
- (b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).
- (2) In such a case the term of imprisonment or of detention to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above. 5
- (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 which he is liable to serve in respect of the offence (or any of the offences). 10
- 1968 c. 29 (N.I.)
- (4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—
- (a) any sentence of imprisonment or order for detention suspended under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 which has not taken effect at the time the warrant is issued; 15
- (b) any term of imprisonment or detention fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued 20 at that time.
- (5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned. 25
- Reconsideration
etc: variation of
prison term.
- 187.**—(1) Subsection (2) applies if—
- (a) a court varies a confiscation order under section 170, 171, 172, 178, 181 or 182,
- (b) the effect of the variation is to vary the maximum period applicable in relation to the order under section 35(2) of the Criminal Justice Act (Northern Ireland) 1945, and 30
- (c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of that Act.
- (2) In such a case the court must fix a reduced term of imprisonment or 35 detention in respect of the confiscation order under section 35(1)(c) of that Act in place of the term previously fixed.
- (3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.
- (4) In such a case the court may fix a reduced term of imprisonment or 40 detention in respect of the confiscation order under section 35(1)(c) of that Act in place of the term previously fixed.
- (5) If the effect of section 161 is to increase the maximum period applicable in relation to a confiscation order under section 35(2) of that Act, on the application of the appropriate person the Crown Court may amend the 45 term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of that Act.

- (6) The appropriate person is—
- (a) the Director, if he was appointed as the enforcement authority for the order under section 183;
 - (b) the prosecutor, in any other case.

5 *Restraint orders and charging orders*

188.—(1) The High Court may exercise the powers conferred by sections 189 and 190 if any of the following conditions is satisfied. Conditions for exercise of powers.

(2) The first condition is that—

- 10 (a) a criminal investigation has been started in Northern Ireland with regard to an offence, and
- (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.

(3) The second condition is that—

- 15 (a) proceedings for an offence have been started in Northern Ireland and not concluded,
- (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(4) The third condition is that—

- 20 (a) an application by the prosecutor or the Director has been made under section 168, 169, 176 or 177 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—

- 25 (a) an application by the prosecutor or the Director has been made under section 170 and not concluded, or the court believes that such an application is to be made, and
- 30 (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 amount found as his benefit for the purposes of the confiscation order.

(6) The fifth condition is that—

- 35 (a) an application by the prosecutor or the Director has been made under section 171 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 amount found as the available amount for the purposes of the confiscation order.

40 (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—

- 45 (a) there has been undue delay in continuing the application, or

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- PART IV
- (b) the prosecutor or the Director (as the case may be) 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 222(7) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.
- Restraint orders.
- 189.**—(1) If any condition set out in section 188 is satisfied the High Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.
- (2) A restraint order may provide that it applies—
 - (a) to all realisable property held by the specified person whether or not the property is described in the order;
 - (b) to realisable property transferred to the specified person after the order is made.
 - (3) A restraint order may be made subject to exceptions, and an exception may in particular—
 - (a) make provision for living expenses and legal expenses;
 - (b) be made subject to conditions.
 - (4) Subsection (5) applies if—
 - (a) the court makes a restraint order, and
 - (b) the applicant for the order asks the court to proceed under subsection (5) (whether as part of the application for the restraint order or at any time afterwards).
 - (5) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
 - (6) A restraint order does not affect—
 - (a) property for the time being subject to a charging order;
 - (b) property for the time being subject to a charge under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 or Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996.
 - (7) Dealing with property includes removing it from Northern Ireland.
- S.I. 1990/2588 (N.I. 17).
S.I. 1996/1299 (N.I. 9).
- Charging orders.
- 190.**—(1) If any condition set out in section 188 is satisfied the High Court may make an order (a charging order) imposing on specified interests in specified realisable property a charge for securing the payment of money to the Crown.
- (2) The amount whose payment is secured is as follows—
 - (a) if a confiscation order has not been made against the defendant, it is an amount equal to the value from time to time of the interests charged;

(b) if a confiscation order has been made against the defendant, it is an amount equal to the smaller of the amount mentioned in paragraph (a) and the amount required to be paid by the confiscation order.

5 (3) A charging order may be imposed only on interests falling within subsection (4) or (5).

(4) An interest falls within this subsection if—

(a) it is held beneficially by the defendant or a recipient of a tainted gift, and

10 (b) it is an interest in an asset falling within subsection (6) or an interest under a trust.

(5) An interest falls within this subsection if—

(a) it is held by a person as trustee of a trust,

(b) it is an interest in an asset falling within subsection (6) or an interest under another trust, and

15 (c) the whole beneficial interest under the trust mentioned in paragraph (a) falls within subsection (4).

(6) The assets falling within this subsection are—

(a) land in Northern Ireland;

(b) securities falling within subsection (7).

20 (7) The securities falling within this subsection are—

(a) government funds or stocks;

(b) stock of a body (other than a building society) incorporated in Northern Ireland;

25 (c) stock of a body incorporated outside Northern Ireland (other than a building society incorporated in Great Britain) if the stock is registered in a register kept at a place in Northern Ireland;

(d) stock of a country or territory outside the United Kingdom if the stock is registered in a register kept at a place in Northern Ireland;

30 (e) units of a unit trust if a register of the unit holders is kept at a place in Northern Ireland.

(8) If a charge is imposed on an interest in securities falling within subsection (7) and the charging order provides that the charge extends to any interest or dividend payable in respect of the securities, the charge has effect accordingly.

35 (9) A charging order may be made subject to conditions (such as a condition about the time when it becomes effective).

(10) The Secretary of State may by order amend subsections (6) and (7) so as to add or remove assets.

(11) In this section—

40 “building society” has the same meaning as in the Building Societies Act 1968;

“dividend” includes any distribution in respect of any unit of a unit trust;

“government funds or stocks” has the same meaning as in the Judgments Enforcement (Northern Ireland) Order 1981;

1986 c. 53.

S.I. 1981/226 (N.I. 6).

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PART IV	“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;	
	“unit trust” means any trust established for the purpose of having the effect of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.	5
Application, discharge and variation.	191. —(1) A restraint order or a charging order—	10
	(a) may be made only on an application by an applicant falling within subsection (2);	
	(b) may be made on an ex parte application to a judge in chambers.	
	(2) These applicants fall within this subsection—	
	(a) the prosecutor;	15
	(b) the Director;	
	(c) an accredited financial investigator.	
	(3) A person affected by a restraint order or a charging order may apply to the High Court to discharge it or to vary it; and subsections (4) to (7) apply in such a case.	20
	(4) The court—	
	(a) may discharge the order;	
	(b) may vary the order.	
	(5) If the condition in section 188 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).	
	(6) If the condition in section 188 which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).	
	(7) If the order is a charging order the court must discharge it on payment into court of the amount whose payment is secured by the charge.	
	(8) An accredited financial investigator is a person accredited as a financial investigator by the Director or by a person authorised by the Director.	35
	(9) An accredited financial investigator may not make an application for a restraint order unless he is authorised to do so by—	
	(a) a police officer who is not below the rank of superintendent, or	
	(b) a person who is commissioned by the Commissioners of Customs and Excise and who is not below such grade as is designated by the Commissioners as equivalent to that rank.	40
Appeal to Court of Appeal.	192. —(1) If on an application for a restraint order or a charging order the court decides not to make one, the person who applied for it may appeal to the Court of Appeal against the decision.	45

(2) If an application is made under section 191(3) in relation to a restraint order or a charging order the following persons may appeal to the Court of Appeal in respect of the High Court's decision on the application—

- 5 (a) the person who applied for the order;
(b) any person affected by the order.
- (3) On an appeal under subsection (1) the Court of Appeal may—
- (a) confirm the decision, or
(b) make such order as the High Court could have made.
- (4) On an appeal under subsection (2) the Court of Appeal may—
- 10 (a) confirm the decision, or
(b) make such order as it believes is appropriate.

193.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 192. Appeal to House of Lords.

- (2) An appeal under this section lies at the instance of—
- 15 (a) the person who applied for a restraint order or a charging order;
(b) any person affected by the decision of the Court of Appeal.
- (3) On an appeal under this section the House of Lords may—
- (a) confirm the decision of the Court of Appeal, or
(b) make such order as it believes is appropriate.

20 **194.**—(1) Subsection (2) applies if—

(a) the High Court makes a restraint order, and
(b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).

*Restraint orders:
receivers and
seizure.*

25 (2) The High Court may by order—

(a) appoint a receiver to take possession of any realisable property to which the restraint order applies and (in accordance with the court's directions) to manage or otherwise deal with the property;
(b) require a person who has possession of property in respect of which a receiver is appointed to give him possession of it.

30

(3) An appointment of a receiver may be made subject to exceptions or conditions.

(4) If a restraint order is in force a constable may seize any realisable property to which it applies to prevent its removal from Northern Ireland.

35 (5) Property seized under subsection (4) must be dealt with in accordance with the directions of the court which made the order.

195.—(1) The person applying for a restraint order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which— *Orders:
supplementary.
1970 c. 18 (N.I.).*

- 40 (a) the application relates, or

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(b) a restraint order made in pursuance of the application relates.

(2) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for a restraint order relates, make an entry inhibiting any dealing with the land without the consent of the High Court. 5

(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under subsection (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(4) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order discharging the restraint order may require that the entry be vacated. 10

(5) A charge imposed by a charging order has the same effect and is enforceable in the same courts and in the same manner as an equitable charge created by the person or persons who are entitled to make such charges over the realisable property; but this is subject to anything done under section 196 or 202 and to rules of court. 15

1970 c. 18 (N.I.). (6) If a charging order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970, an order discharging the charging order may require the entry to be vacated. 20

(7) In this section—

“Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970; and

1954 c. 33 (N.I.). “Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954. 25

Realisation of property: general

Confiscation order made: receivers.

196.—(1) This section applies if—

- (a) a confiscation order is made,
- (b) it is not satisfied, and 30
- (c) it is not subject to appeal.

(2) In such a case the Crown Court may on the application of the prosecutor exercise the powers conferred on it by this section.

(3) The court may by order appoint a receiver in respect of realisable property. 35

(4) The court may by order confer the powers listed in subsection (5) on any of these receivers—

- (a) a receiver appointed under section 194;
- (b) a receiver appointed under subsection (3) above;
- (c) a receiver appointed in pursuance of a charging order. 40

(5) These are the powers—

- (a) power to enforce a charge imposed by a charging order;
- (b) power to take possession of any realisable property, subject to any conditions or exceptions the court specifies;

(c) power to realise any realisable property, in such manner as the court may specify.

(6) The court may order any person who has possession of realisable property to give possession of it to a receiver listed in subsection (4).

5 (7) The court—

(a) may order a person holding an interest in realisable property to make to a receiver listed in subsection (4) such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

10 (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(8) Subsections (5)(b) and (c), (6) and (7) do not apply to—

(a) property for the time being subject to a charging order;

15 (b) property for the time being subject to a charge under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 or Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996.

S.I. 1990/2588
(N.I. 17).

S.I. 1996/1299
(N.I. 9).

(9) The court must not—

20 (a) confer the power mentioned in subsection (5)(a) or (c) in respect of property, or

(b) exercise the power conferred on it by subsection (7) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

25 **197.**—(1) This section applies to the sums which—

(a) are in the hands of any of the receivers listed in subsection (2), and

(b) fall within subsection (3).

Application of
sums by receiver.

(2) These are the receivers—

(a) a receiver appointed under section 194;

30 (b) a receiver appointed under section 196(3);

(c) a receiver appointed in pursuance of a charging order.

(3) These sums fall within this subsection—

(a) the proceeds of the enforcement of a charge imposed by a charging order;

35 (b) the proceeds of the realisation (other than by the enforcement of such a charge) of property under section 194 or 196;

(c) any sums (other than those mentioned in paragraph (a) or (b)) in which the defendant holds an interest.

(4) The sums must be applied as follows—

40 (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 214(5) or (6);

(b) second, they must be applied in making any payments directed by the High Court or the Crown Court;

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(c) third, they must be applied on the defendant's behalf towards satisfaction of any confiscation order that has been or may be made against him.

(5) If the amount payable under any confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them— 5

(a) among such persons who held (or hold) interests in the property concerned as the High Court or the Crown Court directs, and

(b) in such proportions as it directs.

(6) Before making a direction under subsection (5) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it. 10

(7) For the purposes of subsections (5) and (6) the property concerned is—

(a) the property represented by the proceeds mentioned in subsection (3)(a) or (b); 15

(b) the sums mentioned in subsection (3)(c).

(8) If a confiscation order has been made against the defendant a receiver applies sums as mentioned in subsection (4)(c) by paying them to the appropriate chief clerk on account of the amount payable under the order.

(9) The appropriate chief clerk is the chief clerk of the court at the place 20 where the confiscation order was made.

Sums received by chief clerk.

198.—(1) This section applies if a chief clerk receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 197 or otherwise).

(2) The chief clerk's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows. 25

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—

(a) are payable under this subsection by virtue of section 214(5) or (6), but 30

(b) are not already paid under section 197(4)(a).

(4) If the chief clerk received the sums under section 197 he must next apply them in payment of the receiver's remuneration and expenses.

(5) If a direction was made under section 162(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, 35 the chief clerk must next apply the sums in payment of that amount.

(6) If any amount remains after the chief clerk makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954 (application of fines) as if it were a fine. 40

1954 c. 9 (N.I.).

(7) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters—

(a) the chief clerk must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other 45 matters the same proportion as the amount specified in the direction

- under section 162(6) bears to the total amount payable under the
confiscation order; PART IV
- (b) despite the deduction under paragraph (a), the person entitled to the
compensation must be treated as having received the whole amount
to be applied in payment of it; 5
- (c) the amount deducted must be treated for the purposes of section 20
of the Administration of Justice Act (Northern Ireland) 1954 as if it
were a fine. 1954 c. 9 (N.I.).
- (8) Subsection (4) does not apply if the receiver is a member of the staff of
the Director of Public Prosecutions for Northern Ireland or of the
Commissioners of Customs and Excise; and it is immaterial whether he is a
permanent or temporary member or he is on secondment from elsewhere. 10
- 199.**—(1) If on an application for an order under section 194 or 196 the
court decides not to make one, the person who applied for the order may
appeal to the Court of Appeal against the decision. 15 Appeal to Court of
Appeal.
- (2) If on an application for an order under section 194 or 196 the court
makes an order, the following persons may appeal to the Court of Appeal in
respect of the order—
- (a) the person who applied for the order;
- (b) any person affected by the order. 20
- (3) On an appeal under subsection (1) the Court of Appeal may—
- (a) confirm the decision, or
- (b) make such order as the High Court or, as the case may be, the Crown
Court could have made.
- (4) On an appeal under subsection (2) the Court of Appeal may confirm,
quash or vary the order. 25
- 200.**—(1) An appeal lies to the House of Lords from a decision of the
Court of Appeal on an appeal under section 199. Appeal to House of
Lords.
- (2) An appeal under this section lies at the instance of any person who
was a party to the proceedings before the Court of Appeal. 30
- (3) On an appeal under this section the House of Lords may make such
order as it believes is appropriate.
- 201.**—(1) This section applies to money which— Seized money.
- (a) is held by a person, and
- (b) is held in an account maintained by him with a bank or a building
society. 35
- (2) This section also applies to money which is held by a person and
which—
- (a) has been seized by a constable under Article 21 of the Police and
Criminal Evidence (Northern Ireland) Order 1989 (general power
of seizure etc), and S.I. 1989/1341
(N.I. 12). 40
- (b) is held in an account maintained by a police force with a bank or a
building society.

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- PART IV (3) This section also applies to money which is held by a person and which—
- (a) has been seized by an officer of Customs and Excise under Article 21 of the 1989 Order as applied by order made under Article 85(1) of that Order, and 5
 - (b) is held in an account maintained by the Commissioners of Customs and Excise with a bank or a building society.
- (4) This section applies if the following conditions are satisfied—
- (a) a restraint order has effect in relation to money to which this section applies; 10
 - (b) a receiver has not been appointed under section 196(3) in relation to the money;
 - (c) a confiscation order is made against the person by whom the money is held;
 - (d) the Director has not been appointed as the enforcement authority for the confiscation order; 15
 - (e) any period allowed under section 160 for payment of the amount ordered to be paid under the confiscation order has ended.
- (5) In such a case on the application of the prosecutor a magistrates court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order. 20
- (6) If a bank or building society fails to comply with an order under subsection (5)—
- (a) the magistrates' court may order it to pay an amount not exceeding £5,000, and 25
 - (b) for the purposes of the Magistrates' Courts (Northern Ireland) Order 1981 the sum is to be treated as adjudged to be paid by a conviction of the magistrates' court.
- (7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)(a). 30
- (8) For the purposes of this section—
- (a) a bank is a deposit-taking business within the meaning of the Banking Act 1987; 1987 c. 22.
 - (b) "building society" has the same meaning as in the Building Societies Act 1986; 1986 c. 53.
 - (c) an officer of Customs and Excise is an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; 1979 c. 2.
 - (d) "appropriate chief clerk" has the same meaning as in section 197(9). 40

Realisation of property: Director

- Director as enforcement authority: receivers.
- 202.**—(1) This section applies if—
- (a) a confiscation order is made, and
 - (b) the Director is appointed as the enforcement authority for the order under section 183; 45
- and if this section applies section 196 does not apply.

(2) The Crown Court must make an order for the appointment of a receiver.

(3) An order under subsection (2)—

- 5 (a) must confer power on the Director to nominate the person who is to be the receiver, and
(b) takes effect when the Director nominates that person.

(4) The Director must not nominate a person under subsection (3) unless at the time he does so the confiscation order—

- 10 (a) is not satisfied, and
(b) is not subject to appeal.

(5) In an order under subsection (2) the court may confer the following powers on a receiver appointed under this section—

- 15 (a) power to enforce a charge imposed by a charging order;
(b) power to take possession of any realisable property, subject to any conditions or exceptions the court specifies;
(c) power to realise any realisable property, in such manner as the court may specify.

(6) An order under subsection (2) may require any person who has possession of realisable property to give possession of it to a receiver appointed under this section.

(7) On the application of the Director, the court—

- 25 (a) may order a person holding an interest in realisable property to make to a receiver appointed under this section such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(8) Subsections (5)(b) and (c), (6) and (7) do not apply to—

- 30 (a) property for the time being subject to a charging order;
(b) property for the time being subject to a charge under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 or Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996.

S.I. 1990/2588
(N.I. 17).
S.I. 1996/1299
(N.I. 9).

(9) The court must not—

- 35 (a) confer the power mentioned in subsection (5)(a) or (c) in respect of property, or
(b) exercise the power conferred on it by subsection (7),

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

40 (10) A person nominated to be the receiver under subsection (3) may be a member of the staff of the Agency.

203.—(1) This section applies to sums which—

- (a) are in the hands of a receiver appointed under section 202, and
(b) fall within subsection (2).

Application of
sums by Director's
receiver.

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- (2) These sums fall within this subsection—
- (a) the proceeds of the enforcement of a charge imposed by a charging order;
 - (b) the proceeds of the realisation (other than by the enforcement of such a charge) of property under section 194 or 202; 5
 - (c) any sums (other than those mentioned in paragraph (a) or (b)) in which the defendant holds an interest.
- (3) The sums must be applied as follows—
- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 214(5) or (6); 10
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order by being paid to the Director 15 on account of the amount payable under it.
- (4) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—
- (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and 20
 - (b) in such proportions as it directs.
- (5) Before making a direction under subsection (4) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (6) For the purposes of subsections (4) and (5) the property concerned 25 is—
- (a) the property represented by the proceeds mentioned in subsection (2)(a) or (b);
 - (b) the sums mentioned in subsection (2)(c).

Sums received by Director.

204.—(1) This section applies if the Director receives sums on account of 30 the amount payable under a confiscation order (whether the sums are received under section 203 or otherwise).

(2) The Director's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a 35 person acting as an insolvency practitioner as—

- (a) are payable under this subsection by virtue of section 214(5) or (6), but
- (b) are not already paid under section 203(3)(a).

(4) If— 40

- (a) the Director received the sums under section 203, and
- (b) the receiver is not a member of the staff of the Agency,

he must next apply them in payment of the receiver's remuneration and expenses.

(5) If a direction was made under section 162(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the Director must next apply the sums in payment of that amount.

5 (6) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters—

10 (a) the Director must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 162(6) bears to the total amount payable under the confiscation order;

(b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it.

15 **205.**—(1) If the court makes an order under section 202(2) or (7), the following persons may appeal to the Court of Appeal in respect of the order—

Appeal to Court of Appeal.

(a) the Director;

(b) any person affected by the order.

20 (2) On an appeal under subsection (1) relating to section 202(2), the Court of Appeal may confirm or vary the order.

(3) On an appeal under subsection (1) relating to section 202(7), the Court of Appeal may confirm, quash or vary the order.

25 **206.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 205.

Appeal to House of Lords.

(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

30 (3) On an appeal from a decision of the Court of Appeal under this section the House of Lords may confirm or vary the order referred to in section 205(1), if the appeal relates to section 202(2).

(4) On an appeal from a decision of the Court of Appeal under this section the House of Lords may confirm, quash or vary the order referred to in section 205(1), if the appeal relates to section 202(7).

Exercise of powers

35 **207.**—(1) This section applies to—

Powers of court and receiver.

(a) the powers conferred on a court by sections 188 to 203;

(b) the powers of a receiver appointed under section 194, 196(3) or 202 or in pursuance of a charging order.

(2) The powers—

40 (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;

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- (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property or of the proceeds of realisation;
 - (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant; 5
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following rules—
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him; 10
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; 15
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be realised if the court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be realised. 20
- (5) An order under subsection (4) may be revoked.

Protection of receivers.

- 208.**—(1) If a receiver appointed under section 194, 196(3) or 202 or in pursuance of a charging order—
- (a) takes action in relation to property which is not realisable property, 25
 - (b) would be entitled to take the action if it were realisable property, and
 - (c) believes on reasonable grounds that he is entitled to take the action,
- he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

Receivers: incidental applications.

- 209.**—(1) This section applies to— 30
- (a) a receiver appointed under section 194, 196(3) or 202;
 - (b) a receiver appointed in pursuance of a charging order.
- (2) The receiver may apply—
- (a) to the High Court if he is appointed under section 194 or in pursuance of a charging order; 35
 - (b) to the Crown Court if he is appointed under section 196(3) or 202,
- for an order giving directions as to the exercise of his powers.
- (3) The following persons may apply to the High Court if the receiver is appointed under section 194 or in pursuance of a charging order or to the Crown Court if the receiver is appointed under section 196(3) or 202— 40
- (a) any person affected by action taken by the receiver;
 - (b) any person who may be affected by action the receiver proposes to take.

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(4) On an application under subsection (2) or (3) the court may make such order as it believes is appropriate.

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210.—(1) If on an application for an order under section 209 the court makes an order, the following persons may appeal to the Court of Appeal in respect of the order—

Appeal to Court of Appeal.

- (a) the person who applied for the order;
- (b) any person affected by the order;
- (c) the receiver.

(2) On an appeal under subsection (1) the Court of Appeal may—

- 10 (a) confirm the order, or
- (b) make such order as it believes is appropriate.

211.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 210.

Appeal to House of Lords.

(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

15 (3) On an appeal under this section the House of Lords may make such order as it believes is appropriate.

Insolvency

212.—(1) If a person who holds realisable property is adjudged bankrupt the following property is excluded from his estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989 (the 1989 Order)—

Bankruptcy.

- 20 (a) property for the time being subject to a restraint order which was made before the order adjudging him bankrupt;
- 25 (b) any proceeds of property realised by virtue of section 194(1), 196(5)(c) or (7) or 202(5)(c) or (7) if the proceeds are for the time being in the hands of a receiver appointed under section 194, 196(3) or 202.

S.I. 1989/2405
(N.I. 19).

(2) If a person is adjudged bankrupt the powers conferred on a court by sections 188 to 203, and the powers of a receiver appointed under section 194, 196(3) or 202, must not be exercised in relation to the following property—

- 30 (a) property which is for the time being comprised in the bankrupt's estate for the purposes of Part IX of the 1989 Order;
- 35 (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under Article 280 or 281 of the 1989 Order (after-acquired property etc);
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of the 1989 Order.

40 (3) But—

- (a) nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (2);

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- PART IV
- (b) subsection (2) does not affect the enforcement of a charging order made before the order adjudging the person bankrupt;
 - (c) subsection (2) does not affect the enforcement of a charging order in respect of property which was subject to a restraint order when the order adjudging the person bankrupt was made. 5
- (4) If in the case of a debtor an interim receiver stands at any time appointed under Article 259 of the 1989 Order and any property of the debtor is then subject to a restraint order, the powers conferred on the receiver by virtue of that Order do not apply to property then subject to the restraint order. 10
- (5) Subsections (6) and (7) apply if a person who is adjudged bankrupt has made a tainted gift (whether directly or indirectly).
- (6) No order may be made under Article 312 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when— 15
- (a) proceedings for an offence have been started against the person and have not been concluded,
 - (b) an application has been made in respect of him under section 168, 169, 170, 176 or 177 and has not been concluded, or
 - (c) any property of the recipient of the tainted gift is subject to a restraint order or a charging order. 20
- (7) Any order made under Article 312 or 367 of the 1989 Order after the conclusion of the proceedings or application mentioned in subsection (6) must take into account any realisation under this Part of property held by the recipient of the tainted gift. 25
- (8) In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1st October 1991 (when the 1989 Order came into force) this section has effect with these modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Order substitute references to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
 - (b) omit subsection (2)(b);
 - (c) for the reference in subsection (2)(c) to Article 254(2)(c) of the 1989 Order substitute a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980;
 - (d) for the reference in subsection (3) to the 1989 Order substitute a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980; 40
 - (e) for the references in subsection (4) to an interim receiver appointed as there mentioned and the 1989 Order substitute (respectively) references to a receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872 and that Act;
 - (f) for the references in subsection (6) to Articles 312 and 367 of the 1989 Order substitute (respectively) references to section 12 of the Bankruptcy Amendment Act (Northern Ireland) 1929 and section 10 of the Conveyancing Act (Ireland) 1634. 45
- S.I. 1980/561 (N.I. 4).
- 1872 c. 58.
- 1929 c. 1 (N.I.).
1634 c. 3.

213.—(1) If a company holds realisable property, and an order for its winding up is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—

- 5 (a) property for the time being subject to a restraint order which was made before the relevant time;
- (b) any proceeds of property realised by virtue of section 194(1), 196(5)(c) or (7) or 202(5)(c) or (7) if the proceeds are for the time being in the hands of a receiver appointed under section 194, 196(3) or 202.
- 10

(2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers conferred on a court by sections 188 to 203, and the powers of a receiver appointed under section 194, 196(3) or 202, must not be exercised in the way mentioned in subsection (3) below in relation to any realisable property—

15

- (a) which is held by the company, and
- (b) in relation to which the functions of the liquidator are exercisable.

(3) The powers must not be exercised—

- (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;
- 20 (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(4) But—

- (a) nothing in the Insolvency (Northern Ireland) Order 1989 must be taken to restrict (or enable the restriction of) the exercise of the powers mentioned in subsections (2) and (3);
- 25 (b) subsections (2) and (3) do not affect the enforcement of a charging order made before the relevant time;
- 30 (c) subsections (2) and (3) do not affect the enforcement of a charging order in respect of property which was subject to a restraint order at the relevant time.

(5) In this section "company" means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989.

35

(6) The relevant time is—

- (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- 40 (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;
- (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.

(7) In a case where a winding up of a company commenced or is treated as having commenced before 1st October 1991, this section has effect with the substitution for references to the Insolvency (Northern Ireland) Order 1989 of references to the Companies (Northern Ireland) Order 1986.

45

PART IV
Insolvency
practitioners.

- 214.**—(1) Subsections (2) and (3) apply if—
- (a) a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order, and
 - (b) at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.
- (2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.
- (3) He has a lien on the property or the proceeds of its sale—
- (a) for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which he purported to make the seizure or disposal, and
 - (b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.
- (4) Subsection (2) does not prejudice the generality of any provision of the Insolvency (Northern Ireland) Order 1989 or any other provision which confers protection from liability on him.
- (5) If a person acting as an insolvency practitioner incurs expenses in respect of property subject to a restraint order and does not know (and has no reasonable grounds to believe) that the property is subject to a restraint order, he is entitled to payment of the expenses under section 197(4), 198(3), 203(3) or 204(3) (whether or not he has seized or disposed of the property).
- (6) If a person acting as an insolvency practitioner incurs expenses which are not expenses in respect of property subject to a restraint order and which (but for the effect of a restraint order) might have been met by taking possession of and realising property subject to the restraint order, he is entitled to payment of the expenses under section 197(4), 198(3), 203(3) or 204(3) (whether or not he has seized or disposed of any property).
- (7) The expression “person acting as an insolvency practitioner” includes the official receiver acting as receiver or manager of the property concerned.
- (8) Subject to subsection (7), the expression “person acting as an insolvency practitioner” must be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989 (interpretation) except that for the purposes of such construction paragraph (5) of that Article (which includes provision to the effect that nothing in the Article is to apply to anything done by the official receiver) must be ignored.

S.I. 1989/2405
(N.I. 19).

Committal

Committal by
magistrates' court.

- 215.**—(1) This section applies if—
- (a) a defendant is convicted of an offence by a magistrates' court, and
 - (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 154.
- (2) In such a case the magistrates' court—
- (a) must commit the defendant to the Crown Court in respect of the offence, and

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(b) may commit him to the Crown Court in respect of any other offence falling within subsection (3). PART IV

(3) An offence falls within this subsection if—

5 (a) the defendant has been convicted of it by the magistrates' court or any other court, and

(b) the magistrates' court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences—

(a) section 154 applies accordingly, and

10 (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 216.

(5) A committal under this section may be in custody or on bail.

15 **216.**—(1) If a defendant is committed to the Crown Court under section 215 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 154). Sentencing by Crown Court.

(2) The Crown Court—

(a) must inquire into the circumstances of the case, and

20 (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

Compensation

217.—(1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just. Serious default.

25 (2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.

(3) The first condition is also satisfied if proceedings for an offence are started against a person and—

(a) they do not result in his conviction for the offence, or

30 (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.

(4) If subsection (2) applies the second condition is that—

(a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and

35 (b) the investigation would not have continued if the default had not occurred.

(5) If subsection (3) applies the second condition is that—

40 (a) in any criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and

(b) the proceedings would not have been started or continued if the default had not occurred.

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PART IV	(6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.	
	(7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.	5
	(8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.	
	(9) Compensation under this section is payable to the applicant and—	
	(a) if the person in default was or was acting as a member of the Police Service of Northern Ireland, the compensation is payable by the Chief Constable;	10
	(b) if the person in default was a member of the Director of Public Prosecutions for Northern Ireland or was acting on his behalf, the compensation is payable by the Director;	
1979 c. 2.	(c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;	15
	(d) if the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, the compensation is payable by the Commissioners of Customs and Excise;	
	(e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.	20
Order varied or discharged.	218. —(1) This section applies if—	
	(a) the court varies a confiscation order under section 178 or discharges one under section 179, and	25
	(b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.	
	(2) The court may order the payment of such compensation as it believes is just.	30
	(3) Compensation under this section is payable—	
	(a) to the applicant;	
	(b) by the Lord Chancellor.	
	<i>Enforcement abroad</i>	
Enforcement abroad.	219. —(1) This section applies if—	35
	(a) any of the conditions in section 188 is satisfied,	
	(b) the prosecutor or the Director believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and	
	(c) the prosecutor or the Director (as the case may be) sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.	40
	(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.	45

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—

- (a) any person is prohibited from dealing with realisable property;
- 5 (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

10 (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—

- (a) that property has been realised in pursuance of a request under subsection (3),
- 20 (b) the date of realisation, and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Interpretation

220.—(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied. Criminal lifestyle.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—

- (a) it is a drug trafficking offence;
- (b) it is a money laundering offence;
- (c) it is specified in regulations under this section by the Secretary of State;
- 35 (d) it constitutes conduct forming part of a course of criminal activity;
- (e) it is an offence committed over a period of at least six months.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

- (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
- 40 (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of
- 45 an offence constituting conduct from which he has benefited.

PART IV
Conduct and
benefit.

- 221.**—(1) Criminal conduct is conduct which—
- (a) constitutes an offence in Northern Ireland, or
 - (b) would constitute such an offence if it had occurred in Northern Ireland.
- (2) General criminal conduct of the defendant is all his criminal conduct, 5
and it is immaterial—
- (a) whether conduct occurred before or after the passing of this Act;
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.
- (3) Particular criminal conduct of the defendant is all his criminal conduct 10
which falls within the following paragraphs—
- (a) conduct which constitutes the offence or offences concerned;
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence (or any of the offences) concerned; 15
 - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.
- (4) A person benefits from conduct if he obtains property as a result of or in 20
connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in 25
connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

Tainted gifts.

- 222.**—(1) Subsections (2) and (3) apply if— 30
- (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
 - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the 35
relevant day.
- (3) A gift is also tainted if it was made by the defendant at any time and was of property—
- (a) which was obtained by the defendant in connection with his general criminal conduct, or
 - (b) which (in whole or part and whether directly or indirectly) 40
represented in the defendant's hands property obtained by him in connection with his general criminal conduct.
- (4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.

- (5) A gift is tainted if it was made by the defendant at any time after—
- (a) the date on which the offence concerned was committed, or
 - (b) if there are two or more offences and they were committed on different dates, the date of the earliest.
- 5 (6) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (7) The relevant day is the first day of the period of six years ending with—
- 10 (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

- 223.**—(1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the
15 consideration provided by the defendant, he is to be treated as making a gift.
- (2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
- (a) whose numerator is the difference between the two values mentioned
20 in subsection (1), and
 - (b) whose denominator is the value of the consideration provided by the defendant.
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

Gifts and their recipients.

- 224.**—(1) This section applies for the purpose of deciding the value at any
25 time of property then held by a person.
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any order listed in subsection (4).
- 30 (4) The orders are—
- (a) a charging order;
 - (b) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 or Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996.
- 35 (5) This section has effect subject to sections 225 and 226.

Value: the basic rule.

S.I. 1990/2588 (N.I. 17).

S.I. 1996/1299 (N.I. 9).

- 225.**—(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.
- 40 (2) The value of the property at the material time is the greater of the following—
- (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;

Value of property obtained from conduct.

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PART IV	(b) the value (at the material time) of the property found under subsection (3).	
	(3) The property found under this subsection is as follows—	
	(a) if the person holds the property obtained, the property found under this subsection is that property;	5
	(b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;	
	(c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.	10
	(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 224.	
Value of tainted gifts.	226. —(1) The value at any time (the material time) of a tainted gift is the greater of the following—	15
	(a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;	
	(b) the value (at the material time) of the property found under subsection (2).	
	(2) The property found under this subsection is as follows—	20
	(a) if the recipient holds the property given, the property found under this subsection is that property;	
	(b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;	25
	(c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.	
	(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 224.	30
Free property. 1971 c. 38. 2000 c. 11. 1975 c. 21. 1995 c. 43. S.I. 1994/2795 (N.I. 15).	227. Property is free unless an order is in force in respect of it under— (a) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders), (b) section 143 of the Sentencing Act (deprivation orders), (c) section 23 or 111 of the Terrorism Act 2000 (forfeiture orders), (d) section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property), (e) Part II of the Proceeds of Crime (Scotland) Act 1995 (forfeiture of property used in crime), or (f) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (deprivation orders).	40
Realisable property.	228. Realisable property is— (a) any free property held by the defendant;	

(b) any free property held by the recipient of a tainted gift.

PART IV

229.—(1) Property is all property wherever situated and includes—

Property: general provisions.

- (a) money;
 - (b) all forms of real, personal, heritable or moveable property;
 - 5 (c) things in action and other intangible or incorporeal property.
- (2) The following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - 10 (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to property vested in his trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985) or liquidator;
 - 15 (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
 - (f) references to an interest, in relation to property, include references to a right.

1985 c. 66.

20 **230.**—(1) Proceedings for an offence are started—

Proceedings.

- (a) when a justice of the peace issues a summons or warrant under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- 25 (c) when an indictment is preferred under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.

S.I. 1981/1675 (N.I. 26).

1969 c. 15 (N.I.).

(2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.

30 (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.

(4) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court, the Court of Appeal or the House of Lords) the proceedings are concluded—

- 35 (a) when the order is satisfied or discharged, or
- (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

(5) If the defendant is convicted on one or more counts in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply—

- 40 (a) if an application for leave to appeal under section 180(2) is refused, the proceedings are concluded when the decision to refuse is made;
- (b) if the time for applying for leave to appeal under section 180(2) expires without an application being made, the proceedings are
- 45 concluded when the time expires;

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PART IV

- (c) if on an appeal under section 180(2) the Court of Appeal confirms the Crown Court's decision and an application for leave to appeal under section 182 is refused, the proceedings are concluded when the decision to refuse is made;
 - (d) if on appeal under section 180(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 182 expires without an application being made, the proceedings are concluded when the time expires; 5
 - (e) if on appeal under section 180(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 182 the House of Lords confirms the Court of Appeal's decision, the proceedings are concluded when the House of Lords confirms the decision; 10
 - (f) if on appeal under section 180(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision. 15
- (6) In applying subsection (5) any power to extend the time for making an application for leave to appeal must be ignored. 20
- (7) In applying subsection (5) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

Applications.

- 231.**—(1) An application under section 168, 169, 176 or 177 is concluded—
- (a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision; 25
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied;
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made. 30
- (2) An application under section 170 or 171 is concluded—
- (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
 - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied; 35
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

Confiscation orders.

- 232.**—(1) A confiscation order is satisfied when no amount is due under it. 40
- (2) In applying section 231 for the purposes of sections 212(6) and (7) a confiscation order is also satisfied when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.
- (3) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored. 45

Proceeds of Crime

- 233.**—(1) Each of the following offences under the Misuse of Drugs Act 1971 is a drug trafficking offence—
- PART IV
Drug trafficking offences.
1971 c. 38.
- 5 (a) an offence under section 4(2) or (3) (production and supply of controlled drugs);
- (b) an offence under section 5(3) (possession of controlled drugs);
- (c) an offence under section 8 (permitting certain activities);
- (d) an offence under section 20 (assisting in or inducing commission outside UK of offence punishable under a corresponding law).
- (2) An offence is a drug trafficking offence if—
- 10 (a) it is an offence under section 50(2) or (3), 68(2) or 170 of the Customs and Excise Management Act 1979 (import, export and fraudulent evasion), and 1979 c. 2.
- (b) it is an offence in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971.
- 15 (3) Each of the following offences under the Criminal Justice (International Co-operation) Act 1990 is a drug trafficking offence— 1990 c. 5.
- (a) an offence under section 12 (manufacture or supply of substance specified in Schedule 2 to that Act);
- 20 (b) an offence under section 19 (using ship for illicit traffic in controlled drugs).
- (4) Each of the following offences is a drug trafficking offence—
- (a) an offence under Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of conspiracy to commit any of the offences falling within subsections (1) to (3); S.I. 1983/1120 (N.I. 13).
- 25 (b) an offence under Article 3 of that Order of attempting to commit any of those offences;
- (c) an offence of inciting another person to commit any of those offences (whether under section 19 of the Misuse of Drugs Act 1971 or at common law);
- 30 (d) an offence of aiding, abetting, counselling or procuring the commission of any of those offences.
- 234.**—(1) An offence under section 311, 312 or 313 is a money laundering offence. Money laundering offences.
- 35 (2) Each of the following is a money laundering offence—
- (a) attempt, conspiracy or incitement to commit an offence specified in subsection (1);
- (b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).
- 40 **235.**—(1) A reference to the offence (or offences) concerned must be construed in accordance with section 154(9). Other interpretative provisions.
- (2) A reference to a constable includes a reference to an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.

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- (3) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
- (4) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted). 5
- (5) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.
- (6) The following paragraphs apply to references to orders—
- (a) a confiscation order is an order under section 154;
 - (b) a restraint order is an order under section 189; 10
 - (c) a charging order is an order under section 190.
- (7) Sections 220 to 234 and this section apply for the purposes of this Part.

General

- Procedure on appeal to the Court of Appeal. 15
- 1980 c. 47. 20
- Procedure on appeal to the House of Lords.
- Crown Court Rules. 25
- 1978 c. 23. 30
- 236.**—(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.
- (2) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (subject to any specified modifications).
- 237.** In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (subject to any specified modifications).
- 238.** In relation to—
- (a) proceedings under this Part, or
 - (b) receivers appointed under this Part,
- Crown Court Rules may make provision corresponding to provision in rules of court (within the meaning of section 120(1) of the Judicature (Northern Ireland) Act 1978).

PART V

RECOVERY OF THE PROCEEDS OF UNLAWFUL CONDUCT: ENGLAND AND WALES

Introductory

5 **239.** This Part has effect generally for the purpose of enabling the Director to recover in civil proceedings before the High Court property which is, or represents, property obtained through unlawful conduct. Purpose of this Part.

240.—(1) Property means property of any kind (whether situated in the United Kingdom or elsewhere), including— Property and possession of property.

- 10 (a) money,
(b) all forms of real, personal, heritable or moveable property,
(c) things in action and other intangible or incorporeal property,
and includes, where the context allows, a part of or interest in property.

(2) In relation to property—
15 “interest” includes right,
“part” includes portion.

(3) A person is in possession of property if the property or a part of it or interest in it—
20 (a) is in his possession or under his control (whether or not the possession or control is lawful), or
(b) belongs to him.

241.—(1) Conduct carried out in England and Wales is unlawful conduct if it is unlawful under the criminal law of England and Wales. Property obtained through unlawful conduct.

- (2) Conduct which—
25 (a) is carried out in another part of the United Kingdom, or in a country outside the United Kingdom, and is unlawful under the criminal law of the place where it is carried out, and
(b) if it were carried out in England and Wales, would be unlawful under the criminal law of England and Wales,
30 is also unlawful conduct.

(3) The court must decide on a balance of probabilities whether it is proved that any matters alleged to constitute unlawful conduct have occurred.

35 (4) Whether or not the person who carried out the conduct might be found guilty of a corresponding offence under the law of the place or places concerned is immaterial to the court’s decision.

(5) A person obtains property through unlawful conduct (whether his own conduct or another’s) if he obtains property by or in return for the conduct.

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PART V	(6) In deciding whether any property was obtained through unlawful conduct— (a) it is immaterial whether or not any cash, or any goods or services, were provided in order to put the person in question in a position to carry out the conduct, (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.	5
Obtaining and disposing of property.	242. —(1) References to obtaining or disposing of property are to be read in accordance with this section. (2) Obtaining or disposing of property includes obtaining or disposing of possession of it. (3) Disposing of property includes— (a) disposing of a part of it, (b) disposing of, or granting, an interest in it. (4) Making a payment (in cash or otherwise) is a disposal of property. (5) The circumstances in which property is disposed of and obtained include those where it passes under a will or intestacy or by operation of law. (6) A person is only to be treated as having obtained property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.	10 15
Granting interests.	243. —(1) This section applies if a person in possession of property which may be recovered in proceedings under this Part grants an interest in the property. (2) That interest, and the property in which it subsists, are to be treated as if— (a) each had existed as a separate interest in his possession since he obtained the original property, and (b) each had been obtained by him in the same circumstances as those in which he obtained the original property. (3) Accordingly, on his granting the interest— (a) where the original property is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct, (b) where the original property represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.	25 30 35
Recoverable property.	<p style="text-align: center;"><i>Recoverable property</i></p> 244. —(1) Property which may be recovered in proceedings under this Part is referred to as recoverable property. (2) Property is recoverable in relation to a person if it is recoverable in proceedings under this Part against him or would be so recoverable if such proceedings were brought.	40

Proceeds of Crime

(3) In order to decide whether property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

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5 **245.**—(1) The Director has a right, subject to the following provisions of this Part, to recover property obtained through unlawful conduct.

Right to recover property obtained through unlawful conduct.

(2) The Director's right is enforceable in proceedings under this Part against a person who is—

- (a) the person who through the conduct obtained the property, or
- (b) a person into whose hands the Director may follow the property;

10 and such proceedings may also be brought after the person has disposed of the property.

(3) The Director may follow property into the hands of a person obtaining it on a disposal by—

- (a) the person who through the conduct obtained the property, or
- 15 (b) a person into whose hands the Director may (by virtue of this subsection) follow the property.

This subsection is subject to section 249.

20 **246.**—(1) The Director's right to recover property obtained through unlawful conduct ("the original property") is also enforceable in proceedings under this Part by the recovery of property which represents the original property.

Tracing property, etc.

(2) Property may be recovered in such proceedings against a person in whose hands it represents the original property; and such proceedings may also be brought after the person has disposed of the property.

25 (3) If—

- (a) property is recoverable property by virtue of section 245 in relation to any person, and
- (b) the person enters into a transaction by which he disposes of it and obtains other property in place of it,

30 the other property represents in his hands the original property.

(4) Subsections (5) and (6) apply if a person disposes of property which, in his hands, represents the original property.

35 (5) The Director may follow the property into the hands of the person who obtains it (and it continues in the person's hands to represent the original property).

This subsection is subject to section 249.

(6) If the disposal is part of a transaction by which the person who disposes of the property obtains other property in place of it, the other property also represents in his hands the original property.

40 **247.**—(1) If recoverable property in the possession of any person is mixed with other property (whether in the possession of that person or another), subsection (2) applies to so much of the mixed property as is attributable to the recoverable property.

Mixing property.

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(2) It is to be treated as a part of the mixed property which, in the hands of the person in possession of it, represents the property obtained through unlawful conduct.

(3) The circumstances in which recoverable property is mixed with other property include (for example) those where the recoverable property is used—

- (a) to increase funds held in a bank account,
- (b) in part payment for the acquisition of an asset,
- (c) for the restoration or improvement of land,
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Exceptions for victims of theft, etc.

248.—(1) In proceedings under this Part for the recovery of any property, a person who claims that the property belongs to him may apply for a declaration under this section.

(2) If it appears to the court that the person meets the following condition, the court may make a declaration to that effect.

(3) Property to which a declaration under this section applies is not to be treated as recoverable property.

(4) The condition is that the person—

- (a) was deprived of lawful possession or control of the property, or of property which it represents, by the unlawful conduct in question, and
- (b) has a valid claim to the property.

(5) The unlawful conduct is—

- (a) the conduct by which the property, or the property which it represents, was obtained, or
- (b) if the property, or the property which it represents, was obtained by receiving stolen goods, the theft to which the receiving related, and unlawful conduct includes blackmail and obtaining property by deception.

(6) A person who, by virtue of the unlawful conduct, has claims both to the property in question and to property which represents it, or which it represents, must choose which claim he wishes to pursue and the other claim is not to be treated as valid for the purposes of this section.

(7) References in this section to property representing property obtained through unlawful conduct include cases where the unlawful conduct in question is not the conduct in issue in the proceedings.

(8) The applicant must serve a copy of the application notice on the respondent, the Director, the interim receiver (if there is one) and any other person who may be affected by the declaration.

Exceptions for bona fide purchasers, etc.

249.—(1) If—

- (a) a person disposes of recoverable property, and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the Director may not follow the property into that person's hands and, accordingly, the property ceases to be recoverable.

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	(2) If, on making the disposal, the person also obtains other property in place of it, this section does not affect any right of the Director to recover that other property.	PART V
5	(3) If property is disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.	
	250. Property is recovered in proceedings under this Part by an order in respect of the property under section 266 (order vesting property in trustee for civil recovery, requiring payment to be made to trustee etc.) taking effect or being complied with.	Nature of recovery.
10	251. If property is recoverable, it includes any profits which have accrued in respect of the property at a time when the property was recoverable.	Recoverable property: accruing profits.
	252. Proceedings under this Part against any person for the recovery of property may be taken in respect of—	Property to which proceedings for recovery may apply.
15	(a) any property which is recoverable property or a part of which, or an interest in which, is recoverable, and	
	(b) every part of, or interest in, the property referred to in paragraph (a).	
	<i>Interim receiving orders</i>	
20	253.— (1) Where the Director may take proceedings under this Part in respect of any property, he may apply to the court for an interim receiving order (whether before or after starting the proceedings).	Application for interim receiving order.
	(2) An interim receiving order means an order for—	
	(a) the detention, custody or preservation of property in respect of which the proceedings under this Part may be taken, and	
	(b) the appointment of an interim receiver.	
25	(3) An application by the Director for an interim receiving order, or for varying or setting aside the order, does not require notice.	
	(4) The court is not to make an interim receiving order unless it is satisfied that the conditions in subsections (5) and (6) are met.	
30	(5) The first condition is that there is a good arguable case that the property in respect of which the application for the order is made, or a part of it or an interest in it, is recoverable property in relation to the respondent.	
	(6) The second condition is that the Director has taken all reasonable steps—	
35	(a) to establish whether or not the property in respect of which the application for the order is made, or a part of it or an interest in it, belongs to any other person, and	
	(b) if there is such a person, to establish his identity.	
40	(7) In his application for an interim receiving order, the Director must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the Agency.	

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PART V
Functions of
interim receiver.

254.—(1) An interim receiving order may authorise or require the interim receiver—

- (a) to exercise any of the powers mentioned in Schedule 3,
- (b) to take any other steps the court considers appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2). 5

(2) An interim receiving order must require the interim receiver to take any steps which the court considers necessary to establish—

- (a) whether (in relation to the respondent) the property to which the order applies, or a part of it or interest in it, is recoverable property,
- (b) whether (in relation to the respondent) there is any other recoverable property,
- (c) the identity of any other persons against whom proceedings might be taken under this Part for the recovery of the property obtained through unlawful conduct or property representing it. 10 15

(3) If—

- (a) the interim receiver deals with any property which is not property to which the order applies, and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order, 20

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Dealing with property means taking possession of it or disposing of it. 25

(4) Property is not to be treated as ceasing to be in the possession of any person merely because the interim receiver takes possession of it.

(5) Schedule 3 also contains further provisions about interim receiving orders.

Restrictions on
disposals.

255.—(1) While an interim receiving order has effect, any disposal of property to which the order applies is void, unless the disposal is— 30

- (a) made under powers conferred by the order, or
- (b) made with the consent of the court or subsequently ratified by the court.

(2) Subsection (1) does not apply to a disposal— 35

- (a) consisting of property passing under a will or intestacy or by operation of law, or
- (b) made by a person of property held by him on trust for another.

(3) In this section, “disposal” means a transfer of the rights of an owner.

Restriction on
proceedings and
remedies.

256.—(1) While an interim receiving order has effect, the High Court may stay any action, execution or other legal process in respect of the property to which the order applies. 40

(2) If the High Court, or any other court, in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

5 (3) Before exercising any power conferred by subsection (2), the court must give the Director an opportunity to be heard.

257.—(1) An interim receiving order must require the interim receiver to inform the Director and the court as soon as reasonably practicable if he forms the opinion that—

Reporting.

10 (a) any property to which the order applies is not recoverable property in relation to the respondent,

(b) any other property is recoverable property in relation to the respondent, or

15 (c) any property to which the order applies is recoverable property in relation to a person other than the respondent,

or if he forms the opinion that there has been any other material change of circumstances.

(2) An interim receiving order must require the interim receiver—

20 (a) to report his findings to the court,

(b) to serve copies of his report on any person who is in possession of any property to which the order applies or who may otherwise be affected by the report.

258.—(1) The interim receiver may at any time apply to the court—

25 (a) for directions as to the exercise of his functions,

(b) for the interim receiving order to be varied or set aside.

Interim receiver: supervision and variation.

(2) The interim receiver must serve a copy of the application notice on the Director.

30 (3) Before varying or setting aside the order, the court may give the respondent, or any other person who may be interested in the application, an opportunity to be heard.

259.—(1) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property within subsection (2).

Release of part or interest not recoverable.

35 (2) Property is within this subsection if the court decides—

(a) that is not recoverable, and

(b) if it consists of a part of or interest in property, that it may be excluded without prejudicing any right of the Director to recover the property of which it is a part or in which the interest subsists.

40 (3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court considers necessary or expedient.

(4) If, by a variation under this section—

(a) a part of or interest in property is excluded from the interim receiving order, and

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PART V	(b) the property of which it is a part or in which the interest subsists is subsequently vested in the trustee for civil recovery under section 266, the vesting is to have effect with the exclusion of the part or (as the case may be) subject to the interest.	5
Release of property to meet respondent's needs.	260. —(1) The court may on an application under this section consent to the disposal for any of the following purposes of property to which an interim receiving order applies. This subsection is subject to section 261. (2) The purposes are— (a) enabling the applicant to meet his reasonable living expenses, (b) enabling the applicant to meet his reasonable legal expenses in respect of the proceedings under this Part, (c) enabling the applicant to carry on any trade, business, profession or occupation. (3) The application may be made by the respondent or another person in possession of the property in question. (4) A copy of the application notice must be served on the Director, the interim receiver and any other person who may be affected by the disposal. (5) The consent may be general or specific.	10 15 20
Release of property: supplementary.	261. —(1) If giving consent under section 260(2)(a) is opposed by the Director or the interim receiver, the court may only give the consent if the conditions in subsections (2) and (3) are met. (2) The first condition is that the applicant has made a document which— (a) sets out his assets and liabilities, and (b) states that it is a complete and accurate account of those assets and liabilities, and has verified the document by a statement of truth. (3) The second condition is that the court must be satisfied that the applicant will not be able to meet the expenses in question unless the consent is given. (4) Consent may be given for the purpose mentioned in section 260(2)(b) only in the circumstances, and to the extent, allowed by an order made by the Secretary of State. (5) Any legal expenses in respect of which the application for consent under section 260(2)(b) was made are to be assessed by the court, if the Director or the interim receiver so requests. (6) If giving consent under section 260(2)(c) is opposed by the Director, the court may only give the consent if the interim receiver so recommends.	25 30 35
Interim receiver: expenses etc.	262. The court may from time to time require the Director to deposit with the interim receiver, or otherwise secure to the interim receiver's satisfaction, any sum which the court specifies to cover his remuneration and expenses.	40

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Main proceedings

PART V

263. The Director must serve the claim form and the particulars of claim (where they are served subsequently)—

Service of proceedings.

- (a) on the respondent, and
5 (b) on any person whom the Director thinks may be in possession of any property mentioned in the form or, as the case may be, the particulars.

264.—(1) Where proceedings have been started against any person under this Part, the court may order the respondent—

Requirement to provide information etc.

- 10 (a) to provide any person specified in the order with any information about property which is or may be recoverable, or
(b) to appear before the court and answer any questions about such property.

(2) The court may make the order of its own initiative or on the
15 application of the Director.

(3) The Director must serve a copy of the application notice on the respondent.

(4) The respondent is not entitled to refuse to comply with a requirement of an order under this section on the ground that the information sought, or
20 the answer to the question, might constitute evidence that he had committed an offence.

(5) But in criminal proceedings in which the respondent is charged with an offence (other than one mentioned in subsection (6))—

- (a) no evidence relating to the information provided or answer given
25 may be adduced, and
(b) no question relating to the information or answer may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the respondent.

(6) The offences excluded from subsection (5) are—

- (a) an offence under section 2 or 5 of the Perjury Act 1911 or Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath),
35 (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

Vesting and realisation of recoverable property

265.—(1) In relation to any proceedings under this Part in which an order is
40 made under section 266 (“a recovery order”), the trustee for civil recovery is a person appointed by the court to recover any property to which the order relates.

Functions of the trustee for civil recovery.

(2) The Director must nominate a suitably qualified person for appointment as trustee for civil recovery.

PART V

(3) The functions of the trustee for civil recovery are—

- (a) to secure the detention, custody or preservation of the property vested in him by the recovery order,
- (b) in the case of property other than cash, to realise the value of the property for the benefit of the Director, and
- (c) to perform the other functions conferred on him under this Part.

(4) In performing his functions, the trustee for civil recovery acts on behalf of the Director and must comply with any directions given by the Director.

(5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Director.

(6) For the purpose of exercising his functions, the trustee for civil recovery has the powers mentioned in Schedule 4.

(7) The Director may make payments to the trustee for civil recovery in respect of his remuneration and expenses, so far as not met out of property vested in the trustee by the recovery order.

Recovery orders.

266.—(1) If in proceedings against a person under this Part the court is satisfied that any property, or a part of it or interest in it, is recoverable, the court must make a recovery order in respect of the property.

(2) The recovery order must vest the property in the trustee for civil recovery.

(3) The order may impose conditions as to the manner in which the trustee may deal with the property for the purpose of realising it.

(4) On the vesting of any property by the order, any interest of the respondent or any other person in the property or a part of it is extinguished.

(5) This section is subject to sections 259(4), 267 and 268.

Parts, interests etc. not recoverable.

267.—(1) This section applies if the court makes a recovery order in respect of any property, but—

- (a) decides that a part of the property, or an interest in the property, is not recoverable, or
- (b) the property belongs to persons jointly, and the court decides that, in the hands of a joint owner other than the respondent, it is not recoverable.

The joint owner in whose hands it is not recoverable is referred to below as an excepted joint owner.

(2) If the Director (on the one hand) and the person to whom the part or interest belongs or the excepted joint owner (on the other) agree, the recovery order may, instead of vesting the recoverable property in the trustee, require that person to make a payment to the trustee; and on the payment being made the property ceases to be recoverable.

(3) The amount of the payment is to be the amount which the Director and that person agree represents so much of the value of the property as is properly attributable to the Director.

(4) If there is more than one such part, interest or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person to whom such a part or interest belongs or who is an excepted joint owner, is to be agreed between both (or all) of them and the
5 Director.

(5) If there is no agreement under subsection (2), the recovery order may make any one or more of the provisions mentioned in subsection (7) which the court considers just and equitable, having regard to the following matters.

(6) The matters are—

- 10 (a) the rights of any person to whom the part or interest which is not recoverable belongs or who is an excepted joint owner and the value to him of those rights or, as the case may be, of his severable share (including any value which cannot be assessed in terms of cash),
15 (b) the Director's interest in receiving the realised proceeds of the recoverable property.

(7) The recovery order may provide—

- 20 (a) for the trustee to pay an amount to the person to whom any part or interest which is not recoverable belongs or who is an excepted joint owner,
(b) for the exclusion from the property to be vested in the trustee of any part which is not recoverable,
(c) for the recoverable property to be vested subject to any interest which is not recoverable.

25 **268.**—(1) This section applies if in any proceedings under this Part—

Limit on recovery.

- (a) the Director seeks to recover any property which represents property obtained through unlawful conduct, and
(b) he also seeks to recover related property in those proceedings or has previously recovered related property in proceedings under this
30 Part.

(2) Property which represents property obtained through unlawful conduct is related—

- (a) to the property which it represents ("the original property"), and
(b) to any other property which represents the original property.

35 (3) The court is not to order the recovery of any property in the proceedings if it considers that the Director's right to recover the original property has been satisfied by a previous recovery of that or related property.

(4) Subject to subsection (3), if the court considers that two or more related items of property are recoverable in the proceedings but that recovery of both or all of them is not required in order to satisfy the Director's right,
40 the court may in order to satisfy that right to the extent required—

- (a) order the recovery only of some of the items of property,
(b) order the recovery only of some of the items of property and, in the case of any of them, order the recovery only of a part, or
45 (c) order the recovery of all of the items but, in the case of any of them, order the recovery only of a part.

Proceeds of Crime

- PART V (5) In making a decision under this section, the court is to disregard—
- (a) differences in the values of the properties in question, and
 - (b) the profits referred to in section 251.

Applying realised proceeds.

- 269.**—(1) This section applies to—
- (a) cash which represents the realised proceeds of property which was 5 vested in the trustee for civil recovery by a recovery order,
 - (b) cash vested in the trustee by a recovery order,
 - (c) cash paid to the trustee under section 267.
- (2) The cash is to be applied as follows—
- (a) first, in making any payment required to be made under section 267, 10
 - (b) second, towards the trustee's expenditure,
 - (c) third, towards the trustee's remuneration.
- (3) Any of the cash which remains is to be paid to the Director.

Miscellaneous and general

Compensation.

270.—(1) If, in the case of any property to which an interim receiving 15 order has at any time applied, the court does not in the course of the proceedings decide that the property or any related property is recoverable, any person to whom the property belongs may make an application to the court for compensation.

(2) The applicant must serve a copy of the application notice on the 20 Director.

(3) If the court is satisfied that the applicant has suffered loss as a result of the order, it may require the Director to pay compensation to him.

(4) Related property—

- (a) in relation to an interest in property, means the property in which the 25 interest subsists,
- (b) in relation to a part of any property, means the property of which it is a part.

(5) The amount of compensation to be paid under subsection (3) is the amount the court considers reasonable, having regard to the loss suffered and 30 any other relevant circumstances.

(6) Where a recovery order vests property in the trustee for civil recovery, a person who—

- (a) was not served with the claim form, and
- (b) did not receive any other notice of the proceedings which would 35 have given him a reasonable opportunity to make an application for a declaration under section 248,

may apply to the Director for compensation.

(7) If, on considering the application, it appears to the Director that—

- (a) the condition in section 248(4) applied to the person, and 40
- (b) the person would have made an application under section 248 had he received any such notice of the proceedings,

the Director may, if he considers it reasonable in the circumstances, do the following.

Proceeds of Crime

- (8) The Director may—
- (a) make a payment to him of an amount which the Director considers reasonable, or
 - (b) transfer the property to him.

PART V

- 5 **271.**—(1) In this Part—
- “country” includes territory,
 - “the court” (except in section 256) means the High Court,
 - “respondent”, in relation to any application or other proceedings under this Part, means the person against whom the proceedings are
 - 10 taken,
 - “value” means market value.

General interpretation.

(2) The expressions listed below (which have effect for the purposes of this Part) have the meaning given by, or are to be interpreted in accordance with, the specified provisions.

15	<i>Expression</i>	<i>Provision</i>
	interest or part (in relation to property)	section 240(2)
	interim receiving order	section 253(2)
	obtaining or disposing (in relation to property)	section 242
20	obtaining property for value	section 242(7)
	possession (in relation to property)	sections 240(3) and 254(4)
	property	section 240(1)
25	property obtained through unlawful conduct	section 241 with section 243(3)
	property which represents property obtained through unlawful conduct	sections 243(3), 246 and 247
	recoverable property	sections 244(2), 245, 246 and 249
30	recovery order	section 265
	value (in relation to property)	subsection (1) of this section

PART VI

PART VI

REVENUE FUNCTIONS

General functions

Director's general Revenue functions.	272. —(1) For the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that—	5
	(a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), or	10
	(b) a company is chargeable to corporation tax on its profits arising in respect of a chargeable period and the profits arise as a result of the company's or another person's criminal conduct (whether wholly or partly and whether directly or indirectly).	
	(2) If the qualifying condition is satisfied the Director may serve on the Commissioners of Inland Revenue (the Board) a notice which—	15
	(a) specifies the person or the company (as the case may be) and the period, and	
	(b) states that the Director intends to carry out, in relation to the person or the company (as the case may be) and the period, such of the general Revenue functions as are specified in the notice.	20
	(3) Service of a notice under subsection (2) vests in the Director, in relation to the person or the company (as the case may be) and the period, such of the general Revenue functions as are specified in the notice; but this is subject to section 273.	25
	(4) The Director—	
	(a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);	
	(b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied.	30
	(5) Service of a notice under subsection (4) divests the Director of the functions concerned in relation to the person or the company (as the case may be) and the period.	
	(6) The vesting of a function in the Director under this section does not divest the Board or an officer of the Board of the function.	35
	(7) If—	
	(a) apart from this section the Board's authorisation would be required for the exercise of a function, and	
	(b) the function is vested in the Director under this section, the authorisation is not required in relation to the function as so vested.	40
Revenue functions regarding employment.	273. —(1) Subsection (2) applies if—	
	(a) the Director serves a notice or notices under section 272(2) in relation to a company and a period or periods, and	

(b) the company is an employer.

(2) The general Revenue functions vested in the Director do not include functions relating to any requirement which—

(a) is imposed on the company in its capacity as employer, and

5 (b) relates to a year of assessment which does not fall wholly within the period or periods.

(3) Subsection (4) applies if—

(a) the Director serves a notice or notices under section 272(2) in relation to an individual and a year or years of assessment, and

10 (b) the individual is a self-employed earner.

(4) The general Revenue functions vested in the Director do not include functions relating to any liability to pay Class 2 contributions in respect of a period which does not fall wholly within the year or years of assessment.

(5) In this section—

15 (a) “self-employed earner” has the meaning given by section 2(1)(b) of the Social Security Contributions and Benefits Act 1992;

1992 c. 4.

(b) “Class 2 contributions” must be construed in accordance with section 1(2)(c) of that Act.

20 **274.**—(1) For the purpose of the exercise by the Director of any function vested in him by virtue of this Part it is immaterial that he cannot identify a source for any income.

No-source assessments.

25 (2) An assessment made by the Director under section 29 of the Management Act (assessment where loss of tax discovered) in respect of income charged to tax under Case VI of Schedule D must not be reduced or quashed only because it does not specify (to any extent) the source of the income.

30 (3) If the Director serves on the Board a notice of withdrawal under section 272(4), any assessment made by him under section 29 of the Management Act is invalid to the extent that it does not specify a source for the income.

(4) Subsections (2) and (3) apply in respect of years of assessment whenever occurring.

Inheritance tax functions

35 **275.**—(1) For the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that—

Director’s functions: transfers of value.

(a) there has been a transfer of value within the meaning of the Inheritance Tax Act 1984, and

1984 c. 51.

(b) the value transferred by it is attributable (in whole or part) to criminal property.

40 (2) If the qualifying condition is satisfied the Director may serve on the Board a notice which—

(a) specifies the transfer of value, and

(b) states that the Director intends to carry out the Revenue inheritance tax functions in relation to the transfer.

Proceeds of Crime

PART VI	(3) Service of a notice under subsection (2) vests in the Director the Revenue inheritance tax functions in relation to the transfer.	
	(4) The Director—	
	(a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);	5
	(b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied.	
	(5) Service of a notice under subsection (4) divests the Director of the Revenue inheritance tax functions in relation to the transfer.	
	(6) The vesting of a function in the Director under this section does not divest the Board or an officer of the Board of the function.	10
Director's functions: certain settlements. 1984 c. 51.	276. —(1) For the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that—	
	(a) tax falls to be charged under Chapter III of Part III of the Inheritance Tax Act 1984 (settlements without interests in possession), and	15
	(b) the property by reference to which the charge falls to be made is (in whole or part) criminal property.	
	(2) If the qualifying condition is satisfied the Director may serve on the Board a notice which—	
	(a) specifies the settlement concerned,	20
	(b) states that the Director intends to carry out the Revenue inheritance tax functions in relation to the settlement, and	
	(c) states the period for which he intends to carry them out.	
	(3) Service of a notice under subsection (2) vests in the Director the Revenue inheritance tax functions in relation to the settlement for the period.	25
	(4) The Director—	
	(a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);	
	(b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied.	30
	(5) Service of a notice under subsection (4) divests the Director of the Revenue inheritance tax functions in relation to the settlement for the period.	
	(6) The vesting of a function in the Director under this section does not divest the Board or an officer of the Board of the function.	
	<i>General</i>	35
Functions.	277. —(1) The general Revenue functions are such of the functions vested in the Board or in an officer of the Board as relate to any of the following matters—	
	(a) income tax;	
	(b) capital gains tax;	40
	(c) corporation tax;	
	(d) national insurance contributions;	

- (e) statutory sick pay;
- (f) statutory maternity pay;
- (g) student loans.

(2) The Revenue inheritance tax functions are such functions vested in the Board or in an officer of the Board as relate to inheritance tax.

(3) But the general Revenue functions and the Revenue inheritance tax functions do not include any of the following functions—

- (a) functions relating to the making of subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978);
- (b) the function of the prosecution of offences;
- (c) the function of authorising an officer for the purposes of section 20BA of the Management Act (orders for delivery of documents);
- (d) the function of giving information under that section;
- (e) the function of approving an officer's application for the purposes of section 20C of the Management Act (warrant to enter and search premises);
- (f) the function of applying under that section.

(4) For the purposes of this section—

- (a) national insurance contributions are contributions payable under Part I of the Social Security Contributions and Benefits Act 1992;
- (b) "statutory sick pay" must be construed in accordance with section 151(1) of that Act;
- (c) "statutory maternity pay" must be construed in accordance with section 164(1) of that Act;
- (d) "student loans" must be construed in accordance with the Education (Student Loans) (Repayment) Regulations 2000.

278.—(1) This section applies in relation to the exercise by the Director of—

- (a) general Revenue functions;
 - (b) Revenue inheritance tax functions.
- (2) Paragraph (b) of section 1(5) does not apply.
- (3) The Director must apply—
- (a) any interpretation of the law which has been published by the Board;
 - (b) any concession which has been published by the Board and which is available generally to any person falling within its terms.
- (4) The Director must also take account of any material published by the Board which does not fall with subsection (3).
- (5) The Director must provide the Board with such documents and information as they consider appropriate.
- (6) "Concession" includes any practice, interpretation or other statement in the nature of a concession.

Exercise of Revenue functions

279.—(1) Criminal conduct is conduct which—

- (a) constitutes an offence in England and Wales, or

Interpretation.

Proceeds of Crime

- PART VI
- (b) would constitute such an offence if it occurred in England and Wales.
- (2) But criminal conduct does not include conduct constituting an offence relating to a matter under the care and management of the Board.
- (3) In applying subsection (1) it is immaterial whether conduct occurred before or after the passing of this Act. 5
- (4) Property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and it is immaterial—
- (a) who carried out the conduct; 10
- (b) who benefited from it.
- (5) Whether a person benefits from conduct must be construed in accordance with Part I.
- (6) Any reference to an officer of the Board includes a reference to—
- (a) a collector of taxes; 15
- (b) an inspector of taxes.
- (7) Expressions used in this Part and in the Taxes Acts have the same meaning as in the Taxes Acts (within the meaning given by section 118 of the Taxes Management Act 1970).
- 1970 c. 9.
- (8) This section applies for the purposes of this Part. 20

PART VII
INVESTIGATIONS

Introduction

- 5 **280.**—(1) This Part applies in relation to any investigation into— Investigations in
relation to which
Part applies.
- (a) whether a person has benefited from criminal conduct, or
 - (b) the extent or whereabouts of his benefit from criminal conduct.
- (2) Criminal conduct is conduct which—
- (a) constitutes an offence in England and Wales or Northern Ireland, or
 - 10 (b) would constitute such an offence if it occurred in England and Wales or Northern Ireland.
- (3) A person has benefited from conduct if he has obtained property as a result of or in connection with the conduct.
- (4) If a person has obtained a pecuniary advantage as a result of or in connection with conduct, he is to be taken to have obtained property as a result of or in connection with the conduct.
- 15 (5) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
- (6) It is immaterial—
- 20 (a) whether conduct occurred before or after the passing of this Act, and
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

Production orders

- 25 **281.**—(1) A Circuit judge or (in Northern Ireland) a county court judge may, on an application made to him by an appropriate officer, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled. Production orders.
- (2) These are appropriate officers—
- (a) the Director;
 - 30 (b) accredited financial investigators;
 - (c) constables;
 - (d) persons commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979. 1979 c. 2.
- 35 (3) The application for a production order must contain these statements—
- (a) that a person specified in the application is subject to an investigation in relation to which this Part applies;
 - (b) that the order is sought for the purposes of the investigation;
 - 40 (c) that the order is sought in relation to material, or material of a description, specified in the application;

Proceeds of Crime

- PART VII
- (d) that a person specified in the application appears to be in possession of the material.
 - (4) A production order is an order either—
 - (a) requiring the person the application for the order specifies as appearing to be in possession of material to produce it to an appropriate officer for him to take away, or
 - (b) requiring that person to give an appropriate officer access to the material,within the period stated in the order.
 - (5) The period stated in a production order is to be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

Requirements for making of production order. **282.**—(1) These are the requirements for the making of a production order. 15

(2) There must be reasonable grounds for suspecting that the person the application for the order specifies as being subject to an investigation has benefited from criminal conduct.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession of the material so specified is in possession of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

Order to grant entry. **283.**—(1) This section applies if a judge makes a production order requiring a person to give an appropriate officer access to material on any premises. 25

(2) The judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises. 30

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

Production orders: further provisions. **284.**—(1) A production order may not require a person to produce, or give access to, any material which he would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to produce material containing only the name and address of a client of his. 35

(2) A production order may not require a person to produce, or give access to, excluded material. 40

(3) A production order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise).

(4) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

5 (5) Documents produced in compliance with a production order may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(6) But if an appropriate officer has reasonable grounds for believing that—

10 (a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.

15 **285.**—(1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

Production orders:
computer
information.

20 (2) If the order is an order requiring a person to produce the material to an appropriate officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

(3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

25 **286.**—(1) A production order may be made in relation to material in the possession of an authorised government department.

Production orders:
government
departments.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material to comply with it.

30 (3) An order containing such a requirement is to be served as if the proceedings were civil proceedings against the department.

(4) If an order contains such a requirement, the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned.

35 (5) But if the order is not brought to the attention of the officer concerned within the period stated in the order, the person on whom it is served must report the reasons for the failure to a Circuit judge or (in Northern Ireland) a county court judge.

40 (6) And any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

(7) An authorised government department is a government department, or a Northern Ireland department, which is an authorised department for the purposes of the Crown Proceedings Act 1947.

Proceeds of Crime

PART VII
Supplementary.

287.—(1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.

(2) Provision may be made by Crown Court Rules as to—

- (a) the discharge and variation of production orders and orders to grant entry, and
- (b) proceedings relating to such orders.

(3) Production orders and orders to grant entry have effect as if they were orders of the Crown Court.

Search and seizure warrants

Search and seizure
warrants.

288.—(1) A Circuit judge or (in Northern Ireland) a county court judge may, on an application made to him by an appropriate officer, issue a search and seizure warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.

(2) The application for a search and seizure warrant must contain these statements—

- (a) that a person specified in the application is subject to an investigation in relation to which this Part applies;
- (b) that the warrant is sought for the purposes of the investigation;
- (c) that the warrant is sought in relation to the premises specified in the application.

(3) A search and seizure warrant is a warrant authorising an appropriate officer—

- (a) to enter and search the premises specified in the application for the warrant, and
- (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

(4) The requirements for the issue of a search and seizure warrant are—

- (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
- (b) that section 289 is satisfied in relation to the warrant.

Requirements
where production
order not
available.

289.—(1) This section is satisfied in relation to a search and seizure warrant if—

- (a) there are reasonable grounds for suspecting that the person specified in the application for the warrant has benefited from criminal conduct, and
- (b) either the first or the second set of conditions is complied with.

(2) The first set of conditions is that there are reasonable grounds for believing that—

- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought, and

(b) it would not be appropriate to make a production order for any one or more of the reasons in subsection (3).

(3) Those reasons are—

- 5 (a) that it is not practicable to communicate with any person against whom the production order could be made;
- (b) that it is not practicable to communicate with any person against whom an order to grant entry to the premises could be made;
- 10 (c) that the investigation might be seriously prejudiced unless an appropriate officer is able to secure immediate access to the material.

(4) The second set of conditions is that—

- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (5), and
- 15 (b) any one or more of the requirements in subsection (6) is met.

(5) Material falls within this subsection if it cannot be identified at the time of the application but it—

- 20 (a) relates to the person specified in the application, the question whether he has benefited from criminal conduct or any question as to the extent or whereabouts of his benefit from criminal conduct, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(6) The requirements are—

- 25 (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that entry to the premises will not be granted unless a warrant is produced;
- 30 (c) that the investigation might be seriously prejudiced unless an appropriate officer arriving at the premises is able to secure immediate entry to them.

290.—(1) A search and seizure warrant does not confer the right to seize any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court, except material containing only the name and address of a lawyer's client. Further provisions.

(2) A search and seizure warrant does not confer the right to seize excluded material.

(3) Sections 15 and 16 of the Police and Criminal Evidence Act 1984 and Articles 17 and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (search warrants: safeguards) apply in relation to search and seizure warrants but as if the references to a constable were to an appropriate officer. 1984 c. 60. S.I. 1989/1341 (N.I. 12).

(4) Section 20(1) of that Act and Article 22(1) of that Order (seizure: computerised information) apply to the power of seizure conferred on an appropriate officer by a search and seizure warrant.

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PART VII (5) For the purposes of sections 21 and 22 of that Act and Articles 23 and 24 of that Order (seized material: access and copying and retention) an investigation in relation to which this Part applies is to be treated as an investigation of or in connection with an offence.

(6) And references in those sections and Articles to a constable, and references in section 21(3) and Article 23(3) to the police, include references to an appropriate officer other than a constable.

Disclosure orders

Disclosure orders. **291.**—(1) A Circuit judge or (in Northern Ireland) a county court judge may, on an application made to him by the Director, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled. 10

(2) The application for a disclosure order must state—

- (a) that a person specified in the application is subject to an investigation in relation to which this Part applies, and 15
- (b) that the order is sought for the purposes of the investigation.

(3) A disclosure order is an order authorising the Director to give to any person the Director considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following— 20

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
- (b) provide information specified in the notice, by a time and in a manner so specified;
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified. 25

(4) Relevant information is information (whether or not contained in a document) which the Director considers to be relevant to the investigation.

(5) If a person on whom a requirement is imposed by a notice given under a disclosure order requires the production of evidence of authority to give the notice, the person is not bound to comply with the requirement unless evidence of the authority has been produced to him. 30

Requirements for making of disclosure order. **292.**—(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from criminal conduct. 35

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought. 40

Offences. **293.**—(1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—

- (a) imprisonment for a term not exceeding six months, or
- (b) a fine not exceeding level 5 on the standard scale,

5 or to both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he—

- (a) makes a statement which he knows to be false or misleading in a material particular, or
- 10 (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
- 15 (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

294.—(1) A statement made by a person in response to a requirement imposed on him under a disclosure order may be used in evidence against him only—

Statements.

- (a) in proceedings under Part II or IV,
- (b) on a prosecution for an offence under section 293(3),
- (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements), or
- 25 (d) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.

1911 c. 6.
S.I. 1979/1714
(N.I. 19).

(2) But a statement may not be used by virtue of subsection (1)(d) against a person unless—

- (a) evidence relating to it is adduced, or
- 30 (b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

295.—(1) A disclosure order does not confer the right to require a person to answer any question, provide any information or produce any document which he would be entitled to refuse to answer, provide or produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of a client of his.

Further provisions.

(2) A disclosure order does not confer the right to require a person to produce excluded material.

(3) A disclosure order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise).

Proceeds of Crime

- PART VII (4) The Director may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.
- (5) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made. 5
- (6) But if the Director has reasonable grounds for believing that—
- (a) the documents may need to be produced for the purposes of any legal proceedings, and
 - (b) they might otherwise be unavailable for those purposes, 10
- they may be retained until the proceedings are concluded.

- Supplementary. **296.**—(1) An application for a disclosure order may be made ex parte to a judge in chambers.
- (2) Provision may be made by Crown Court Rules as to—
- (a) the discharge and variation of disclosure orders; 15
 - (b) proceedings relating to disclosure orders.

Customer information orders

- Customer information orders. **297.**—(1) A Circuit judge or (in Northern Ireland) a county court judge may, on an application made to him by a senior appropriate officer, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled. 20
- (2) These are senior appropriate officers—
- (a) the Director;
 - (b) police officers of at least the rank of superintendent;
 - (c) persons commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 of at least such grade as is designated by the Commissioners as equivalent to that rank. 25
- (3) The application for a customer information order must contain these statements— 30
- (a) that a person specified in the application is subject to an investigation in relation to which this Part applies;
 - (b) that the order is sought for the purposes of the investigation;
 - (c) that the order is sought against the financial institution or financial institutions specified in the application. 35
- (4) An application for a customer information order may specify—
- (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions. 40
- (5) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information relating to the person so specified as it has.
- 1979 c. 2.

(6) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

5 (7) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

10 **298.**—(1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to—

Meaning of “customer information”.

- 15 (a) the matters specified in subsection (2) if the person is an individual, and
- (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.

(2) The matters referred to in subsection (1)(a) are—

- 20 (a) the account number or numbers;
- (b) the person’s full name;
- (c) his date of birth;
- (d) his most recent address and any previous addresses;
- (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
- 25 (f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
- (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;
- 30 (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.

35 (3) The matters referred to in subsection (1)(b) are—

- (a) the account number or numbers;
- (b) a description of any business which the person carries on;
- (c) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 or corresponding legislation of any country or territory outside the United Kingdom;
- 40 (d) any number assigned to it for the purposes of value added tax in the United Kingdom;
- 45 (e) its registered office, and any previous registered offices, under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 or anything similar under corresponding legislation of any country or territory outside the United Kingdom;

1985 c. 6.
S.I. 1986/1032
(N.I. 6).

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2000 c. 12.

- (f) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000 or anything similar under corresponding legislation of any country or territory outside Great Britain;
 - (g) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so; 5
 - (h) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering; 10
 - (i) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.
- (4) The Secretary of State may by order provide for information of a description specified in the order— 15
- (a) to be customer information, or
 - (b) no longer to be customer information.

Requirements for
making of
customer
information order.

- 299.**—(1) These are the requirements for the making of a customer information order.
- (2) There must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from criminal conduct.
- (3) There must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought. 25

Offences.

- 300.**—(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 30
- (3) A financial institution commits an offence if, in purported compliance with a customer information order, it—
- (a) makes a statement which it knows to be false or misleading in a material particular, or 35
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

Statements.

- 301.**—(1) A statement made by a financial institution in response to a

customer information order may be used in evidence against it only—

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- (a) in proceedings under Part II or IV,
- (b) on a prosecution for an offence under section 300(3),
- 5 (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements), or
- (d) on a prosecution for some other offence where, in giving evidence, it makes a statement inconsistent with it.

1911 c. 6.
S.I. 1979/1714
(N.I. 19).

(2) But a statement may not be used by virtue of subsection (1)(d) against a financial institution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

15 **302.**—(1) A customer information order does not require a financial institution to provide any information which it would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.

Further provisions.

(2) A customer information order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise).

303.—(1) An application for a customer information order may be made ex parte to a judge in chambers.

Supplementary.

(2) Provision may be made by Crown Court Rules as to—

- 25 (a) the discharge and variation of customer information orders;
- (b) proceedings relating to customer information orders.

Account monitoring orders

30 **304.**—(1) A Circuit judge or (in Northern Ireland) a county court judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

Account monitoring orders.

(2) The application for an account monitoring order must state—

- (a) that a person specified in the application is subject to an investigation in relation to which this Part applies,
- 35 (b) that the order is sought for the purposes of the investigation, and
- (c) that the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

40 (3) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(4) The application for an account monitoring order may specify

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	(a) all accounts held by the person specified in the application for the order at the financial institution so specified,	
	(b) a particular description, or particular descriptions, of accounts so held, or	5
	(c) a particular account, or particular accounts, so held.	
	(5) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the application to an appropriate officer in the manner, and at or by the time or times, stated in the order.	10
	(6) The period stated in an account monitoring order is not to exceed the period of 90 days beginning with the day on which the order is made.	
Requirements for making of account monitoring order.	305. —(1) These are the requirements for the making of an account monitoring order.	15
	(2) There must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from criminal conduct.	
	(3) There must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.	20
Statements.	306. —(1) A statement made by a financial institution in response to an account monitoring order may be used in evidence against it only—	
	(a) in proceedings under Part II or IV,	
	(b) in proceedings for contempt of court,	25
1911 c. 6. S.I. 1979/1714 (N.I. 19).	(c) on a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements), or	
	(d) on a prosecution for some other offence where, in giving evidence, it makes a statement inconsistent with it.	30
	(2) But a statement may not be used by virtue of subsection (1)(d) against a financial institution unless—	
	(a) evidence relating to it is adduced, or	
	(b) a question relating to it is asked,	
	by or on behalf of the financial institution in the proceedings arising out of the prosecution.	35
Further provisions.	307. —(1) An account monitoring order does not require a financial institution to provide any information which it would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.	40
	(2) An account monitoring order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise).	

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308.—(1) An application for an account monitoring order may be made ex parte to a judge in chambers.

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Supplementary.

(2) Provision may be made by Crown Court Rules as to—

- (a) the discharge and variation of account monitoring orders;
- 5 (b) proceedings relating to account monitoring orders.

(3) Account monitoring orders have effect as if they were orders of the Crown Court.

Prejudicing of investigations

309.—(1) This section applies if a person knows or suspects that an appropriate officer is acting in connection with an investigation in relation to which this Part applies.

Offences of
prejudicing
investigation.

(2) The person commits an offence if—

- (a) he makes a disclosure which is likely to prejudice the investigation, or
- 15 (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if—

- 20 (a) he does not know or suspect that the disclosure was likely to prejudice the investigation,
- (b) the disclosure is made in the exercise of a function under this Act or in compliance with a requirement imposed under or by virtue of this Act, or
- 25 (c) he is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure—

- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
- 30 (b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within subsection (4) if it is made with a view to furthering a criminal purpose.

(6) A person does not commit an offence under subsection (2)(b) if—

- 35 (a) he does not know or suspect that the documents are relevant to the investigation, or
- (b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer carrying out the investigation.

(7) A person guilty of an offence under subsection (2) is liable—

- 40 (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

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Interpretation

Interpretation.

1984 c. 60.
S.I. 1989/1341
(N.I. 12).

- 310.**—(1) This section applies for the purposes of this Part.
- (2) “Document”, “excluded material” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984 or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989. 5
- (3) References to a business in the regulated sector must be construed in accordance with Schedule 5.
- (4) “Financial institution” means a person carrying on a business in the regulated sector. 10
- (5) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 5 or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under—
- (a) a customer information order, or 15
 - (b) an account monitoring order,
- to provide information which relates to a time when the institution was a financial institution.
- (6) References to notice in writing include references to notice given by electronic means. 20
- (7) These expressions are defined elsewhere in this Part as follows—
- “account monitoring order”: section 304(5)
 - “appropriate officer”: section 281(2)
 - “benefited from criminal conduct”: section 280
 - “customer information”: section 298 25
 - “customer information order”: section 297(5)
 - “disclosure order”: section 291(3)
 - “investigation in relation to which this Part applies”: section 280
 - “order to grant entry”: section 283(3)
 - “production order”: section 281(4) 30
 - “search and seizure warrant”: section 288(3).

PART VIII
MONEY LAUNDERING

Offences

- 5 **311.**—(1) A person commits an offence if he— Concealing etc.
- (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property;
 - (e) removes criminal property from the jurisdiction.
- 10 (2) But a person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 318;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so.
- 15 (3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
-
- 20 **312.**—(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. Arrangements.
- (2) But a person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 318;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so.
-
- 25 **313.**—(1) A person commits an offence if he— Acquisition, use and possession.
- (a) acquires criminal property;
 - (b) uses criminal property;
 - (c) has possession of criminal property.
- 30 (2) But a person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 318;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property for adequate consideration;
- 35 (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- 40 (3) For the purposes of this section—
- (a) having possession of property includes doing anything in relation to it;

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- (b) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (c) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession; 5
- (d) the provision for a person of goods or services which help him to carry out criminal conduct is not consideration.

Failure to disclose:
regulated sector.

314.—(1) A person commits an offence if each of the following three conditions is satisfied. 10

- (2) The first condition is that he—
 - (a) knows or suspects, or
 - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter— 15
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.
- (4) The third condition is that he does not disclose the information or other matter to a constable or a nominated officer as soon as is practicable 20 after it comes to him.
- (5) But a person does not commit an offence under this section if—
 - (a) he has a reasonable excuse for not disclosing the information or other matter;
 - (b) he is a professional legal adviser and the information or other matter 25 came to him in privileged circumstances.
- (6) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
 - (a) issued by a supervisory authority or any other appropriate body, 30
 - (b) approved by the Treasury, and
 - (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (7) A disclosure to a nominated officer is a disclosure which— 35
 - (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
 - (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose. 40
- (8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—
 - (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- 5 (9) But subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.
- (10) Schedule 5 has effect for the purpose of determining what is—
 - (a) a business in the regulated sector;
 - (b) a supervisory authority.
- 10 (11) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

315.—(1) A person commits an offence if—

Tipping off.

- 15 (a) he knows or suspects that a constable is acting (or proposing to act) in connection with an investigation which is being or is about to be conducted into money laundering, and
- (b) he makes a disclosure which is likely to prejudice the investigation or proposed investigation.
- (2) A person commits an offence if—
- 20 (a) he knows or suspects that a disclosure falling within section 317 or 318 has been made, and
- (b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).
- 25 (3) But a person does not commit an offence under subsection (1) or (2) if—
- (a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in the subsection concerned;
- 30 (b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
- (c) he is a professional legal adviser and the disclosure falls within subsection (4).
- 35 (4) A disclosure falls within this subsection if it is a disclosure—
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
- 40 (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (5) But a disclosure does not fall within subsection (4) if it is made with a view to furthering a criminal purpose.

Proceeds of Crime

PART VIII
Penalties.

- 316.**—(1) A person guilty of an offence under section 311, 312 or 313 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or 5
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (2) A person guilty of an offence under section 314 or 315 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Disclosures

Protected disclosures.

- 317.**—(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed). 15
- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure in the course of a business in the regulated sector. 20
- (3) The second condition is that the information or other matter—
- (a) causes the person making the disclosure to know or suspect, or
 - (b) gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (4) The third condition is that the disclosure is made to a constable or a nominated officer as soon as is practicable after the information or other matter comes to the person making the disclosure.
- (5) A disclosure to a nominated officer is a disclosure which—
- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and 30
 - (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.
- (6) The reference to a business in the regulated sector must be construed in accordance with Schedule 5. 35

Authorised disclosures.

- 318.**—(1) For the purposes of this Part a disclosure is authorised if—
- (a) it is a disclosure to a constable or a nominated officer by the alleged offender that property is criminal property, and
 - (b) the first or second condition set out below is satisfied.
- (2) The first condition is that— 40
- (a) the disclosure is made before the alleged offender does the prohibited act, and

(b) he does the act with the consent of the constable or nominated officer. PART VIII

(3) The second condition is that—

- 5 (a) the disclosure is made after the alleged offender does the prohibited act,
(b) there is a good reason for his failure to make the disclosure before he did the act, and
(c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

10 (4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) A disclosure to a nominated officer is a disclosure which—

- (a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures, and
15 (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(6) References to the prohibited act are to an act mentioned in section 311(1), 312(1) or 313(1) (as the case may be).

20 *Interpretation*

319.—(1) This section applies for the purposes of this Part. Interpretation.

(2) Property is criminal property if—

- 25 (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(3) It is immaterial—

- 30 (a) who carried out the conduct;
(b) who benefited from it.

(4) Whether a person benefits from conduct must be construed in accordance with Part I; and "criminal conduct" and "property" have the same meanings as in that Part.

(5) Money laundering is an act which—

- 35 (a) constitutes an offence under section 311, 312 or 313,
(b) would constitute an offence specified in paragraph (a) if done in England and Wales,
(c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), or
40 (d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a).

(6) References to a constable include references to—

- 45 (a) an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; 1979 c. 2.

Proceeds of Crime

PART VIII (b) a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service.

PART IX

GENERAL

320.—(1) Her Majesty may by Order in Council—

External requests
and orders.

- 5 (a) make provision for a prohibition on dealing with property which is the subject of an external request;
- (b) make provision for the realisation of property for the purpose of giving effect to an external order.

(2) An external request is a request by an overseas government to prohibit dealing with relevant property which is identified in the request.

10 (3) An external order is an order which—

(a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and

(b) is for the recovery of specified property.

15 (4) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.

(5) An Order under this section may in particular include—

20 (a) provision corresponding to any provision of Part II (subject to any specified modifications);

(b) provision about the functions of the Secretary of State and the Director in relation to external requests and orders;

(c) provision about the registration of external orders;

25 (d) provision about the authentication of any judgment or order of an overseas court, and of any other document connected with such a judgment or order or any proceedings relating to it;

(e) provision about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in an overseas court);

30 (f) provision to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in England and Wales.

35 (6) An overseas court is a court of a country or territory outside the United Kingdom; and an overseas government is the government of such a country or territory.

(7) In this section—

“criminal conduct” has the meaning given by section 73(1);

“property” has the meaning given by section 81(1).

40 (8) Crown Court Rules may make such provision as is necessary or expedient to give effect to an Order in Council made under this section.

Proceeds of Crime

PART IX Customs and Excise prosecutions.	321. —(1) Proceedings for a specified offence may be started by order of the Commissioners of Customs and Excise (the Commissioners).	
	(2) Such proceedings must be brought in the name of an officer.	
	(3) If the officer in whose name the proceedings are brought—	
	(a) dies,	5
	(b) is removed or discharged, or	
	(c) is absent,	
	the proceedings may be continued by a different officer.	
	(4) If the Commissioners investigate, or propose to investigate, any matter to help them to decide—	10
	(a) whether there are grounds for believing that a specified offence has been committed, or	
1979 c. 2.	(b) whether a person is to be prosecuted for such an offence,	
	the matter must be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979.	15
	(5) This section—	
	(a) does not prevent any person (including an officer) who has power to arrest, detain or prosecute a person for a specified offence from doing so;	
	(b) does not prevent a court from dealing with a person brought before it following his arrest by an officer for a specified offence, even if the proceedings were not started by an order under subsection (1).	20
	(6) References to an officer are to a person commissioned by the Commissioners under section 6(3) of the Customs and Excise Management Act 1979.	25
	(7) The following are specified offences—	
	(a) an offence under Part VIII;	
	(b) an offence under section 309;	
	(c) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b);	30
	(d) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b).	
Crown servants and regulators.	322. —(1) The Secretary of State may by regulations provide that any of the following provisions apply to persons in the public service of the Crown.	
	(2) The provisions are—	35
	(a) the provisions of Part VIII;	
	(b) section 309.	
	(3) The Secretary of State may by regulations provide that section 314 does not to apply to persons who exercise functions—	
	(a) as or on behalf of supervisory authorities;	40
	(b) as investigators.	
	(4) The reference to supervisory authorities must be construed in accordance with Schedule 5.	

Proceeds of Crime

- 323.**—(1) References in this section to subordinate legislation are to—
- (a) any Order in Council under this Act;
 - (b) any order under this Act (other than one falling to be made by a court);
 - 5 (c) any regulations under this Act.
- (2) Subordinate legislation—
- (a) may make different provision for different purposes;
 - (b) may include supplementary, incidental, saving or transitional provisions.
- 10 (3) Any power to make subordinate legislation is exercisable by statutory instrument.
- (4) A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if it contains subordinate legislation other than an order under section 298(4) or 325.
- 15 (5) No order may be made under section 298(4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- 324.** Schedule 6 contains miscellaneous and consequential amendments.
- 325.** This Act (except this section) comes into force in accordance with provision made by the Secretary of State by order.

PART IX
Orders and
regulations.

Amendments.

Commencement.

SCHEDULES

Section 9.

SCHEDULE 1

CRIMINAL ASSETS RECOVERY AGENCY

Director's terms of appointment

1.—(1) The Director holds office for the period determined by the Secretary of State on his appointment (or re-appointment) to the office. 5

(2) But the Director may at any time resign by giving notice to the Secretary of State. 10

(3) And the Secretary of State may at any time remove the Director from office if satisfied that he is unable or unfit to exercise his functions. 10

2. Subject to that, the Director holds office on the terms determined by the Secretary of State.

1972 c. 11.

3. In Schedule 1 to the Superannuation Act 1972 (offices etc. to which section 1 of that Act applies) in the list of "Offices" insert (at the appropriate place in alphabetical order)— 15

"Director of the Criminal Assets Recovery Agency."

Staff

4. The members of staff of the Agency must include—

(a) a deputy to the Director who is to act as Director during any vacancy in that office or if the Director is absent, subject to suspension or unable to act, and

(b) a senior official with responsibilities in relation to the exercise of the Director's functions in Northern Ireland.

5. The members of staff of the Agency hold office on the terms determined by the Director. 25

Finances

6.—(1) The Secretary of State must meet the expenses of the Director.

(2) The Secretary of State must pay to the Minister for the Civil Service, at the times directed by that Minister, any sums determined by that Minister in respect of any increase attributable to paragraph 3 in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 30

(3) The Director must pay any sums received by him to the Secretary of State.

7.—(1) The Director must—

(a) keep proper accounts and proper accounting records, and 35

- (b) prepare in respect of each financial year a statement of accounts.
- (2) The statement of accounts must—
 - (a) contain the information, and
 - (b) be in the form,
5 which the Secretary of State directs.
- (3) The Director must send copies of the statement of accounts relating to a financial year to the Comptroller and Auditor General before—
 - (a) the next 1st September, or
 - (b) such earlier date as the Secretary of State may direct.
- 10 (4) The Comptroller and Auditor General must—
 - (a) examine, certify and report on each statement of accounts sent to him by the Director,
 - (b) send a copy of each such statement and of his report on it to the Secretary of State for him to arrange for them to be published, and
 - 15 (c) lay a copy of each such statement and of his report on it before each House of Parliament.

Annual plan

- 8.—(1) The Director must, before the beginning of each financial year apart from the first, prepare a plan setting out how he intends to exercise his functions during the financial year (an “annual plan”).
20
- (2) The annual plan must, in particular, set out how the Director intends to exercise his functions in Northern Ireland.
- (3) The annual plan must also include a statement of—
 - (a) the Director’s objectives for the financial year,
 - 25 (b) any performance targets which he has for the financial year (whether or not relating to his objectives),
 - (c) his priorities for the financial year,
 - (d) the financial resources expected to be available to him for the financial year, and
 - 30 (e) his proposed allocation of those resources.
- (4) Once the annual plan has been prepared the Director must send a copy to the Secretary of State for his approval.
- (5) If the Secretary of State does not approve the annual plan—
 - (a) he must give the Director his reasons for not approving it, and
 - 35 (b) the Director must revise the annual plan and send a copy of the revised annual plan to the Secretary of State for his approval.
- (6) The Secretary of State may, when giving his reasons for not approving an annual plan, require the Director to revise it in the manner specified by the Secretary of State.

Proceeds of Crime

Sch. 1

Annual report

9.—(1) The Director must, as soon as possible after the end of each financial year, prepare a report on how he has exercised his functions during the financial year.

(2) The report for any financial year apart from the first must include— 5

- (a) the Director's annual plan for the financial year, and
- (b) an assessment of the extent to which it has been carried out.

(3) The Director must send a copy of each report to the Secretary of State who must—

- (a) lay a copy of it before each House of Parliament, and 10
- (b) arrange for it to be published.

Parliamentary disqualification

1975 c. 24. 10. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) insert (at the appropriate place in alphabetical order)— 15

“Director of the Criminal Assets Recovery Agency.”

1975 c. 25. 11. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) insert (at the appropriate place in alphabetical order)—

“Director of the Criminal Assets Recovery Agency.” 20

Meaning of “financial year”

12. In this Schedule “financial year” means—

- (a) the period beginning with the day on which section 1 comes into force and ending with the next 31st March (which is the first financial year), and 25
- (b) each subsequent period of twelve months beginning with 31st March.

SCHEDULE 2

Section 130.

ADMINISTRATORS: FURTHER PROVISION

General

1. In this Schedule, unless otherwise expressly provided—

- 5 (a) references to an administrator are to an administrator appointed under section 123 or 124(3);
(b) references to realisable property are to the realisable property in respect of which the administrator is appointed.

Appointment etc

10 2.—(1) If the office of administrator is vacant, for whatever reason, the court must appoint a new administrator.

(2) Any property vested in the previous administrator by virtue of paragraph 5(4) vests in the new administrator.

15 (3) Any order under section 123 or 124(6) in relation to the previous administrator applies in relation to the new administrator when he gives written notice of his appointment to the person subject to the order.

(4) The administration of property by an administrator must be treated as continuous despite any temporary vacancy in that office.

20 (5) The appointment of an administrator is subject to such conditions as to caution as the accountant of court may impose.

(6) The premium of any bond of caution or other security required by such conditions must be treated as part of the administrator's expenses in the exercise of his functions.

Functions

25 3.—(1) An administrator—

- (a) may, if appointed under section 123, and
(b) must, if appointed under section 124(3),

as soon as practicable take possession of the realisable property and of the documents mentioned in sub-paragraph (2).

30 (2) Those documents are any document which—

- (a) is in the possession or control of the person ("A") in whom the property is vested (or would be vested but for an order made under paragraph 5(4)), and
(b) relates to the property or to A's assets, business or financial affairs.

35 (3) An administrator is entitled to have access to, and to copy, any document relating to the property or to A's assets, business or financial affairs and not falling within sub-paragraph (2)(a).

(4) An administrator may bring, defend or continue any legal proceedings relating to the property.

Sch. 2

(5) An administrator may borrow money so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property.

(6) An administrator may, if he considers that it would be beneficial for the management or realisation of the property—

- (a) carry on any business of A;
- (b) exercise any right of A as holder of securities in a company;
- (c) grant a lease of the property or take on lease any other property;
- (d) enter into any contract, or execute any deed, as regards the property or as regards A's business.

(7) An administrator may, where any right, option or other power forms part of A's estate, make payments or incur liabilities with a view to—

- (a) obtaining property which is the subject of, or
- (b) maintaining,

the right, option or power.

(8) An administrator may effect or maintain insurance policies as regards the property on A's business.

(9) An administrator may, if appointed under section 124(3), complete any uncompleted title which A has to any heritable estate; but completion of title in A's name does not validate by accretion any unperfected right in favour of any person other than the administrator.

(10) An administrator may sell, purchase or exchange property or discharge any security for an obligation due to A; but it is incompetent for the administrator or an associate of his (within the meaning of section 74 of the Bankruptcy (Scotland) Act 1985) to purchase any of A's property in pursuance of this sub-paragraph.

(11) An administrator may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor.

(12) An administrator may discharge any of his functions through agents or employees, but is personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator by virtue of paragraph 9(2) and (4).

(13) An administrator may take such professional advice as he considers necessary in connection with the exercise of his functions.

(14) An administrator may at any time apply to the court for directions as regards the exercise of his functions.

(15) An administrator may exercise any power specifically conferred on him by the court, whether conferred on his appointment or subsequently.

(16) An administrator may do anything incidental to the powers and duties listed in the previous provisions of this paragraph.

4. An administrator proposing to exercise any power conferred by paragraph 3(4) to (16) must first obtain the consent of the accountant of court.

1085 c. 66.

5.—(1) A person dealing with an administrator in good faith and for value is not concerned to enquire whether the administrator is acting within the powers mentioned in paragraph 3.

5 (2) Sub-paragraph (1) does not apply where the administrator or an associate purchases property in contravention of paragraph 3(10).

(3) The validity of any title is not challengeable by reason only of the administrator having acted outwith the powers mentioned in paragraph 3.

10 (4) The exercise of a power mentioned in paragraph 3(4) to (11) must be in A's name except where and in so far as an order made by the court under this sub-paragraph vests the property in the administrator (or in a previous administrator).

(5) The court may make an order under sub-paragraph (4) on the application of the administrator or on its own motion.

Money received by administrator

15 6.—(1) All money received by an administrator in the exercise of his functions must be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 5(4)) of the holder of the property realised, in an appropriate bank or institution.

20 (2) But the administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Secretary of State by regulations.

(3) In sub-paragraph (1), "appropriate bank or institution" means a bank or institution mentioned in section 3(1) of the Banking Act 1987 or for the time being specified in Schedule 2 to that Act. 1987 c. 22.

25 *Effect of appointment of administrator on diligence*

7.—(1) An arrestment or poinding of realisable property executed on or after the appointment of an administrator does not create a preference for the arrester or poinder.

30 (2) Any realisable property so arrested or poinded, or (if the property has been sold) the proceeds of sale, must be handed over to the administrator.

(3) A poinding of the ground in respect of realisable property on or after such appointment is ineffectual in a question with the administrator except for the interest mentioned in sub-paragraph (4).

(4) That interest is—

35 (a) interest on the debt of a secured creditor for the current half-yearly term, and

(b) arrears of interest on that debt for one year immediately before the commencement of that term.

40 (5) On and after such appointment no other person may raise or insist in an adjudication against realisable property or be confirmed as executor-creditor on that property.

(6) An inhibition on realisable property which takes effect on or after such appointment does not create a preference for the inhibitor in a question with the administrator.

Proceeds of Crime

Sch. 2 (7) This paragraph is without prejudice to sections 121 and 122.

Supervision

8.—(1) The accountant of court must supervise the exercise by an administrator of his functions.

(2) If it appears to the accountant of court that an administrator has, 5 without reasonable cause, failed to perform a duty imposed on him by section 127 or this Schedule, he must report the matter to the court.

(3) The court may, after giving the administrator an opportunity to be heard as regards the matter—

- (a) remove him from office, 10
- (b) censure him, or
- (c) make such other order as it thinks fit.

1889 c. 39. (4) Section 6 of the Judicial Factors (Scotland) Act 1889 (supervision of judicial factors) does not apply in relation to an administrator.

Accounts and remuneration 15

9.—(1) An administrator must keep such accounts in relation to the exercise of his functions as the court may require and must lodge them with the accountant of court at such times as the court may fix.

(2) The accountant of court must audit the accounts and issue a determination as to the amount of remuneration and expenses payable to the 20 administrator in respect of the exercise of his functions.

(3) Not later than two weeks after the issuing of a determination under sub-paragraph (2), the administrator or the Lord Advocate may appeal against it to the court.

(4) The amount of remuneration payable to the administrator must be 25 determined on the basis of the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.

(5) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator. 30

Discharge of administrator

10.—(1) After an administrator has lodged his final accounts under paragraph 9(1), he may apply to the accountant of court to be discharged from office.

(2) A discharge, if granted, frees the administrator from all liability (other 35 than liability arising from fraud) in respect of any act or omission of his in exercising his functions as administrator.

SCHEDULE 3

Section 254.

POWERS OF INTERIM RECEIVER

Seizure

1. Power to seize property to which the order applies.

5 *Information*

2. Power to obtain information.

Entry, search, etc.

3.—(1) For the purpose of paragraph 1 or 2, power to—

(a) enter any premises in Great Britain, and

10 (b) take any of the following steps.

(2) Those steps are—

(a) to carry out a search for or inspection of anything described in the order,

15 (b) to make or obtain a copy, photograph or other record of anything so described,

(c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part V.

20 (3) The order may describe anything generally, whether by reference to a class or otherwise.

Obligation to assist interim receiver

4. An interim receiving order may require any person—

(a) to give the interim receiver access to any premises which he may enter in pursuance of paragraph 3,

25 (b) to give the interim receiver any assistance he may require for taking the steps mentioned in that paragraph.

Incriminating evidence

30 5.—(1) A person is not entitled to refuse to comply with a requirement under paragraph 3 in respect of any document or other thing on the ground that the document or thing might constitute evidence that he had committed an offence.

(2) But in criminal proceedings in which the person is charged with any offence (other than one mentioned in sub-paragraph (3))—

(a) no evidence relating to the document or thing may be adduced, and

35 (b) no question relating to the document or thing may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

Proceeds of Crime

- Sch. 3 (3) The offences excluded from sub-paragraph (2) are—
- (a) an offence under section 2 or 5 of the Perjury Act 1911 or Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), 5
 - (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

Management

- 6.—(1) Power to manage any property to which the order applies. 10
- (2) Managing property includes selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes.
- (3) In the case of any property which is recoverable property in relation to the respondent and comprises assets of a trade or business carried on by him, 15 managing the property includes carrying on, or arranging for another to carry on, the trade or business.

SCHEDULE 4

Section 265.

POWERS OF TRUSTEE FOR CIVIL RECOVERY

Sale

1. Power to sell the property or any part of it or interest in it.

Expenditure

2. Power to incur expenditure for the purpose of—

(a) acquiring any part of the property, or any interest in it, which is not vested in him,

(b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management

3.—(1) Power to manage property.

(2) Managing property includes—

(a) disposing of assets comprised in the property which are perishable,

(b) where the property consists of the assets of a trade or business, carrying on the trade or business,

(c) incurring capital expenditure in respect of the property.

Legal proceedings

4. Power to start, carry on or defend any legal proceedings in respect of the property.

Compromise

5. Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary

6.—(1) For the purposes of, or in connection with, the exercise of any of his powers, power—

(a) by his official name to do any of the things mentioned in subparagraph (2),

(b) power to do any other act which is necessary or expedient.

(2) Those things are—

(a) holding property,

(b) entering into contracts,

(c) suing and being sued,

(d) employing agents,

(e) executing a power of attorney, deed or other instrument.

Sch. 4

Section 314.

SCHEDULE 5

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

PART I

REGULATED SECTOR

Business in the regulated sector

5

1. A business engaged in any of the following activities is a business in the regulated sector—

- 1987 c. 22. (a) deposit-taking business carried on by a person who is for the time being authorised under the Banking Act 1987;
 - (b) acceptance by a building society of deposits made by any person 10 (including raising money from members of the society by the issue of shares);
 - (c) the business of the National Savings Bank;
 - (d) business carried on by a credit union;
 - (e) any home-regulated activity carried on by a European institution in 15 respect of which the requirements of paragraph 1 of Schedule 2 to the Banking Co-ordination (Second Council Directive) Regulations 1992 have been complied with;
 - S.I. 1992/3218.
 - 1986 c. 60. (f) investment business within the meaning of the Financial Services Act 1986; 20
 - (g) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968 under the auspices of the Director of Savings;
 - 1968 c. 13. (h) any of the activities in points 1 to 12 or 14 of the Annex to the Second Banking Co-ordination Directive, ignoring an activity 25 described in any of sub-paragraphs (a) to (g) above;
 - (i) insurance business carried on by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive.
2. For the purposes of paragraph 1—
- (a) “deposit-taking business” has the meaning given by the Banking Act 30 1987;
 - 1986 c. 53. (b) “building society” has the meaning given by the Building societies Act 1986;
 - 1979 c. 34. (c) “credit union” has the meaning given by the Credit Unions Act 1979 35 or the Credit Unions (Northern Ireland) Order 1985;
 - S.I. 1985/1205 (N.I. 12) (d) “home-regulated activity” and “European institution” have the meanings given by the Banking Co-ordination (Second Council Directive) Regulations 1992;
 - (e) the Second Banking Co-ordination Directive is the Second Council Directive on the co-ordination of laws, regulations and 40 administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. 89/646/EEC);

Proceeds of Crime

- (f) the First Life Directive is the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. 79/267/EEC). SCH. 5

5 *Excluded activities*

3. A business is not in the regulated sector to the extent that it engages in any of the following activities—

- (a) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act 1965 by a society registered under that Act; 1965 c. 12.
- (b) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society;
- (c) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969 by a society registered under that Act; 1969 c. 24 (N.I.).
- (d) activities carried on by the Bank of England;
- (e) any activity specified in section 45 of the Financial Services Act 1986 in relation to a person who is an exempted person for the purposes of that section. 1986 c. 60.

20 PART II

SUPERVISORY AUTHORITIES

- 4.—(1) Each of the following is a supervisory authority—
- (a) the Bank of England;
- (b) the Financial Services Authority;
- 25 (c) the Building Societies Commission;
- (d) a designated agency;
- (e) a recognised self-regulating organisation;
- (f) a recognised professional body;
- (g) a transferee body;
- 30 (h) a recognised self-regulating organisation for friendly societies;
- (i) the Secretary of State (subject to sub-paragraph (3));
- (j) the Treasury;
- (k) the Council of Lloyd's;
- (l) the Director General of Fair Trading;
- 35 (m) the Friendly Societies Commission;
- (n) the Chief Registrar of Friendly Societies;
- (o) the Central Office of the Registry of Friendly Societies;
- (p) the Registrar of Friendly Societies for Northern Ireland;
- (q) the Assistant Registrar of Friendly Societies for Scotland.
- 40 (2) Sub-paragraph (1)(d) to (h) must be construed in accordance with the Financial Services Act 1986.

Proceeds of Crime

- SCH. 5 (3) The Secretary of State is a supervisory authority in the exercise, in relation to a person carrying on business in the regulated sector, of his functions under the enactments relating to insurance companies, companies or insolvency or under the Financial Services Act 1986. 1986 c. 60.

PART III

5

POWER TO AMEND

5.—(1) The Secretary of State may by order amend Part I or II of this Schedule.

(2) An order under this paragraph must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of 10 Parliament.

SCHEDULE 6

Section 324

AMENDMENTS

Introduction

1. The amendments specified in this Schedule shall have effect.

5 *Land Registration Act 1925 (c. 21)*

2. In section 49(1)(g) of the Land Registration Act 1925 (registration in respect of charging orders) after “Drug Trafficking Act 1994” insert “or Part II of the Proceeds of Crime Act 2001”.

Criminal Appeal Act 1968 (c. 19)

10 3.—(1) The Criminal Appeal Act 1968 is amended as follows.

(2) In section 33 (appeal to House of Lords) after subsection (1) insert—

15 “(1A) In subsection (1) above the reference to the prosecutor includes a reference to the Director of the Criminal Assets Recovery Agency in a case where (and to the extent that) he is a party to the appeal to the Court of Appeal.”

(3) In section 50(1) (meaning of sentence) after paragraph (c) insert—

“(ca) a confiscation order under Part II of the Proceeds of Crime Act 2001;

20 “(cb) an order which varies a confiscation order made under Part II of the Proceeds of Crime Act 2001 if the varying order is made under section 20, 21 or 28 of that Act (but not otherwise);”.

Misuse of Drugs Act 1971 (c. 38)

25 4. In section 27 of the Misuse of Drugs Act 1971 (forfeiture) in subsection (1) after “the Drug Trafficking Act 1994” insert “or an offence which by virtue of section 85 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part II of that Act”.

Rehabilitation of Offenders Act 1974 (c. 53)

30 5. In section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent convictions) after subsection (2A) insert—

“(2B) In subsection (2)(a) above the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part II of the Proceeds of Crime Act 2001.”

Proceeds of Crime

Sch. 6

Criminal Justice Act 1982 (c. 48)

6. In Part II of Schedule 1 to the Criminal Justice Act 1982 (offences excluded from early release provisions) after the entry relating to the Drug Trafficking Act 1994 insert—

“PROCEEDS OF CRIME ACT 2001 5

Section 311 (concealing criminal property etc).
Section 312 (arrangements relating to criminal property).
Section 313 (acquisition, use and possession of criminal property).”

Police and Criminal Evidence Act 1984 (c. 60)

7.—(1) The Police and Criminal Evidence Act 1984 is amended as 10 follows.

(2) In section 56 (right to have someone informed when arrested) in subsection (5) for “subsection (5A)” substitute “subsections (5A) and (5B)”.

(3) After subsection (5A) of that section insert—

“(5B) An officer may also authorise delay where he has reasonable 15 grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his general or particular criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest. 20

(5C) For the purposes of subsection (5B) above the question whether a person has benefited from his general or particular criminal conduct is to be decided in accordance with Part II of the Proceeds of Crime Act 2001.”

(4) In section 58 (access to legal advice) in subsection (8) for “subsection 25 (8A)” substitute “subsections (8A) and (8B)”.

(5) After subsection (8A) of that section insert—

“(8B) An officer may also authorise delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has 30 benefited from his general or particular criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by subsection (1) above.

(8C) For the purposes of subsection (8B) above the question whether a 35 person has benefited from his general or particular criminal conduct is to be decided in accordance with Part II of the Proceeds of Crime Act 2001.”

(6) In section 116 (meaning of serious arrestable offence) in subsection (2) after paragraph (b) leave out “and”, and after paragraph (c) insert— 40

“(d) any offence which by virtue of section 85(1), (2) or (3) of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part II of that Act.”

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Insolvency Act 1986 (c. 45)

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8. In section 281 of the Insolvency Act 1986 (effect of discharge) after subsection (4) insert—

5 “(4A) In subsection (4) the reference to a fine includes a reference to a confiscation order under Part II of the Proceeds of Crime Act 2001.”

Criminal Justice Act 1988 (c. 33)

9. In section 151(5) of the Criminal Justice Act 1988 (meaning of drug trafficking offence for certain purposes) after “means” insert “(a)” and at the end insert “, or

10 (b) any offence which by virtue of section 85 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part II of that Act.”

Extradition Act 1989 (c. 33)

10.—(1) The Extradition Act 1989 is amended as follows.

15 (2) In section 22 (extension of purposes of extradition for offences under Acts giving effect to international conventions) in subsection (4)(h) after sub-paragraph (i) insert—

20 “(ia) any offence which by virtue of section 85 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part II of that Act;

(ib) any offence under section 311, 312 or 313 of that Act (offences concerning criminal property);”.

(3) In paragraph 15 of Schedule 1 (deemed extension of jurisdiction of foreign states) after paragraph (j) insert—

25 “(ja) an offence which by virtue of section 85 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part II of that Act;

(jb) an offence under section 311, 312 or 313 of that Act (offences concerning criminal property);”.

Crime (Sentences) Act 1997 (c. 43)

30 11.—(1) The Crime (Sentences) Act 1997 is amended as follows.

(2) In section 35 (fine defaulters) in subsection (1)(a) after “Drug Trafficking Act 1994” insert “or section 4 of the Proceeds of Crime Act 2001”.

35 (3) In section 40 (fine defaulters) in subsection (1)(a) after “Drug Trafficking Act 1994” insert “or section 4 of the Proceeds of Crime Act 2001”.

Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

40 12.—(1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.

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SCH. 6 (2) In section 110(5) in the definition of drug trafficking offence after “Proceeds of Crime (Northern Ireland) Order 1996” insert “or an offence which by virtue of section 85 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part II of that Act”.

(3) In section 133 (review of compensation orders) in subsection (3)(c) 5 after “Criminal Justice Act 1988” insert “, or Part II of the Proceeds of Crime Act 2001,”.