

**2003 No. 210 (C. 44)**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Commencement No. 6,  
Transitional Provisions and Savings) (Scotland) Order 2003**

*Made*

*20th March 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 458(3) and 459(2) of the Proceeds of Crime Act 2002(a) and after consultation with the Secretary of State, hereby make the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Commencement No. 6, Transitional Provisions and Savings) (Scotland) Order 2003.

(2) In this Order, “the Act” means the Proceeds of Crime Act 2002.

(3) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, for the purposes of this Order it is committed on the earliest of those days.

**Commencement of provisions**

2.—(1) The provisions of—

- (a) Part 3 (sections 92 to 155 including Schedule 4) (Confiscation: Scotland) of the Act; and
- (b) to the extent that they relate to that Part, the provisions of the Act listed in column 1 of the Schedule to this Order,

shall, subject to paragraph (2) and the transitional provisions and savings contained in articles 3 to 7, come into force on 24th March 2003.

(2) Where a particular purpose is specified in column 2 of the Schedule in relation to any provision in column 1, the provision shall come into force for that purpose only.

**Transitional provisions relating to confiscation orders**

3.—(1) Section 92 (making of confiscation order) of the Act shall not have effect where the offence, or any of the offences mentioned in section 92(2), was committed before 24th March 2003.

(2) Section 111 (conviction or other disposal of accused) of the Act shall not have effect where the offence, or any of the offences mentioned in section 111(1), was committed before 24th March 2003.

(3) Section 112 (accused neither convicted nor acquitted) of the Act shall not have effect where the offence, or any of the offences, in respect of which proceedings have been instituted but not concluded was committed before 24th March 2003.

### **Transitional provisions relating to restraint orders and enforcement abroad**

**4.** Sections 120 (restraint orders etc) and 141 (enforcement abroad) of the Act shall not have effect where—

- (a) the powers in those sections would otherwise be exercisable by virtue of the condition in section 119(2) or (3) (conditions for exercise of powers) of the Act being satisfied; and
- (b) the offence mentioned in section 119(2)(a) or, as the case may be, section 119(3)(a) was committed before 24th March 2003.

### **Transitional provisions relating to criminal lifestyle**

**5.—(1)** This article applies where the court is determining under section 92(5)(a) of the Act whether the accused has a criminal lifestyle.

(2) Conduct shall not form part of a course of criminal activity under section 142(2)(a) of the Act where any one of the three or more offences mentioned in section 142(2)(a) was committed before 24th March 2003.

(3) Conduct shall form part of a course of criminal activity under section 142(2)(b) of the Act, notwithstanding that any of the offences of which the accused was convicted on at least two separate occasions in the period mentioned in section 142(2)(b) were committed before 24th March 2003.

(4) Where the Court is applying the rule in section 142(4) of the Act on the calculation of relevant benefit for the purposes of determining whether or not the test in section 142(1)(b) of the Act is satisfied by virtue of conduct forming part of a course of criminal activity under section 142(2)(b) of the Act, the court may take into account benefit from conduct constituting an offence committed before 24th March 2003.

### **Transitional provisions relating to particular criminal conduct**

**6.** Conduct which constitutes an offence which was committed before 24th March 2003 is not particular criminal conduct under section 143(3) of the Act.

### **Savings**

**7.—(1)** Where, by virtue of articles 3 or 4, a provision of the Act does not have effect, the Proceeds of Crime (Scotland) Act 1995(a) and the provisions in paragraph (2) shall continue to have effect as they had effect immediately prior to the coming into force of the provisions commenced by this Order.

(2) The provisions are—

- (a) section 86A of the Civic Government (Scotland) Act 1982(b);
- (b) sections 5(4) and 7(1) of the Bankruptcy (Scotland) Act 1985(c);
- (c) section 13(6) of the Criminal Justice (International Co-operation) Act 1990(d);
- (d) sections 41 and 43 of the Criminal Law (Consolidation) (Scotland) Act 1995(e);
- (e) sections 109(1), 205B(5) and 219(8)(b) of the Criminal Procedure (Scotland) Act 1995(f);

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(a) 1995 c.43; section 86A was inserted by the Police Property Act 1997 (c.30), section 6(4).

(b) 1982 c.45.

(c) 1985 c.66.

(d) 1990 c.5.

(e) 1995 c.39; section 205B was inserted by the Crime and Punishment Act 1997 (c.48), section 2.

(f) 1995 c.46.

- (f) section 15(3) of, and paragraph 20 of Schedule 1 to, the Crime and Punishment (Scotland) Act 1997<sup>(a)</sup>; and
- (g) paragraph 11(2) of Schedule 15 to the Terrorism Act 2002<sup>(b)</sup>.

St Andrew's House,  
Edinburgh  
20th March 2003

*HUGH HENRY*  
A member of the Scottish Executive

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<sup>(a)</sup> 1997 c.48.  
<sup>(b)</sup> 2000 c.11.

## SCHEDULE

<i>Column 1 (provision)</i>	<i>Column 2 (purpose)</i>
Section 456 (Amendments).	Commenced for the purposes of the provisions of Schedule 11 to the Act commenced by this Order.
Section 457 (Repeals).	Commenced for the purposes of the provisions of Schedule 12 to the Act commenced by this Order.
In Schedule 11, paragraphs 7, 11, 12, 15, 16, 20, 21, 28, 29, 33 and 39.	
In Schedule 12: in the entry relating to the Criminal Justice (International Co-operation) Act 1990(a), the entry in the second column concerning paragraph 1 of Schedule 4 to that Act; the entry relating to the Criminal Law (Consolidation) (Scotland) Act 1995; in the entry relating to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(b), the entry in the second column concerning paragraph 4(2) of Schedule 3 to that Act; the entry relating to the Proceeds of Crime (Scotland) Act 1995(c); the entry relating to the Crime and Punishment (Scotland) Act 1997(d); and in the entry relating to the Terrorism Act 2002(e) the entry in the second column concerning paragraph 11(2) of Schedule 15 to that Act.	The entry relating to the Criminal Law (Consolidation) (Scotland) Act 1995 is commenced so far as it repeals sections 41 and 43 of that Act.

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(a) 1990 c.5.  
(b) 1995 c.40.  
(c) 1995 c.43.  
(d) 1995 c.48.  
(e) 2000 c.11.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force, on 24th March 2003, the following provisions of the Proceeds of Crime Act (“the Act”):-

- (a) Part 3 which replaces the existing scheme of criminal confiscation in Scotland;
- (b) certain minor and consequential amendments in Schedule 11, together with entries in the repeals Schedule, Schedule 12.

Articles 3 to 7 make transitional provision and savings in relation to the existing confiscation provisions in Scotland.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the Proceeds of Crime Act 2002 have been brought into force by commencement order made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Part 1 (sections 1 to 5, together with Schedule 1) (Assets Recovery Agency)	13th January 2003	2002/3055
Part 2 (sections 6 to 91, including Schedule 2) so far as not already in force.	24th March 2003	2003/333
Section 89 (Procedure on appeal to the Court of Appeal) (for the purposes of making secondary legislation)	30th December 2002	2002/3015
Section 90 (Procedure on appeal to the House of Lords) (for the purposes of making secondary legislation)	30th December 2002	2002/3015
Chapter 1 of Part 5 (sections 240 to 242 (Civil recovery of the proceeds etc of unlawful conduct – introductory)	30th December 2002	2002/3015
Chapter 2 of Part 5 (sections 243 to 288, including Schedules 6 and 7) (Civil Recovery in the High Court or Court of Session), except for section 270(4) and (5)	24th February 2003	2003/120
Section 270(4) and (5) (Associated and joint property)	30th December 2002	2002/3015
Chapter 3 of Part 5 (sections 289 to 303) (Civil recovery of the proceeds etc of unlawful conduct – recovery of cash in summary proceedings)	30th December 2002	2002/3015
Sections 304 to 311 (Civil recovery of the proceeds etc of unlawful conduct – general)	30th December 2002	2002/3015
Section 312 (Performance of functions of Scottish Ministers by constables in Scotland)	24th February 2003	2003/120
Section 313 (Restriction on performance of Director’s functions by police)	24th February 2003	2003/120
Sections 314 to 316 (Interpretation)	30th December 2002	2002/3015

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Part 6 (sections 317 to 326, including Schedule 8) (Revenue Functions)	24th February 2003	2003/120
Part 7 (sections 327 to 340, including Schedule 9) (Money Laundering)	24th February 2003	2003/120
Part 8 (sections 341 to 416) (Investigations)	24th February 2003	2003/120
Part 10 (sections 435 to 442) (Information) (in part)	24th February 2003	2003/120
Section 443 (Enforcement in different parts of the United Kingdom)	24th February 2003	2003/120
Section 448, including Schedule 10 (Tax)	24th February 2003	2003/120
Section 450 (Pseudonyms: Scotland)	24th February 2003	2003/120
Section 451 (Customs and Excise prosecutions)	24th February 2003	2003/120
Section 452 (Crown Servants)	24th February 2003	2003/120
Section 453 (References to financial investigators)	24th February 2003	2003/120
Section 454 (Customs Officers)	30th December 2002	2002/3015
Section 455 (Enactment)	30th December 2002	2002/3015
Section 456 (Amendments) (in part)	30th December 2002 and 24th March 2003	2002/3015 and 2003/333
Section 457 (Repeals) (in part)	30th December 2002 and 24th March 2003	2002/3015 and 2003/333
Paragraphs 2, 3, 6, 10(2), 13, 14(1) and (4), 17(1), (2) (in part), (3) and (5), 18, 19(1) and (4), 22, 23, 24, 25(2)(a) to (g) (in part), (3), (4), (5), (6) and (7), 27 (in part), 28(1) and (2)(a) (in part), 30, 31(1), (2) (in part), (3)(c) to (h) and (4) to (18), 34, 35, 38 and 40 of Schedule 11	24th February 2003	2003/120
Paragraph 10(1), (3) and (4) of Schedule 11	30th December 2002	2002/3145
Paragraphs 25(1) and (2)(a) and 36 of Schedule 11 (in part)	30th December 2002	2002/3015
Paragraphs 1, 4, 5, 7, 8, 9, 11, 14(2) and (3), 15, 16, 17(2) (in part), (4) and (6), 19(2) and (3), 20, 21, 25(2)(a) and (h) to (j) (in part), 26, 27 (in part), 28(1) and (2)(e) to (g), 31 (2) (in part) and (3)(a) to (c), 32, 37, 38 and 39 of Schedule 11 except to the extent that they relate to Part 3 (Confiscation: Scotland)	24th March 2003	2003/333

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
In Schedule 12 entries relating to the Criminal Appeal (Northern Ireland) Act 1980, the Police and Criminal Evidence Act 1984, the Criminal Justice Act 1980 (in part), the Housing Act 1988 the Criminal Justice (International Co-operation) Act 1990 (in part) Criminal Justice (Northern Ireland) Order 1990, the Criminal Justice Act 1993, the Drug Trafficking Act 1994 (in part), the Proceeds of Crime Act 1995 (in part), the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (in part), the Private International Law (Miscellaneous Provisions) Act 1995, the Proceeds of Crime (Scotland) Act 1995 (in part), the Proceeds of Crime (Northern Ireland) Order 1996 (in part), the Justice of the Peace Act 1997, the Crime and Disorder Act 1998, Access to Justice Act 1999, the Powers of Criminal Courts (Sentencing) Act, the Terrorism Act 2000 (in part) and the Criminal Justice and Police Act 2001.	24th March 2003	2003/333

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