SCOTTISH STATUTORY INSTRUMENTS

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(**1**) 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.

(**1**) 2002 c. 29.

(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(**2**) 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(**3**);

(b) sections 5(4) and 7(1) of the Bankruptcy (Scotland) Act 1985(**4**);

(c) section 13(6) of the Criminal Justice (International Co-operation) Act 1990(**5**);

(**2**) 1995 c. 43; section 86A was inserted by the Police Property Act 1997 (c. 30), section 6(4).
(**3**) 1982 c. 45.
(**4**) 1985 c. 66.
(**5**) 1990 c. 5.

(d) sections 41 and 43 of the Criminal Law (Consolidation) (Scotland) Act 1995(**6**);

(e) sections 109(1), 205B(5) and 219(8)(b) of the Criminal Procedure (Scotland) Act 1995(**7**);

(f) section 15(3) of, and paragraph 20 of Schedule 1 to, the Crime and Punishment (Scotland) Act 1997(**8**); and

(g) paragraph 11(2) of Schedule 15 to the Terrorism Act 2002(**9**).

St Andrew's House, Edinburgh
20th March 2003

HUGH HENRY
A member of the Scottish Executive

(**6**) 1995 c. 39; section 205B was inserted by the Crime and Punishment Act 1997 (c. 48), section 2.
(**7**) 1995 c. 46.
(**8**) 1997 c. 48.
(**9**) 2000 c. 11.

SCHEDULE Article 2

Column 1 (provision)	*Column 2 (purpose)*
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(**10**), 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(**11**), 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(**12**); the entry relating to the Crime and Punishment (Scotland) Act 1997(**13**); and in the entry relating to the Terrorism Act 2002(**14**) 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.

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.

(**10**) 1990 c. 5.
(**11**) 1995 c. 40.
(**12**) 1995 c. 43.
(**13**) 1995 c. 48.
(**14**) 2000 c. 11.