

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 2: Scotland

Confiscation

Section 19: Enforcement of confiscation orders

84. Section 118 of POCA makes similar provision for Scotland in relation to default sentences as section 35 does for England and Wales. Section 118 enables a court (the High Court of Justiciary or the sheriff) to set a default sentence for the accused to serve if he or she fails to pay the amount due under the confiscation order. It achieves this outcome by treating an unpaid confiscation order as if it were an unpaid fine and applying the fine enforcement provisions in section 221 of the Criminal Procedure (Scotland) Act 1995. Section 221(3) of that Act makes a fine unenforceable once a default sentence has been served. This provision does not apply when an administrator is appointed in relation to a confiscation. Consequently, where a person serves a default sentence following his or her failure to pay the amount due under a confiscation order the offender's liability to pay this amount is extinguished; this contrasts with the position in England and Wales. *Subsection (1)(a)* amends section 118(2)(h) of POCA so as to disapply section 221(3) of the Criminal Procedure (Scotland) Act 1995. As a result an offender will be required to pay the amount due under a confiscation order if he or she defaults on payment and serves a default sentence. Accordingly, the liability of the accused to pay the amount due under a confiscation order will no longer be extinguished by serving a prison sentence for defaulting on payment.
85. *Paragraph 42 of Schedule 4* makes a consequential repeal of section 118(2)(k) of POCA so as to disapply section 224 of the Criminal Procedure (Scotland) Act 1995. That section requires warrants of imprisonment for non-payment of a fine to specify a date for the discharge of the liability to pay the fine (in practice once the default sentence has been served) notwithstanding the fact that it has not been paid. That requirement will no longer operate in relation to default sentences for the non-payment of a confiscation order. *Paragraph 45 of Schedule 4* makes a further consequential repeal of section 153(1)(b) of POCA, which provides that a confiscation order is satisfied where the accused against whom it was made has served a default sentence for non payment of the order.
86. *Subsection (1)(b)* makes similar amendments to section 118 of POCA in relation to default sentences to that made to the England and Wales provision in section 35 of POCA by section 10(1) and (2) (see new section 118(2A) and (2B)). Subsection (1)(b) also inserts new subsections (2C) and (2D) into section 118 to provide that where a confiscation order is made by a court in England and Wales or in Northern Ireland but falls to be enforced in Scotland, the criminal courts in Scotland, when sentencing the

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person for non payment of the confiscation order, would apply the respective default sentences set out in new sections 35(2A) and 185(2A) of POCA (as inserted by sections 10 and 32).

87. *Subsection (2)* makes consequential amendments to section 459 of POCA as a result of the new order-making power provided for in new section 118(2B) of POCA as inserted by subsection (1)(b). Paragraph (a) disapplies, for the purposes of the new order-making power, section 459(3) of POCA which provides for any power under POCA to make subordinate legislation to be exercisable by statutory instrument. The power conferred on the Scottish Ministers to make an order under new section 118(2B) will be exercisable by Scottish statutory instrument in accordance with the provisions of the Interpretative and Legislative Reform (Scotland) Act 2010. Paragraphs (b) and (c) amend section 459 of POCA so as to provide that the new order-making power is subject to the affirmative procedure in the Scottish Parliament.
88. *Subsection (3)* makes a consequential amendment to section 219(8) of the Criminal Procedure (Scotland) Act 1995 which requires a sheriff to remit a case to the High Court for sentencing where he or she considers that the default sentence appropriate for that case is beyond his or her normal sentencing powers (namely, a maximum sentence of five years' imprisonment).