



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Enforcement as fines etc

35 [F1 **Enforcement as fines**]

- (1) This section applies if a court—
 - (a) makes a confiscation order, ^{F2}
 - ^{F2}(b)
- (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 3 of the Magistrates' Courts Act 1980 (c. 43) to an amount payable under a confiscation order—
 - (a) ignore section 75 of that Act (power to dispense with immediate payment);
 - (b) 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;
 - (c) in section 87 of that Act ignore subsection (3) (inquiry into means).

Textual Amendments

F1 S. 35 heading substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 19\(2\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

F2 S. 35(1)(b) and preceding word repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 19\(3\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

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Modifications etc. (not altering text)

- C1** Pt. 2 applied by **Terrorism Act 2000** (c. 11), Sch. 8 paras. 8(5A), **34(3A)** (as substituted (24.3.2003) by **Proceeds of Crime Act 2002** (c. 29), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7); S.I. 2003/333, art. 2, **Sch.**)
- C2** Pt. 2 applied by **Police and Criminal Evidence Act 1984** (c. 60), **ss. 56(5B), 58(8B)** (as substituted (24.3.2003) by **Proceeds of Crime Act 2002** (c. 29), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, **Sch.**)

Commencement Information

- I1** S. 35 in force at 24.3.2003 by **S.I. 2003/333, art. 2, Sch.**

^{F3}36 Director appointed as enforcement authority

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Textual Amendments

- F3** S. 36 repealed (1.4.2008) by **Serious Crime Act 2007** (c. 27), s. 94(1), Sch. 8 para. 20, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

- I2** S. 36 in force at 24.3.2003 by **S.I. 2003/333, art. 2, Sch.**

^{F4}37 Director's application for enforcement

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Textual Amendments

- F4** S. 37 repealed (1.4.2008) by **Serious Crime Act 2007** (c. 27), s. 94(1), Sch. 8 para. 20, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

- I3** S. 37 in force at 24.3.2003 by **S.I. 2003/333, art. 2, Sch.**

38 Provisions about imprisonment or detention

(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
- (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).

[^{F5}(1A) An individual who is not a member of the Office may be appointed by the Director to appear in—

- (a) specified proceedings, or
- (b) a specified class or description of proceedings,

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in which the Director or a Prosecutor would otherwise appear by virtue of section 302A of the Proceeds of Crime Act 2002 (cash recovery proceedings).]

- (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.
- (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—
 - (a) any sentence suspended under [^{F6}section 189(1) of the Criminal Justice Act 2003] which has not taken effect at the time the warrant is issued;
 - (b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (c. 45) (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.
- (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.

Textual Amendments

- F5** S. 38(1A) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 84\(3\)](#), [94\(1\)](#); [S.I. 2008/755](#), [art. 17\(1\)\(h\)](#)
- F6** Words in s. 38(4)(a) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), [s. 336\(3\)\(4\)](#), [Sch. 32 para. 141](#); [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 42\(38\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), [art. 2](#); and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1 paras. 48\(s\)](#), [50\(2\)\(d\)](#); (30.11.2009) by [S.I. 2009/3111](#), [art. 2](#); (3.12.2012) by [S.I. 2012/2905](#), [art. 4](#); (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); [S.I. 2012/2906](#), [art. 2\(l\)](#))

Commencement Information

- I4** S. 38 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

39 Reconsideration etc: variation of prison term

- (1) Subsection (2) applies if—
 - (a) a court varies a confiscation order under section 21, 22, 23, 29, 32 or 33,
 - (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

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- (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.

[^{F7}(1A) The Director may designate a member of the Office to appear in—

- (a) specified proceedings, or
 (b) a specified class or description of proceedings,

in which the Director or a Prosecutor would otherwise appear by virtue of section 302A of the Proceeds of Crime Act 2002 (cash recovery proceedings).]

- (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 amend the term of imprisonment or detention fixed in respect of the confiscation order under section 139(2) of the Sentencing Act.
- (5) If the effect of section 12 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 [^{F8}prosecutor] the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 139(2) of that Act.

^{F9}(6)

Textual Amendments

- F7** S. 39(1A) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 84\(4\)](#), [94\(1\)](#); [S.I. 2008/755](#), [art. 17\(1\)\(h\)](#)
- F8** Word in s. 39(5) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [s. 94\(1\)](#), [Sch. 8 para. 21\(2\)](#); [S.I. 2008/755](#), [art. 2\(1\)\(a\)](#) (with arts. 3-14)
- F9** S. 39(6) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [s. 94\(1\)](#), [Sch. 8 para. 21\(3\)](#), [Sch. 14](#); [S.I. 2008/755](#), [art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

Commencement Information

- I5** S. 39 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

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