



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Modifications etc. (not altering text)

- C1** Pt. 3 functions of administrator extended (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **4(1)(a)**
- C2** Pt. 3 applied by [Terrorism Act 2000 \(c. 11\)](#), Sch. 8 paras. 17(4A), 34(3A) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 39(4)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7); S.I. 2003/333, art. 2, Sch.
- C3** Pt. 3 applied (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), **Sch. 1 para. 6(5)**
- C4** Pt. 3 applied (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), **Sch. 1 para. 11(5)**

Confiscation orders

92 Making of order

- (1) The court must act under this section where the following three conditions are satisfied.
- (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.
- (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.

Status: Point in time view as at 06/04/2016.

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- (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;
 - (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—
- (a) it must decide the recoverable amount, and
 - (b) it must make an order (a confiscation order) requiring him to pay that amount.
- [^{F1}Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the accused to pay the recoverable amount.]
- (7) But the court must treat the duty in subsection (6) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the accused in respect of loss, injury or damage sustained in connection with the conduct.
- (8) Before making an order under this section the court must take into account any representations made to it by any person whom the court thinks is likely to be affected by the order.
- (9) The standard of proof required to decide any question arising under subsection (5) or (6) is the balance of probabilities.
- (10) The first condition is not satisfied if the accused is unlawfully at large (but section 111 may apply).
- (11) For the purposes of any appeal or review, an order under this section is a sentence.
- (12) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).
- (13) In this section and sections 93 to 118 “the court” means the High Court of Justiciary or the sheriff.

Textual Amendments

F1 Words in s. 92(6) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 35](#); [S.S.I. 2016/11](#), reg. 2(j)

Commencement Information

I1 S. 92 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#) (with [arts. 3\(1\)](#), [5](#), [7](#))

93 Recoverable amount

- (1) The recoverable amount for the purposes of section 92 is an amount equal to the accused’s benefit from the conduct concerned.
- (2) But if the accused shows that the available amount is less than that benefit the recoverable amount is—
 - (a) the available amount, or

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- (b) a nominal amount, if the available amount is nil.
- (3) But if section 92(7) 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).
- (4) In calculating the accused's benefit from the conduct concerned for the purposes of subsection (1), [^{F2}the following must be ignored—
 - (a) any property in respect of which a recovery order is in force under section 266,
 - (b) any property which has been forfeited in pursuance of a forfeiture notice under section 297A, and
 - (c) any property in respect of which a forfeiture order is in force under section 298(2).]
- (5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

Textual Amendments

F2 Words in s. 93(4) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\), s. 116\(1\), Sch. 7 para. 102](#); [S.I. 2015/983, arts. 2\(2\)\(e\), 3\(ff\)](#)

Commencement Information

I2 S. 93 in force at 24.3.2003 by [S.S.I. 2003/210, art. 2\(1\)\(a\)](#)

94 Accused's benefit

- (1) If the court is acting under section 92 this section applies for the purpose of—
 - (a) deciding whether the accused has benefited from conduct, and
 - (b) deciding his benefit from the conduct.
- (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) Subsection (4) applies if—
 - (a) the conduct concerned is general criminal conduct,
 - (b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the accused, and
 - (c) his benefit for the purposes of that order was benefit from his general criminal conduct.
- (4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.
- (5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
 - (a) the amount ordered to be paid under each confiscation order previously made against the accused;

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- (b) the amount ordered to be paid under each confiscation order previously made against him under—
- (i) the Drug Trafficking Offences Act 1986 (c. 32);
 - (ii) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
 - (iii) Part 6 of the Criminal Justice Act 1988 (c. 33);
 - (iv) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I.17));
 - (v) Part 1 of the Drug Trafficking Act 1994 (c. 37);
 - (vi) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
 - (vii) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/ 1299 (N.I.9)); or
 - (viii) Part 2 or 4 of this Act.
- (6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.
- (7) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (5)(b) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

Commencement Information

I3 S. 94 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

95 Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
- (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
 - (b) the total of the values (at that time) of all tainted gifts.
- (2) An obligation has priority if—
- (a) it is an obligation of the accused 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
 - (b) it is an obligation of the accused 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.
- (3) In subsection (2)—
- “preferred debt” has the meaning given by section 51(2) of the Bankruptcy (Scotland) Act 1985 (c. 66);
 - “preferential debt” has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

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Commencement Information

14 S. 95 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

96 Assumptions to be made in case of criminal lifestyle

- (1) Where the court decides under section 92 that the accused 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
 - (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.
- (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.
- (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.
- (6) But the court must not make any of those assumptions 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.
- (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—
 - (a) the day when proceedings for the offence concerned 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.
- (9) But if a confiscation order mentioned in section 94(3)(c) has been made against the accused at any time during the period mentioned in subsection (8)—
 - (a) the relevant day is the day when the accused's benefit was calculated for the purposes of the last such confiscation order;
 - (b) the second assumption does not apply to any property which was held by him on or before the relevant day.
- (10) The date of conviction is—
 - (a) the date on which the accused was convicted of the offence concerned, or

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- (b) if there are two or more offences and the convictions are on different dates, the date of the latest.

Commencement Information

I5 S. 96 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

97 Effect of order on court's other powers

- (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.
- (2) The court must take account of the confiscation order before—
- it imposes a fine on the accused, or
 - it makes an order falling within subsection (3).
- (3) These orders fall within this subsection—
- an order involving payment by the accused, other than a compensation order under section 249 of the Procedure Act (compensation orders);
 - an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - an order under Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture orders);
 - an order under section 23 [^{F3}or 23A] of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the accused.
- (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, and
 - 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.

Textual Amendments

F3 Words in s. 97(3)(d) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), s. 100(5), [Sch. 3 para. 7\(4\)](#) (with s. 101(2)); [S.I. 2009/1256](#), art. 2(c)

Commencement Information

I6 S. 97 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

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[^{F4}97B Orders for securing compliance with confiscation order

- (1) This section applies where the court makes a confiscation order.
- (2) The court may make such order in relation to the accused as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”).
- (3) The court must consider whether to make a compliance order—
 - (a) on the making of the confiscation order, and
 - (b) if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the prosecutor.
- (4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the accused's travel outside the United Kingdom ought to be imposed for the purpose mentioned in subsection (2).
- (5) The court may discharge or vary a compliance order on an application made by—
 - (a) the prosecutor;
 - (b) the accused.
- (6) For the purposes of any appeal or review, a compliance order is a sentence.

Textual Amendments

F4 Ss. 97B-97D inserted (1.3.2016) by **Serious Crime Act 2015 (c. 9), ss. 16, 88(2)(a)** (with s. 86(3)); **S.S.I. 2016/11, reg. 2(a)**

97C Breach of compliance order

- (1) This section applies where—
 - (a) a compliance order has been made in relation to an accused, and
 - (b) it appears to the court that the accused has failed to comply with the compliance order.
- (2) The court may—
 - (a) issue a warrant for the accused's arrest, or
 - (b) issue a citation to the accused requiring the accused to appear before the court.
- (3) If the accused fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the accused.
- (4) The unified citation provisions (as defined in section 307(1) of the Procedure Act) apply in relation to a citation under subsection (2)(b).
- (5) The court must, before considering the alleged failure—
 - (a) provide the accused with written details of the alleged failure,
 - (b) inform the accused that the accused is entitled to be legally represented, and
 - (c) inform the accused that no answer need be given to the allegation before the accused—
 - (i) has been given an opportunity to take legal advice, or
 - (ii) has indicated that the accused does not wish to take legal advice.

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- (6) If the court is satisfied that the accused has failed without reasonable excuse to comply with the compliance order, the court may—
- (a) impose on the accused a fine not exceeding level 3 on the standard scale,
 - (b) revoke the compliance order and impose on the accused a sentence of imprisonment for a term not exceeding 3 months,
 - (c) vary the compliance order, or
 - (d) both impose a fine under paragraph (a) and vary the order under paragraph (c).
- (7) The court may vary the compliance order if the court is satisfied—
- (a) that the accused has failed to comply with the order,
 - (b) that the accused had a reasonable excuse for the failure, and
 - (c) that, having regard to the circumstances which have arisen since the order was imposed, it is in the interests of justice to vary the order.
- (8) Evidence of one witness is sufficient for the purpose of establishing that an accused has failed without reasonable excuse to comply with a compliance order.

Textual Amendments

- F4** Ss. 97B-97D inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 16, 88\(2\)\(a\)](#) (with [s. 86\(3\)](#)); [S.S.I. 2016/11](#), [reg. 2\(a\)](#)

97D Appeals against variation or discharge of compliance orders

The prosecutor or the accused may appeal against a decision of the court under section 97B(5)—

- (a) to vary or refuse to vary a compliance order, or
- (b) to discharge or refuse to discharge a compliance order.]

Textual Amendments

- F4** Ss. 97B-97D inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 16, 88\(2\)\(a\)](#) (with [s. 86\(3\)](#)); [S.S.I. 2016/11](#), [reg. 2\(a\)](#)

98 Disposal of family home

- (1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person's interest in his family home has been acquired as a benefit from his criminal conduct.
- (2) Where this section applies, then, before the administrator disposes of any right or interest in the person's family home he shall—
 - (a) obtain the relevant consent; or
 - (b) where he is unable to do so, apply to the court for authority to carry out the disposal.
- (3) On an application being made to it under subsection (2)(b), the court, after having regard to all the circumstances of the case including—

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- (a) the needs and financial resources of the spouse or former spouse of the person concerned;
- (b) the needs and financial resources of any child of the family;
- (c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b),

may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.

(4) Subsection (3) shall apply—

- (a) to an action for division and sale of the family home of the person concerned;
or
- (b) to an action for the purpose of obtaining vacant possession of that home,

brought by the administrator as it applies to an application under subsection (2)(b) and, for the purposes of this subsection, any reference in subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action.

(5) In this section—

“family home”, in relation to any person (in this subsection referred to as “the relevant person”) means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person’s spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family;

“child of the family” includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and

“relevant consent” means in relation to the disposal of any right or interest in a family home—

- (a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person;
- (b) where paragraph (a) does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.

Commencement Information

17 S. 98 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Procedural matters

99 Postponement

(1) The court may—

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- (a) proceed under section 92 before it sentences the accused for the offence (or any of the offences concerned), or
 - (b) postpone proceedings under section 92 for a specified period.
- (2) A period of postponement may be extended.
- (3) A period of postponement (including one as extended) must not end after the permitted period ends.
- (4) But subsection (3) does not apply if there are exceptional circumstances or if the accused has failed to comply with an order under section 102(1).
- (5) The permitted period is the period of two years starting with the date of conviction.
- (6) But if—
- (a) the accused 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 (5),
- the permitted period is that period of three months.
- (7) A postponement or extension may be made—
- (a) on application by the accused;
 - (b) on application by the prosecutor;
 - (c) by the court of its own motion.
- (8) If—
- (a) proceedings are postponed for a period, and
 - (b) an application to extend the period is made before it ends,
- the application may be granted even after the period ends.
- (9) The date of conviction is—
- (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.
- (10) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.
- (11) But subsection (10) does not apply if before it made the confiscation order the court has—
- (a) imposed a fine on the accused;
 - (b) made an order falling within section 97(3);
 - (c) made an order under section 249 of the Procedure Act.

Commencement Information

18 S. 99 in force at 24.3.2003 by **S.S.I. 2003/210, art. 2(1)(a)**

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100 Effect of postponement

- (1) If the court postpones proceedings under section 92 it may proceed to sentence the accused for the offence (or any of the offences) 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) concerned in the postponement period the court must not—
 - (a) impose a fine on him,
 - (b) make an order falling within section 97(3), or
 - (c) make an order for the payment of compensation under section 249 of the Procedure Act.
- (4) If the court sentences the accused for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by—
 - (a) imposing a fine on him,
 - (b) making an order falling within section 97(3), or
 - (c) making an order for the payment of compensation under section 249 of the Procedure Act.
- (5) But the court may proceed under subsection (4) only within the period of 28 days which starts with the last day of the postponement period.
- (6) Where the court postpones proceedings under section 92 following conviction on indictment, section 109(1) of the Procedure Act (intimation of 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.
- (7) Despite subsection (6), 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.
- (8) Where the court postpones proceedings under section 92 following conviction on complaint—
 - (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 within 3 weeks of the relevant day.
- (9) Despite subsection (8), 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 conviction.
- (10) 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;
 - (b) in any other case, the day on which sentence is passed in open court.
- (11) The postponement period is the period for which proceedings under section 92 are postponed.

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Commencement Information

I9 S. 100 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

101 Statement of information

- (1) When the court is proceeding under section 92 the prosecutor must, within such period as the court may order, give the court a statement of information.
- (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;
 - (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—
 - (a) in connection with the making by the court of a required assumption under section 96;
 - (b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.
- (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;
 - (b) his benefit from the conduct.
- (5) If the prosecutor gives the court a statement of information—
 - (a) he may at any time give the court a further statement of information;
 - (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.
- (6) If the court makes an order under this section it may at any time vary it by making another one.

Commencement Information

I10 S. 101 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

102 Accused's response to statement of information

- (1) When 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 shall order the accused—
 - (a) to indicate 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,
 within the period it orders.

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Where by virtue of section 99 the court postpones proceedings under section 92, the period ordered by the court under subsection (1) shall be a period ending not less than six months before the end of the permitted period mentioned in section 99.
- (3) 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 101(2) or (4) (as the case may be).
- (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 (3) as accepting every allegation in the statement of information apart from—
 - (a) any allegation in respect of which he has complied with the requirement;
 - (b) 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
 - (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.
- (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 conduct is admissible in evidence in proceedings for an offence.

Commencement Information

III S. 102 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

103 Provision of information by accused

- (1) For the purpose of obtaining information to help it in carrying out its functions under section 92 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.
- (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) Subsection (3) does not affect any power of the court to deal with the accused in respect of a failure to comply with an order under this section.
- (5) If the prosecutor accepts to any extent an allegation made by the accused—
 - (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,

Status: Point in time view as at 06/04/2016.

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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 order.
- (8) No information given under this section which amounts to an admission by the accused that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Commencement Information

I12 S. 103 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Reconsideration

104 No order made: reconsideration of case

- (1) This section applies if—
 - (a) the first condition in section 92 is satisfied but no court has proceeded under that section,
 - (b) the prosecutor has evidence which was not available to him on the relevant date,
 - (c) 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
 - (d) after considering the evidence the court thinks it is appropriate for it to proceed under section 92.
- (2) The court must proceed under section 92, and when it does so subsections (3) to (8) below apply.
- (3) If the court has already sentenced the accused for the offence (or any of the offences) concerned section 92(4) does not apply.
- (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 in connection with conduct occurring before that date.
- (5) In relation to the assumptions that the court must 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;
 - (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.
- (6) The recoverable amount for the purposes of section 92 is such amount as—

Status: Point in time view as at 06/04/2016.

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- (a) the court believes is just, but
 - (b) does not exceed the amount found under section 93.
- (7) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 93;
 - (b) any fine imposed on the accused in respect of the offence (or any of the offences) concerned;
 - (c) 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 and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;
 - (d) 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.
- (8) If an order for payment of compensation under section 249 of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97(5) and (6) do not apply.
- (9) The relevant date is—
- (a) if the court made a decision not to proceed under section 92, the date of the decision;
 - (b) if the court did not make such a decision, the date of the conviction.
- (10) The date of conviction is—
- (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.
- (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.

Commencement Information

113 S. 104 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

105 No order made: reconsideration of benefit

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that in proceeding under section 92 the court has decided that—
- (a) the accused has a criminal lifestyle but has not benefited from his general criminal conduct, or
 - (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,
 - (b) 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

Status: Point in time view as at 06/04/2016.

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- (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.
- (4) If this section applies the court—
 - (a) must make a fresh decision under section 92(5)(b) or (c) as to whether the accused has benefited from his general or particular criminal conduct (as the case may be);
 - (b) may make a confiscation order under that section.
- (5) Subsections (6) to (11) below apply if the court proceeds under section 92 in pursuance of this section.
- (6) If the court has already sentenced the accused for the offence (or any of the offences) concerned section 92(4) does 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;
 - (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.
- (8) In relation to the assumptions that the court must 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;
 - (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.
- (9) The recoverable amount for the purposes of section 92 is such amount as—
 - (a) the court believes is just, but
 - (b) does not exceed the amount found under section 93.
- (10) In arriving at the just amount the court must have regard in particular to—
 - (a) the amount found under section 93;
 - (b) any fine imposed on the accused in respect of the offence (or any of the offences) concerned;
 - (c) 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 and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;
 - (d) 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.
- (11) If an order for the payment of compensation under section 249 of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97(5) and (6) do not apply.

Status: Point in time view as at 06/04/2016.

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- (12) The date of conviction is the date found by applying section 104(10).
- (13) 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.

Commencement Information

I14 S. 105 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

106 Order made: reconsideration of benefit

- (1) This section applies if—
 - (a) a court has made a confiscation order,
 - (b) there is evidence which was not available to the prosecutor at the relevant time,
 - (c) 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 relevant amount,
 - (d) 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
 - (e) 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;
 - (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 must make under section 96—
 - (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;
 - (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 relevant amount the court—
 - (a) must make a new calculation of the recoverable amount for the purposes of section 92, 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 just.

Status: Point in time view as at 06/04/2016.

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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.
- (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;
 - (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 and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;
 - (c) any 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.
- (9) But in applying subsection (6)(b) the court must not have regard to an order falling within subsection (8)(c) if a court has made a direction under section 97(6).
- (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 relevant time is—
- (a) when the court calculated the accused’s benefit for the purposes of the confiscation order, if this section has not applied previously;
 - (b) when the court last calculated the accused’s benefit in pursuance of this section, if this section has applied previously.
- (12) The relevant amount is—
- (a) the amount found as the accused’s benefit for the purposes of the confiscation order, if this section has not applied previously;
 - (b) the amount last found as the accused’s benefit in pursuance of this section, if this section has applied previously.
- (13) The date of conviction is the date found by applying section 104(10).

Commencement Information

I15 S. 106 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

107 Order made: reconsideration of available amount

- (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 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

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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.

- (3) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—
 - (a) it thinks is just, but
 - (b) does not exceed the amount found as the accused’s benefit from the conduct concerned.
- (4) In arriving at the just amount the court must have regard in particular to—
 - (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 and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;
 - (c) any 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.
- (5) But in deciding what is just the court must not have regard to an order falling within subsection (4)(c) if a court has made a direction under section 97(6).
- (6) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
- (7) The relevant amount is—
 - (a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;
 - (b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.
- (8) The amount found as the accused’s benefit from the conduct concerned is—
 - (a) the amount so found when the confiscation order was made, or
 - (b) if one or more new calculations of the accused’s benefit have been made under section 106 the amount found on the occasion of the last such calculation.

Commencement Information

I16 S. 107 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

108 Inadequacy of available amount: variation of order

- (1) This section applies if—
 - (a) a court has made a confiscation order, and
 - (b) the accused or the prosecutor applies to the court to vary the order under this section.
- (2) In such a case the court must calculate the available amount 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 calculation and as if references to the date of the confiscation order were to the date of the calculation.

Status: Point in time view as at 06/04/2016.

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- (3) If the court finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.
- (4) If a person's estate has been sequestrated or he has been [^{F5}made] bankrupt, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by him or by the company 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.
- (6) In subsection (4) "company" means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

Textual Amendments

F5 Word in s. 108(4) substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\), reg. 1, Sch. 1 para. 18](#)

Commencement Information

I17 S. 108 in force at 24.3.2003 by [S.S.I. 2003/210, art. 2\(1\)\(a\)](#)

109 Inadequacy of available amount: discharge of order

- (1) This section applies if—
 - (a) a court has made a confiscation order,
 - (b) the prosecutor applies to the court to discharge the order under this section, 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, 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 calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (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,
 it may discharge the confiscation order.
- (4) The specified reasons are—
 - (a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;
 - (b) any reason specified by the Scottish Ministers.

Status: Point in time view as at 06/04/2016.

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- (5) The Scottish Ministers may by order vary the amount for the time being specified in subsection (1)(c).

Commencement Information

I18 S. 109 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

110 Information

- (1) This section applies if—
- (a) the court proceeds under section 92 in pursuance of section 104 or 105, or
 - (b) the prosecutor applies under section 106.
- (2) In such a case—
- (a) the prosecutor must give the court a statement of information within such period as the court may specify;
 - (b) section 101 applies accordingly (with appropriate modifications where the prosecutor applies under section 106);
 - (c) sections 102 and 103 apply accordingly.

Commencement Information

I19 S. 110 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Accused unlawfully at large

111 Conviction or other disposal of accused

- (1) This section applies if an accused is unlawfully at large [^{F6}and, either before or after he became unlawfully at large] —
- (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.
- (2) If this section applies the court may, on the application of the prosecutor and if it believes it is appropriate for it to do so, proceed under section 92 in the same way as it must proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3).
- (3) If the court proceeds under section 92 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 92 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 92 unless the prosecutor has taken reasonable steps to contact the accused;
 - (c) section 92(12) applies as if the reference to subsection (2) were to subsection (1) of this section;
 - (d) sections 96, 101(3), 102 and 103 do not apply;

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- (e) sections 104, 105 and 106 do not apply while the accused is still unlawfully at large.

[^{F7}(4) Once the accused has ceased to be unlawfully at large—

- (a) section 104 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) in a case where section 111 applies the court did not proceed under section 92,
 (b) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under section 92, and
 (c) the court thinks it is appropriate for it to do so.”;

- (b) section 105 has effect as if subsection (3) read—

“(3) The second condition is that—

- (a) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to reconsider whether the accused has benefited from his general or particular criminal conduct (as the case may be), and
 (b) the court thinks it is appropriate for it to do so.”;

- (c) section 106 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
 (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 relevant amount,
 (c) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under this section, and
 (d) the court thinks it is appropriate for it to do so.”;

- (d) the modifications set out in subsection (3)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 104, 105 or 106 (as applied by this subsection).]

Textual Amendments

F6 Words in s. 111(1) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 18(1)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

F7 S. 111(4) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 18(2)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

Commencement Information

I20 S. 111 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)** (with [arts. 3\(2\)](#), 7)

Status: Point in time view as at 06/04/2016.

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112 Accused neither convicted nor acquitted

- (1) This section applies if—
- (a) proceedings for an offence or offences are instituted against an accused but are not concluded,
 - (b) he is unlawfully at large, and
 - (c) the period of [^{F8}three months] (starting with the day the court believes he first became unlawfully at large) has ended.
- (2) If this section applies the court may, on an application by the prosecutor and if it believes it is appropriate for it to do so, proceed under section 92 in the same way as it must proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3).
- (3) If the court proceeds under section 92 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 92 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 92 unless the prosecutor has taken reasonable steps to contact the accused;
 - (c) section 92(12) applies as if the reference to subsection (2) were to subsection (1) of this section;
 - (d) sections 96, 101(3), 102, 103, 104 and 105 do not apply;
 - (e) section 106 does not apply while the accused is still unlawfully at large.
- [^{F9}(4) Once the accused has ceased to be unlawfully at large—
- (a) section 106 has effect as if subsection (1) read—

“(1) This section applies if—

 - (a) a court has made a confiscation order,
 - (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 relevant amount,
 - (c) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under this section, and
 - (d) the court thinks it is appropriate for it to do so.”;
 - (b) the modifications set out in subsection (3)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 106 (as applied by this subsection).]
- (5) If—
- (a) the court makes an order under section 92 as applied by this section, and
 - (b) the accused is later convicted of the offence (or any of the offences) concerned, section 92 does not apply so far as that conviction is concerned.

Textual Amendments

- F8** Words in s. 112(1)(c) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 18\(3\)](#), [88\(2\)\(a\)](#); [S.S.I. 2016/11](#), [reg. 2\(c\)](#)

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F9 S. 112(4) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 18(4)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

Commencement Information

I21 S. 112 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)** (with [arts. 3\(3\)](#), 7)

113 Variation of order

- (1) This section applies if—
- (a) the court makes a confiscation order under section 92 as applied by section 112,
 - (b) the accused ceases to be unlawfully at large,
 - (c) he is convicted of an offence (or any of the offences) mentioned in section 112(1)(a),
 - (d) 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
 - (e) before the end of the relevant period 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—
- (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
 - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (3) The relevant period is the period of 28 days starting with—
- (a) the date on which the accused was convicted of the offence mentioned in section 112(1)(a), or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (4) But in a case where section 112(1)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the accused has not been convicted.

Commencement Information

I22 S. 113 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

114 Discharge of order

- (1) Subsection (2) applies if—
- (a) the court makes a confiscation order under section 92 as applied by section 112,
 - (b) the accused is later tried for the offence or offences concerned and acquitted of the offence or offences, and

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- (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 92 as applied by section 112,
 - (b) the accused ceases to be unlawfully at large,
 - (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—
 - (a) there has been undue delay in continuing the proceedings mentioned in section 112(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.

Commencement Information

I23 S. 114 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Appeals

115 Appeal by prosecutor

- (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).
- (2) In subsection (1), after paragraph (c) insert—
 - “(ca) a decision under section 92 of the Proceeds of Crime Act 2002 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—
 - “(3) For the purposes of subsection (2)(b)(i) above in its application to a confiscation order by virtue of section 92(11) of the Proceeds of Crime Act 2002, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.”
- (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 92 of the Proceeds of Crime Act 2002 not to make a confiscation order;”
- (7) In subsection (4A)(b)(ii), for the words “or (c)” substitute “, (c) or (ca)”.
- (8) After subsection (4A) insert—

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“(4B) For the purposes of subsection (4A)(b)(i) above in its application to a confiscation order by virtue of section 92(11) of the Proceeds of Crime Act 2002, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.”

Commencement Information

I24 S. 115 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Payment and enforcement

116 Time for payment

- (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 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.
- (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 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.
- (6) An order under subsection (4)—
 - (a) may be made after the end of the specified period, but
 - (b) must not be made after the end of the period of twelve months starting with the day on which the confiscation order is made.
- (7) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.

Commencement Information

I25 S. 116 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

117 Interest on unpaid sums

- (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 116), he must pay interest on the amount for the period for which it remains unpaid.

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- (2) The rate of interest is the rate payable under a decree of the Court of Session.
- (3) For the purposes of this section no amount is required to be paid under a confiscation order if—
 - (a) an application has been made under section 116(4),
 - (b) the application has not been determined by the court, and
 - (c) the period of 12 months starting with the day on which the confiscation order was made has not ended.
- (4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

Modifications etc. (not altering text)

C5 S. 117 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), [Sch. 1 para. 11\(6\)](#)

Commencement Information

I26 S. 117 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

118 Application of provisions about fine enforcement

- (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.
- (2) Those provisions are—
 - (a) section 211(3) to (6);
 - (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
 - (ii) applied whether the offender was in prison or not;
 - (d) section 217;
 - (e) section 218(2) and (3);
 - (f) section 219, provided that—
 - (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;
 - (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; and
 - (iii) where an administrator has not been appointed in relation to the confiscation order, or where the accused does not ask under

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section 116 for time for payment of any confiscation order imposed by the court, the prosecutor may apply to the court to postpone the imposition of any period of imprisonment for a period not exceeding 3 months to enable the prosecutor to apply to the court for the appointment of an administrator;

- (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;
- (h) section 221 [^{F10}(other than subsection (3) and as if the words “Subject to subsection (3) below,” were omitted); but that section does not apply] 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 (c. 37), the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) or of Part 2 or 4 of this Act;
- (j) section 223;
- ^{F11}(k)

[^{F12}(2A) In its application in relation to confiscation orders, subsection (2) of section 219 of the Procedure Act is to be read as if for the Table in that subsection there were substituted the following Table—

<i>Amount to be Paid under Compensation Order</i>	<i>Maximum Period of Imprisonment</i>
£10,000 or less	6 months
More than £10,000 but no more than £500,000	5 years
More than £500,000 but no more than £1 million	7 years
More than £1 million	14 years

(2B) The Scottish Ministers may by order—

- (a) amend section 219(2) of the Procedure Act (as applied by this section) so as to provide for minimum periods of imprisonment in respect of amounts ordered to be paid under a confiscation order;
- (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of paragraph (a) of this subsection) or to add any entry;
- (c) apply (with or without modifications) any provision of the Procedure Act relating to enforcement of fines in consequence of exercising the power in paragraph (a) or (b) (including modifying any such provision in its application in relation to confiscation orders by virtue of this section).

(2C) In its application in relation to a confiscation order under Part 2 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if, in relation to a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, for “139 of the Powers of Criminal Courts (Sentencing) Act 2000” there were substituted “35(2A) of the Proceeds of Crime Act 2002”.

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- (2D) In its application in relation to a confiscation order under Part 4 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if—
- (a) before the words “section 90” there were inserted “section 35 of the Criminal Justice Act (Northern Ireland) 1945,”;
 - (b) in relation to a transfer of fine order under section 35 of that Act, for “139 of the Powers of Criminal Courts (Sentencing) Act 2000” there were substituted “ 185(2A) of the Proceeds of Crime Act 2002 ”.]
- (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 124 of this Act is to be treated as having been executed by the court as if that subsection authorised such execution.
- (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 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).

Textual Amendments

- F10** Words in s. 118(2)(h) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 19(1)(a)**, 88(2)(a); [S.S.I. 2016/11](#), [reg. 2\(d\)](#) (with [reg. 3](#))
- F11** S. 118(2)(k) omitted (1.3.2016) by virtue of [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), **Sch. 4 para. 42**; [S.S.I. 2016/11](#), [reg. 2\(j\)](#) (with [reg. 3](#))
- F12** S. 118(2A)-(2D) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 19(1)(b)**, 88(2)(a); [S.S.I. 2016/11](#), [reg. 2\(d\)](#) (with [reg. 3](#))

Modifications etc. (not altering text)

- C6** S. 118 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), [reg. 1\(b\)](#), **Sch. 1 para. 11(6)**

Commencement Information

- I27** S. 118 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

Restraint orders etc

119 Conditions for exercise of powers

- (1) The court may exercise the powers conferred by section 120 if any of the following conditions is satisfied.
- (2) The first condition is that—

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- (a) a criminal investigation has been instituted in Scotland with regard to an offence, and
 - (b) there [^{F13}are reasonable grounds to suspect] that the alleged offender has benefited from his criminal conduct.
- (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 from his criminal conduct.
- (4) The third condition is that—
- (a) an application by the prosecutor has been made under section 104, 105, 111 or 112 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 from his criminal conduct.
- (5) The fourth condition is that—
- (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
 - (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 relevant amount (as defined in that section).
- (6) The fifth condition is that—
- (a) an application by the prosecutor has been made under section 107 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 relevant amount (as defined in that section).
- (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—
- (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 believes is to have conduct of any proceedings for the offence;
 - (c) section 144(8) has effect as if proceedings for the offence had been instituted against the accused when the investigation was instituted.
- (10) In this section, sections 120 to 140 and Schedule 3 “the court” means—
- (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;

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- (b) the sheriff exercising his civil jurisdiction, where a diet referred to in paragraph (a) is to be, is being or has been held in the sheriff court.

Textual Amendments

F13 Words in s. 119(2)(b) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 20\(1\)](#), [88\(2\)\(a\)](#); [S.S.I. 2016/11](#), [reg. 2\(e\)](#)

Commencement Information

I28 S. 119 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#) (with [arts. 4, 7](#))

120 Restraint orders etc

- (1) If any condition set out in section 119 is satisfied the court may make an order (a restraint order) interdicting any specified person from dealing with any realisable property held by him.
- (2) A restraint order may provide that it applies—
- to all realisable property held by the specified person whether or not the property is described in the order;
 - 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—
- make provision for reasonable living expenses and reasonable legal expenses;
 - make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
 - be made subject to conditions.
- (4) But an exception to a restraint order may not make provision for any legal expenses which—
- relate to an offence which falls within subsection (5), and
 - are incurred by a person against whom proceedings for the offence have been instituted or by a recipient of a tainted gift.
- (5) These offences fall within this subsection—
- the offence mentioned in section 119(2) or (3), if the first or second condition (as the case may be) is satisfied;
 - the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.
- (6) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- ^{F14}(6A) Subsections (6B) and (6C) apply where the court makes a restraint order (by virtue of the first condition in section 119) as a result of a criminal investigation having been instituted in Scotland with regard to an offence.
- (6B) The court—

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- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
 - (b) must recall the order if proceedings for the offence are not instituted within a reasonable time (and this duty applies whether or not an application to recall the order is made under section 121(5)).
- (6C) The duty under subsection (6B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—
- (a) must give reasons for its decision, and
 - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 121(5)).]
- (7) A restraint order does not affect property subject to a charge under—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32),
 - (b) Part 6 of the Criminal Justice Act 1988 (c. 33),
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)),
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37), or
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) Dealing with property includes removing the property from Scotland.

Textual Amendments

F14 S. 120(6A)-(6C) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 20(2)**, 88(2)(a); [S.S.I. 2016/11](#), reg. 2(e)

Commencement Information

I29 S. 120 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)** (with arts. 4, 7)

[^{F15}120A Restraint orders: power to retain seized property etc.

- (1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
 - (a) is seized by an appropriate officer under a relevant seizure power, or
 - (b) is produced to an appropriate officer in compliance with a production order under section 380.
- (2) Provision under subsection (1) may, in particular—
 - (a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
 - (b) relate to property that has already been seized or produced or to property that may be seized or produced in future.
- (3) “Appropriate officer” means—
 - (a) a constable;
 - (b) an officer of Revenue and Customs;

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- [an immigration officer;]
^{F16}(ba)
[^{F17}(c) a National Crime Agency officer;]
- (4) “Relevant seizure power” means a power to seize property conferred by or by virtue of—
- section 127C or 387,
 - a warrant granted under any other enactment or any rule of law, or
 - any other enactment, or any rule of law, under which the authority of a warrant is not required.]

Textual Amendments

- F15** S. 120A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 53(2)**, 116(1); [S.I. 2015/983](#), [art. 2\(2\)\(a\)](#)
- F16** S. 120A(3)(ba) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), Sch. 21 para. 20 (with Sch. 21 para. 40); [S.I. 2014/3098](#), [art. 2\(e\)](#)
- F17** S. 120A(3)(c) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), Sch. 8 para. 115; [S.I. 2013/1682](#), [art. 3\(v\)](#)

121 Application, recall and variation

- (1) This section applies to a restraint order.
 - (2) An order may be made on an ex parte application by the prosecutor, which may 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 affected by the order may apply to the court to recall an order or to vary it; and subsections (6) to [^{F18}(10)] 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 119 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).
- [^{F19}(8A) The duty in subsection (8) to recall a restraint order on the conclusion of proceedings does not apply where—
- (a) the proceedings are concluded by reason of—
 - (i) an accused's conviction for an offence being quashed under section 118(1)(c) of the Procedure Act, or
 - (ii) the setting aside of the verdict against the accused under section 183(1)(d) of the Procedure Act,

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- (b) the restraint order is in force at the time when the conviction is quashed or the verdict set aside (as the case may be), and
 - (c) the High Court of Justiciary has granted authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution or the prosecutor has requested that the court grant such authority.
- (8B) But the court must recall the restraint order—
- (a) if the High Court of Justiciary refuses a request to grant authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution,
 - (b) if the High Court of Justiciary has granted authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution but no proceedings are commenced by the expiry of the time mentioned in section 119(5) or 185(5) of that Act (as the case may be), or
 - (c) otherwise, on the conclusion of the proceedings in the new prosecution of the accused under section 119 or 185 of the Procedure Act.]
- [^{F20}(9) In the case of a restraint order, if the condition in section 119 which was satisfied was that an investigation was instituted—
- (a) the court must discharge the order if within a reasonable time proceedings for the offence are not instituted;
 - (b) otherwise, the court must recall the order on the conclusion of the proceedings.
- (10) In the case of a restraint order, if the condition in section 119 which was satisfied was that an application was to be made—
- (a) the court must discharge the order if within a reasonable time the application is not made;
 - (b) otherwise, the court must recall the order on the conclusion of the application.]

Textual Amendments

- F18** Word in s. 121(5) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 43\(2\)](#); S.S.I. 2016/11, reg. 2(j)
- F19** S. 121(8A)(8B) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 21](#), 88(2)(a); S.S.I. 2016/11, reg. 2(f)
- F20** S. 121(9)(10) substituted for s. 121(9) (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 43\(3\)](#); S.S.I. 2016/11, reg. 2(j)

Commencement Information

- I30** S. 121 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

122 Appeals

- (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 affected by the order may reclaim or appeal to the Court of Session against the decision of the court on an application under section 121(5).

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

I31 S. 122 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

[^{F21}122A Detention of property pending appeal

- (1) This section applies where—
 - (a) a restraint order includes provision under section 120A authorising the detention of property, and
 - (b) the restraint order is recalled under section 121(7).
- (2) This section also applies where—
 - (a) a restraint order includes provision under section 120A authorising the detention of property, and
 - (b) the restraint order is varied under section 121(7) so as to omit any such provision.
- (3) The property may be detained until there is no further possibility of an appeal against (or review of)—
 - (a) the decision to recall or vary the restraint order, or
 - (b) any decision made on an appeal against (or review of) that decision.]

Textual Amendments

F21 S. 122A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 53\(3\)](#), 116(1); [S.I. 2015/983](#), [art. 2\(2\)\(a\)](#)

123 Inhibition of property affected by order

- (1) On the application of the [^{F22}prosecutor, the court] may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a restraint order.
- (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—
 - (a) has effect as if granted on the dependence of an action for debt by the [^{F23}prosecutor] against the person and may be executed, recalled, loosed or restricted accordingly, and
 - [^{F24}(b) must forthwith be registered by the prosecutor in the Register of Inhibitions]
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) ^{F25}....
- (5) 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.

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) 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.
- (7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the [F26 prosecutor] must—
- (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.

Textual Amendments

- F22** Words in s. 123(1) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [sch. 5 para. 29\(a\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F23** Word in s. 123(3)(a) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [sch. 5 para. 29\(b\)\(i\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F24** S. 123(3)(b) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [sch. 5 para. 29\(b\)\(ii\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F25** Words in s. 123(4) repealed (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 2 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F26** Word in s. 123(7) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [sch. 5 para. 29\(c\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

Modifications etc. (not altering text)

- C7** S. 123 applied (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, [12\(1\)](#)

Commencement Information

- I32** S. 123 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

124 Arrestment of property affected by order

- (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.
- (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.
- (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 or for the purposes of this Part in respect of that property.

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 subsection (5) the prosecutor must apply to the court for an order recalling, or as the case may be, restricting the arrestment.

Modifications etc. (not altering text)

C8 S. 124 applied (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(2)**

Commencement Information

I33 S. 124 in force at 24.3.2003 by [S.S.I. 2003/210](#), art. **2(1)(a)**

125 Management administrators

- (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 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 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 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) The court—
 - (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the administrator 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.
- (6) The court must not—
 - (a) confer the power mentioned in subsection (1) to manage or otherwise deal with the property, or
 - (b) exercise the power conferred on it by subsection (5),unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (7) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

Status: Point in time view as at 06/04/2016.

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- (8) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.
- (9) Subsections (1)(b) and (5) do not apply to property for the time being subject to a charge under—
- (a) section (9) of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

Commencement Information

I34 S. 125 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

^{F27} 126 Seizure

Textual Amendments

F27 S. 126 repealed (1.6.2015) by [Policing and Crime Act 2009](#) (c. 26), ss. 56(3), 116(1), [Sch. 8 Pt. 4](#); [S.I. 2015/983](#), [art. 2\(2\)\(a\)\(f\)](#) (with [art. 4\(3\)\(4\)](#))

Commencement Information

I35 S. 126 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

127 Restraint orders: restriction on proceedings and remedies

- (1) While a restraint order has effect, the court may sist any action, execution or any legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a restraint order has been made or applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by subsection (2), the court must give an opportunity to be heard to—
 - (a) the applicant for the restraint order;
 - (b) any administrator appointed under section 125.

Status: Point in time view as at 06/04/2016.

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Commencement Information

I36 S. 127 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

F28 Search and seizure powers

Textual Amendments

F28 Ss. 127A-127R and cross-heading inserted (22.11.2014 for the insertion of ss. 127A, 127G, 127R for specified purposes, 1.6.2015 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 56(2), 116(1); S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(a)

127A Sections 127B to 127R: meaning of “appropriate officer”

In sections 127B to 127R “appropriate officer” means—

- (a) an officer of Revenue and Customs, or
- F29**(aa) [an immigration officer, or]
- (b) a constable.

Textual Amendments

F29 Words in s. 127A inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), ss. 55(4)(b), 61(2) (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(b)

127B Conditions for exercise of powers

- (1) An appropriate officer may exercise the power conferred by section 127C if satisfied that any of the following conditions is met.
- (2) The first condition is that—
 - (a) a criminal investigation has been started in Scotland with regard to an indictable offence,
 - (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in Scotland,
 - (d) there **F30**are reasonable grounds to suspect] that the person has benefited from conduct constituting the offence, and
 - (e) a restraint order is not in force in respect of any realisable property.
- (3) The second condition is that—
 - (a) a criminal investigation has been started in Scotland with regard to an indictable offence,
 - (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in Scotland, and
 - (d) a restraint order is in force in respect of any realisable property.

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- (4) The third condition is that—
 - (a) proceedings for an indictable offence have been started in Scotland and have not been concluded,
 - (b) there is reasonable cause to believe that the accused has benefited from conduct constituting the offence, and
 - (c) a restraint order is not in force in respect of any realisable property.
- (5) The fourth condition is that—
 - (a) proceedings for an indictable offence have been started in Scotland and have not been concluded, and
 - (b) a restraint order is in force in respect of any realisable property.
- (6) The fifth condition is that—
 - (a) an application by the prosecutor has been made under section 104, 105, 111 or 112 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the accused has benefited from criminal conduct.
- (7) The sixth condition is that—
 - (a) an application by the prosecutor has been made under section 106 and not concluded, or the officer 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 accused's benefit exceeds the relevant amount (as defined in that section).
- (8) The seventh condition is that—
 - (a) an application by the prosecutor has been made under section 107 and not concluded, or the officer 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 relevant amount (as defined in that section).
- (9) The third or fourth condition is not met if the officer believes that—
 - (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
- (10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor does not intend to proceed.
- (11) In relation to the first or second condition references in sections 127C to 127R to the accused are to the person mentioned in that condition.
- (12) In relation to the first or second condition section 144(8) has effect as if proceedings for the offence had been started against the accused when the investigation was started.

Status: Point in time view as at 06/04/2016.

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Textual Amendments

F30 Words in s. 127B(2)(d) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 22(1)**, 88(2)(a); S.S.I. 2016/11, reg. 2(g)

127C Power to seize property

- (1) On being satisfied as mentioned in section 127B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—
 - (a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused, or
 - (b) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.
- (2) But the officer may not seize—
 - (a) cash, or
 - (b) exempt property.
- (3) “Cash” has the same meaning as in section 289.
- (4) “Exempt property” means—
 - (a) such tools, books, vehicles and other items of equipment as are necessary to the accused for use personally in the accused's employment, business or vocation;
 - (b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the accused and the accused's family.
- (5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the accused are to be read as references to the recipient of that gift.

Section 127B(11) is subject to this subsection.

- (6) The power conferred by this section—
 - (a) may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and
 - ^{F31}(aa) [where applicable, in accordance with subsection (6A) or (6B).]
- ^{F32}(6A) The power conferred by this section is exercisable] by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).
- ^{F33}(6B) [The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—
 - (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

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- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.]
- (7) “Relevant offence” means—
- (a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 127B is met, the offence mentioned in that condition,
 - (b) in a case where the officer is satisfied that any of the other conditions in section 127B is met, the offence (or any of the offences) concerned.
- [Relevant nationality enactment” means any enactment in—
- ^{F34}(8) (a) the British Nationality Act 1981,
 (b) the Hong Kong Act 1985,
 (c) the Hong Kong (War Wives and Widows) Act 1996,
 (d) the British Nationality (Hong Kong) Act 1997,
 (e) the British Overseas Territories Act 2002, or
 (f) an instrument made under any of those Acts.]

Textual Amendments

- F31** S. 127C(6)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 21\(2\)\(a\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F32** S. 127C(6A) substituted (22.11.2014) for words by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 21\(2\)\(b\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F33** S. 127C(6B) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 21\(3\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F34** S. 127C(8) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 21\(4\)](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)

127D Search power: premises

- (1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—
 - (a) the officer has reasonable grounds for suspecting may be found there, and
 - (b) if found there, the officer intends to seize under section 127C.
- (2) The power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (3) “Premises” has the meaning given by section 23 of the Police and Criminal Evidence Act 1984.

127E Search power: people

- (1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 127C.
- (2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
 - (a) to permit a search of any article with the person,

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- (b) to permit a search of the person.
- (3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.
- (4) A power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (5) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

127F Search power: vehicles

- (1) The powers specified in subsection (4) are exercisable if—
 - (a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 127C, and
 - (b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.
- (2) The powers are exercisable only if the vehicle is—
 - (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
 - (b) in any other place to which at that time people have ready access but which is not a dwelling.
- (3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—
 - (a) that the person does not reside in the dwelling, and
 - (b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.
- (4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 127C, require the person to—
 - (a) permit entry to the vehicle,
 - (b) permit a search of the vehicle.
- (5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.
- (6) A power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

127G “Appropriate approval”

- (1) This section has effect for the purposes of sections 127C, 127D, 127E and 127F.
- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of the sheriff or (if that is not practicable in any case) the approval of a senior officer.

Status: Point in time view as at 06/04/2016.

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- (3) A senior officer means—
- (a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
 - ^{F35}(aa) [in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,]
 - ^{F36}(ab) [in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,]
 - (b) in relation to the exercise of a power by a constable, a senior police officer.
- (4) A senior police officer means a police officer of at least the rank of inspector.

Textual Amendments

- F35** S. 127G(3)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 22](#) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(e)
- F36** S. 127G(3)(ab) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 22\(2\)](#), [88\(2\)\(a\)](#); [S.S.I. 2016/11](#), reg. 2(g)

127H Exercise of powers without judicial approval

- (1) An appropriate officer must give a written report to the appointed person in any case where—
- (a) the officer seizes property under section 127C without the approval of the sheriff, and
 - (b) any of the property seized is not detained for more than 48 hours.
- (2) An appropriate officer must also give a written report to the appointed person in any case where—
- (a) the officer exercises any of the powers conferred by sections 127D, 127E and 127F without the approval of the sheriff, and
 - (b) no property is seized under section 127C.
- (3) A report under this section must give particulars of the circumstances which led the officer to believe that—
- (a) the powers were exercisable, and
 - (b) it was not practicable to obtain the approval of the sheriff.
- (4) The appointed person means a person appointed for the purposes of this subsection by the Scottish Ministers.
- (5) The appointed person must not be a person employed under or for the purposes of the Scottish Administration; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Scottish Ministers.
- (6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).

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- (7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—
- (a) any Saturday or Sunday,
 - (b) Christmas Day,
 - (c) Good Friday,
 - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland, or
 - (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the power is exercised.

127I Report by appointed person on exercise of powers

- (1) As soon as possible after the end of each financial year, the person appointed under section 127H(4) must prepare a report for that year.
- (2) “Financial year” means—
 - (a) the period beginning with the day on which section 56 of the Policing and Crime Act 2009 comes into force and ending with the next 31 March (which is the first financial year), and
 - (b) each subsequent period of twelve months beginning with 1 April.
- (3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 127C, 127D, 127E and 127F are being exercised in cases where the officer who exercised them is required to give a report under section 127H.
- (4) The report may make any recommendations the appointed person considers appropriate.
- (5) The appointed person must send a copy of the report to the Scottish Ministers.
- (6) The Scottish Ministers must—
 - (a) publish any report received under subsection (5), and
 - (b) lay a copy before the Scottish Parliament.
- (7) Before acting under subsection (6) the Scottish Ministers must exclude from the report any matter which the Scottish Ministers think is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the Scottish Ministers exclude any matter from the report they must comply with subsection (6) in relation to the whole of the report as soon as they think that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

127J Initial detention of seized property

- (1) This section applies if an appropriate officer seizes property under section 127C.
- (2) The property may be detained initially for a period of 48 hours.
- (3) The period of 48 hours is to be calculated in accordance with section 127H(7).

Status: Point in time view as at 06/04/2016.

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127K Further detention pending making of restraint order

- (1) This section applies if—
 - (a) property is detained under section 127J, and
 - (b) no restraint order is in force in respect of the property.
- (2) If within the period mentioned in section 127J an application is made for a restraint order which includes provision under section 120A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against (or review of) that decision.
- (4) In subsection (2) the reference to the period mentioned in section 127J includes that period as extended by any order under section 127M.

127L Further detention pending variation of restraint order

- (1) This section applies if—
 - (a) property is detained under section 127J,
 - (b) a restraint order is in force in respect of the property, and
 - (c) the order does not include provision under section 120A authorising the detention of the property.
- (2) If within the period mentioned in section 127J an application is made for the order to be varied so as to include provision under section 120A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against (or review of) that decision.

127M Further detention in other cases

- (1) This section applies if—
 - (a) property is detained under section 127J,
 - (b) no restraint order is in force in respect of the property, and
 - (c) no application has been made for a restraint order which includes provision under section 120A authorising detention of the property.
- (2) The sheriff may by order extend the period for which the property or any part of it may be detained under section 127J if satisfied that—
 - (a) any of the conditions in section 127B is met (reading references in that section to the officer as references to the sheriff),

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- (b) the property or part is realisable property other than exempt property (within the meaning of section 127C(4)), and
 - (c) there are reasonable grounds for suspecting that—
 - (i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused, or
 - (ii) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.
- (3) An application for an order may be made by—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
[an immigration officer;]
 - ^{F37}(aa)
 - (b) a constable, or
 - (c) the prosecutor.
- (4) If the property was seized in reliance on the first or second condition in section 127B, “the prosecutor” means a person who is to have conduct of any proceedings for the offence.
- (5) An order under this section must provide for notice to be given to persons affected by it.
- (6) In this section “part” includes portion.

Textual Amendments

F37 S. 127M(3)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 23](#) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(e)

127N Discharge, variation and lapse of detention order

- (1) An order under section 127M may be discharged or varied.
- (2) An application for variation or discharge of the order may be made by—
 - (a) a person mentioned in section 127M(3), or
 - (b) any person affected by the order.
- (3) On an application under this section the sheriff must discharge the order if—
 - (a) the order was made on the ground that the first or second condition in section 127B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,
 - (b) the order was made on the ground that the third or fourth condition in section 127B was met but proceedings for the offence mentioned in that condition have now been concluded,
 - (c) the order was made on the ground that the fifth, sixth or seventh condition in section 127B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.

Status: Point in time view as at 06/04/2016.

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- (4) An order made under section 127M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 120A).

127O Appeals

- (1) If on an application for an order under section 127M the sheriff decides not to make an order, a person mentioned in subsection (3) of that section may appeal to the Court of Session against the decision.
- (2) If an application is made under section 127N in relation to an order the following persons may appeal to the Court of Session in respect of the sheriff's decision on the application—
- (a) a person mentioned in section 127M(3), or
 - (b) any person affected by the order.
- (3) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the order was made.
- (4) On an appeal under this section the Court of Session may—
- (a) make or (as the case may be) discharge the order, or
 - (b) vary the order.

127P Detention of property pending section 127O appeal

- (1) This section applies where—
- (a) an application for an order under section 127M is made within the period mentioned in section 127J, and
 - (b) the application is refused.
- (2) This section also applies where—
- (a) an order is made under section 127M extending the period for which property may be detained under section 127J, and
 - (b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.
- (3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

127Q Release of property

- (1) This section applies in relation to property which—
- (a) has been seized by an appropriate officer under section 127C, and
 - (b) is detained under or by virtue of any of sections 127J to 127M and 127P.
- (2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.
- (3) The detention condition is met for so long as—
- (a) any of the conditions in section 127B is met, and
 - (b) there are reasonable grounds for the suspicion mentioned in section 127C(1).

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- (4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 127J to 127M and 127P.
- (5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Guidance about search and seizure and detention of property

127R Guidance by Lord Advocate

- (1) The Lord Advocate may issue guidance in connection with—
 - (a) the carrying out by appropriate officers of the functions conferred by sections 127C to 127H,
 - (b) the carrying out by senior officers of their functions under section 127G, and
 - (c) the detention of property under or by virtue of sections 120A, 122A and 127J to 127P.
- (2) The Lord Advocate must publish any guidance issued under this section.]

Realisation of property: general

128 Enforcement administrators

- (1) This section applies if—
 - (a) a confiscation order is made,
 - (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 property.
- (4) An appointment of an administrator may be made subject to conditions or exceptions.
- (5) The court may confer the powers mentioned in subsection (6) on an administrator appointed under subsection (3) above.
- (6) Those powers are—
 - (a) power to take possession of any realisable property;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise any realisable property, in such manner as the court may specify.
- (7) The court may order any person who has possession of realisable property to give possession of it to an administrator referred to in subsection (5).
- (8) The clerk of court must notify the accused and any person subject to an order under subsection (7) of the making of the order.
- (9) 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.

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- (10) The court—
- (a) may order a person holding an interest in realisable property to make to the administrator 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.
- (11) The court must not—
- (a) confer the power mentioned in subsection (6)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (10) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (12) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.
- (13) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (14) Subsection (6) does not apply to property for the time being subject to a charge under—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 199/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

Commencement Information

I37 S. 128 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

129 Management administrators: discharge

- (1) This section applies if—
- (a) an administrator stands appointed under section 125 in respect of realisable property (the management administrator), and
 - (b) the court appoints an administrator under section 128.
- (2) The court must order the management administrator to transfer to the other administrator all property held by him by virtue of the powers conferred on him by section 125.
- (3) If the management administrator complies with an order under subsection (2) he is discharged—
- (a) from his appointment under that section,

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- (b) from any obligation under this Act arising from his appointment.

Commencement Information

I38 S. 129 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

130 Application of sums by enforcement administrator

- (1) This section applies to sums which—
- (a) are in the hands of an administrator appointed under section 128(3), and
 - (b) fall within subsection (2).
- (2) These sums fall within this subsection—
- (a) the proceeds of the realisation of property under section 128(6)(c);
 - (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 432;
 - (b) second, they must be applied in making any payments as directed by the court;
 - (c) third, they must be applied on the accused's behalf towards satisfaction of the confiscation order.
- (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—
- (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.
- (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);
 - (b) the sums mentioned in subsection (2)(b).
- (7) The 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.
- (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 118(1) of this Act.

Commencement Information

I39 S. 130 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Status: Point in time view as at 06/04/2016.

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131 Sums received by clerk of court

- (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 130 or otherwise).
- (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—
 - (a) are payable under this subsection by virtue of section 432, but
 - (b) are not already paid under section 130(3)(a) [^{F38} or 131D(2)(a)] .
- (4) If the Lord Advocate has reimbursed the administrator in respect of remuneration or expenses under section 133 the clerk of court must next apply the sums in reimbursing the Lord Advocate.
- (5) If the clerk of court received the sums under section 130 [^{F39} or 131D] he must next apply them in payment of the administrator's remuneration and expenses.
- [^{F40}(5A) If the clerk of court received the sums from an appropriate officer under section 130 or 131D, the clerk of court must next apply them in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 131B.]
- (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.
- (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 118(1) of this Act.

Textual Amendments

- F38** Words in s. 131(3)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), ss. 59(3)(a), 116(1); S.I. 2015/983, art. 2(2)(a)
- F39** Words in s. 131(5) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), ss. 59(3)(b), 116(1); S.I. 2015/983, art. 2(2)(a)
- F40** S. 131(5A) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), ss. 59(3)(c), 116(1); S.I. 2015/983, art. 2(2)(a)

Commencement Information

- I40** S. 131 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

[^{F41}Seized personal property

Textual Amendments

- F41** Ss. 131A-131D and cross-heading inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), ss. 59(2), 116(1); S.I. 2015/983, art. 2(2)(a)

Status: Point in time view as at 06/04/2016.

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131A Seized personal property

- (1) This section applies to moveable property which is held by a person and which—
 - (a) has been seized by an appropriate officer under a relevant seizure power, or
 - (b) has been produced to an appropriate officer in compliance with a production order under section 380.
- (2) This section applies if the following conditions are satisfied—
 - (a) a confiscation order is made against the person by whom the property is held;
 - (b) an administrator has not been appointed under section 128 in relation to the property;
 - (c) any period allowed under section 116 for payment of the amount ordered to be paid under the confiscation order has ended.
- (3) In such a case the sheriff may by order authorise an appropriate officer to realise the property.
- (4) In this section “appropriate officer” and “relevant seizure power” have the same meaning as in section 120A.

131B Costs of storage and realisation

- (1) This section applies if the sheriff makes an order under section 131A.
- (2) The sheriff may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
 - (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
 - (b) realising the property.
- (3) If the sheriff makes a determination under this section the appropriate officer is entitled to payment of the amount under section 131(5A).
- (4) A determination under this section may be made on the same occasion as the section 131A order or on any later occasion; and more than one determination may be made in relation to any case.
- (5) In this section “appropriate officer” has the same meaning as in section 120A.

131C Sections 131A and 131B: appeals

- (1) If a sheriff decides not to make an order under section 131A, an appropriate officer may appeal to the Court of Session.
- (2) If a sheriff makes an order under section 131A, a person affected by the order may appeal to the Court of Session.
- (3) But the person mentioned in section 131A(2)(a) may not appeal.
- (4) An appropriate officer may appeal to the Court of Session against—
 - (a) a determination made by a sheriff under section 131B;
 - (b) a decision by a sheriff not to make a determination under that section.
- (5) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the decision or (as the case may be) the order was made.

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- (6) On an appeal under this section the Court of Session may—
- (a) confirm, quash or vary the decision or (as the case may be) the order, or
 - (b) make such order as Court of Session believes is appropriate.
- (7) In this section “appropriate officer” has the same meaning as in section 120A.

131D Proceeds of realisation

- (1) This section applies to sums which—
- (a) are in the hands of an appropriate officer, and
 - (b) are the proceeds of the realisation of property under section 131A.
- (2) 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 432;
 - (b) second, they must be applied in making any payments directed by the sheriff;
 - (c) third, they must be paid to the appropriate clerk of court on account of the amount payable under the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—
- (a) among such persons who held (or hold) interests in the property represented by the proceeds as the sheriff directs, and
 - (b) in such proportions as the sheriff directs.
- (4) Before making a direction under subsection (3) the sheriff must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to the sheriff.
- (5) In this section—
- (a) “appropriate officer” has the same meaning as in section 120A;
 - (b) “appropriate clerk of court” means the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1).]

Exercise of powers

132 Powers of court and administrator [^{F42}etc]

- (1) This section applies to—
- (a) the powers conferred on a court by sections 119 to [^{F43}131D] , 134 to 136 and Schedule 3;
 - (b) the powers of an administrator appointed under section 125 or 128(3).
 - [^{F44}(c) the powers conferred on appropriate officers by sections 127C to 127L;
 - (d) the powers conferred on senior officers by section 127G.]
- (2) The powers—

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- (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;
 - (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—
- (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 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).
- (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 sold.
- (5) An order under subsection (4) may be revoked or varied.

Textual Amendments

- F42** Word in s. 132 heading inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 56(4)(b)**, 116(1); S.I. 2015/983, art. 2(2)(a)
- F43** Word in s. 132(1)(a) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), **Sch. 7 para. 71**; S.I. 2015/983, arts. 2(2)(e), 3(n)
- F44** S. 132(1)(c)(d) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 56(4)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a)

Modifications etc. (not altering text)

- C9** Pt. 3 applied by 2000 c. 11, Sch. 8 para. 34(3A) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 39(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7))

Commencement Information

- I41** S. 132 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Administrators: general

133 Protection of administrators

- (1) If an administrator appointed under section 125 or 128(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
 - (c) believes on reasonable grounds that he is entitled to take the action,

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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—
 - (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.
- (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 131(4).
- (5) The remuneration and expenses must be paid (or must be paid to the extent of the shortfall) by the Lord Advocate.

Commencement Information

I42 S. 133 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

134 Protection of persons affected

- (1) This section applies where an administrator is appointed under section 125 or 128(3).
- (2) The following persons may apply to the court—
 - (a) any person affected by action taken by the administrator;
 - (b) any person who may be affected by action the administrator proposes to take.
- (3) On an application under this section the court may make such order as it thinks appropriate.

Commencement Information

I43 S. 134 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

135 Recall and variation of order

- (1) The prosecutor, an administrator and any other person affected by an order made under section 125 or 128 may apply to the court to vary or recall the order.
- (2) On an application under this section the court—
 - (a) may vary the order;
 - (b) may recall the order.
- (3) But in the case of an order under section 125—

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) if the condition in section 119 which was satisfied was that proceedings were started 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);
- (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must recall 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).

Commencement Information

I44 S. 135 in force at 24.3.2003 by [S.S.I. 2003/210, art. 2\(1\)\(a\)](#)

136 Appeals

- (1) If on an application for an order under section 125 or 128 the court decides not to make one, the prosecutor may appeal to the Court of Session against the decision.
- (2) If the court makes an order under section 125 or 128 the following persons may appeal to the Court of Session in respect of the court's decision—
 - (a) the prosecutor;
 - (b) any person affected by the order.
- (3) If on an application for an order under section 134 the court decides not to make one, the person who applied for the order may appeal to the Court of Session against the decision.
- (4) If the court makes an order under section 134, the following persons may appeal to the Court of Session in respect of the court's decision—
 - (a) the person who applied for the order;
 - (b) any person affected by the order;
 - (c) the administrator.
- (5) The following persons may appeal to the Court of Session against a decision of the court on an application under section 135—
 - (a) the person who applied for the order in respect of which the application was made;
 - (b) any person affected by the court's decision;
 - (c) the administrator.
- (6) On an appeal under this section the Court of Session may—
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

Commencement Information

I45 S. 136 in force at 24.3.2003 by [S.S.I. 2003/210, art. 2\(1\)\(a\)](#)

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

137 Administrators: further provision

Schedule 3, which makes further provision about administrators appointed under section 125 and 128(3), has effect.

Commencement Information

I46 S. 137 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

138 Administrators: restriction on proceedings and remedies

- (1) Where an administrator is appointed under section 128, the court may sist any action, execution or other legal process in respect of the property to which the order appointing the administrator relates.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that an application has been made for the appointment of an administrator or that an administrator has been appointed in relation to that property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by subsection (2) the court must give an opportunity to be heard to—
 - (a) the prosecutor;
 - (b) if appointed, the administrator.

Commencement Information

I47 S. 138 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Compensation

139 Serious default

- (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
 - (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—

Status: Point in time view as at 06/04/2016.

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- (a) in the 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
 - (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 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 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—
- (a) if the person in default was a constable of a police force (within the meaning of the Police (Scotland) Act 1967 (c. 77)), the compensation is payable by the [^{F45}Scottish Police Authority];
 - [^{F46}(aa) if the person in default was a constable of the Police Service of Scotland, the compensation is payable by the Scottish Police Authority,]
 - (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;
 - (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;
 - [^{F47}(ca) if the person in default was a [^{F48}National Crime Agency officer], the compensation is payable by [^{F49}the National Crime Agency];]
 - (d) if the person in default was a customs officer, 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.
- (10) Nothing in this section affects any delictual liability in relation to a serious default.

Textual Amendments

- F45** Words in s. 139(9)(a) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Modifications and Savings\) Order 2013 \(S.S.I. 2013/119\)](#), art. 1, **sch. 1 para. 19(2)(a)**
- F46** S. 139(9)(aa) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Modifications and Savings\) Order 2013 \(S.S.I. 2013/119\)](#), art. 1, **sch. 1 para. 19(2)(b)**
- F47** S. 139(9)(ca) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 61(3)**, 116(1); S.I. 2009/3096, art. 3(g)
- F48** Words in s. 139(9)(ca) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 116(a)**; S.I. 2013/1682, art. 3(v)
- F49** Words in s. 139(9)(ca) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 116(b)**; S.I. 2013/1682, art. 3(v)

Commencement Information

- I48** S. 139 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

140 Confiscation order varied or discharged

- (1) This section applies if—
 - (a) the court varies a confiscation order under section 113 or discharges one under section 114, 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.
- (2) The court may order the payment to the applicant of such compensation as it believes is just.
- (3) Compensation payable under this section is payable by the Lord Advocate.

Commencement Information

I49 S. 140 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Enforcement abroad

141 Enforcement abroad

- (1) This section applies if—
 - (a) any of the conditions in section 119 are satisfied,
 - (b) the prosecutor believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
 - (c) the prosecutor 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.
- (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,
 - (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.
- (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 the realisation.
- (7) A certificate purporting to be issued by or on behalf of the requested government is sufficient evidence of the facts it states if it states—
 - (a) that the property has been realised in pursuance of a request under subsection (3),

Status: Point in time view as at 06/04/2016.

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- (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.

Commencement Information

I50 S. 141 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Interpretation

142 Criminal lifestyle

- (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 specified in Schedule 4;
 - (b) it constitutes conduct forming part of a course of criminal activity;
 - (c) it is an offence committed over a period of at least six months and the accused has benefited from the conduct which constitutes the offence.
- (2) Conduct forms part of a course of criminal activity if the accused 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
 - (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.
- (3) But an offence does not satisfy the test in subsection (1)(b) or (c) unless the accused obtains relevant benefit of not less than [^{F50}£1000].
- (4) Relevant benefit for the purposes of subsection (1)(b) is—
- (a) benefit from conduct which constitutes the offence;
 - (b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the accused has been convicted.
- (5) Relevant benefit for the purposes of subsection (1)(c) is benefit from conduct which constitutes the offence.
- (6) The Scottish Ministers may by order amend Schedule 4.
- (7) The Scottish Ministers may by order vary the amount for the time being specified in subsection (3).

Status: Point in time view as at 06/04/2016.

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Textual Amendments

F50 Sum in s. 142(3) substituted (with application in accordance with art. 2 of the amending S.S.I.) by [The Proceeds of Crime Act 2002 Amendment \(Scotland\) Order 2011 \(S.S.I. 2011/231\)](#), arts. 1, 3

Commencement Information

I51 S. 142 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#) (with [art. 5](#))

143 Conduct and benefit

- (1) Criminal conduct is conduct which—
 - (a) constitutes an offence in Scotland, or
 - (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.
- (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 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 in some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

Commencement Information

I52 S. 143 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#) (with [art. 6](#))

144 Tainted gifts and their recipients

- (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.

Status: Point in time view as at 06/04/2016.

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- (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—
 - (a) which was obtained by the accused as a result of or 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 as a result of or in connection with his general criminal conduct.
- (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
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the earliest of those dates.
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.
- (7) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (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 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.
- (9) 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 property at the time of the transfer, he is to be treated as making a gift.
- (10) If subsection (9) 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 (9), and
 - (b) whose denominator is the value of the property at the time of the transfer.
- (11) References to a recipient of a tainted gift are to a person to whom the accused has (whether directly or indirectly) made the gift.

Commencement Information

153 S. 144 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

145 Value: the basic rule

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person.
- (2) Its value is the market value of the property at that time.

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 charging order under a provision listed in subsection (4).
- (4) The provisions are—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 199/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (5) This section has effect subject to sections 146 and 147.

Commencement Information

I54 S. 145 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

146 Value of property obtained from conduct

- (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.
- (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;
 - (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;
 - (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 145.

Commencement Information

I55 S. 146 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

147 Value of tainted gifts

- (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;

Status: Point in time view as at 06/04/2016.

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- (b) the value (at the material time) of the property found under subsection (2).
- (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;
 - (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) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 145.

Commencement Information

I56 S. 147 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

148 Free property

[^{F51}(1) Property is free unless it falls within subsection (2) or (3).]

[^{F52}(2)] [^{F53}Property falls within this subsection if] an order is in force in respect of it under—

- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders),
- (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15) (deprivation orders),
- (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime),
- (d) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (deprivation orders),
- (e) section 23^[F54], 23A] or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders), or
- (f) section [^{F55} 245A,] 246, [^{F56}255A, 256,] 266, 295(2) or 298(2) of this Act.

[^{F57}(3) Property falls within this subsection if—

- (a) it has been forfeited in pursuance of a forfeiture notice under section 297A;
- (b) it is detained under section 297C or 297D.]

Textual Amendments

- F51** S. 148(1) inserted (1.6.2015) by [Policing and Crime Act 2009](#) (c. 26), s. 116(1), [Sch. 7 para. 103\(2\)](#); [S.I. 2015/983](#), [arts. 2\(2\)\(e\)](#), 3(ff)
- F52** S. 148(2): s. 148 renumbered as s. 148(2) (1.6.2015) by [Policing and Crime Act 2009](#) (c. 26), s. 116(1), [Sch. 7 para. 103\(3\)](#); [S.I. 2015/983](#), [arts. 2\(2\)\(e\)](#), 3(ff)
- F53** Words in s. 148(2) substituted (1.6.2015) by [Policing and Crime Act 2009](#) (c. 26), s. 116(1), [Sch. 7 para. 103\(4\)](#); [S.I. 2015/983](#), [arts. 2\(2\)\(e\)](#), 3(ff)
- F54** Word in s. 148(e) inserted (18.6.2009) by [Counter-Terrorism Act 2008](#) (c. 28), s. 100(5), [Sch. 3 para. 7\(5\)](#) (with s. 101(2)); [S.I. 2009/1256](#), [art. 2\(c\)](#)
- F55** Word in s. 148(f) inserted (1.1.2006) by [Serious Organised Crime and Police Act 2005](#) (c. 15), s. 178(7)(b), [Sch. 6 para. 6\(a\)](#); [S.I. 2005/3136](#), [art. 2\(b\)](#)
- F56** Words in s. 148(f) inserted (1.1.2006) by [Serious Organised Crime and Police Act 2005](#) (c. 15), s. 178(7)(b), [Sch. 6 para. 6\(b\)](#); [S.I. 2005/3136](#), [art. 2\(b\)](#)

Status: Point in time view as at 06/04/2016.

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F57 S. 148(3) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), **Sch. 7 para. 103(5)**; [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)

Commencement Information

I57 S. 148 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

149 Realisable property

Realisable property is—

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

Commencement Information

I58 S. 149 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

150 Property: general provisions

- (1) Property is all property wherever situated and includes—
 - (a) money;
 - (b) all forms of property whether heritable or moveable and whether 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 (c. 66)), 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 land in England, Wales or Northern Ireland, are to any legal estate or equitable interest or power;
 - (g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
 - (h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

Modifications etc. (not altering text)

C10 S. 150(2)(a)(c)-(g) applied (1.1.2006) by [The Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\)](#), arts. 1, **87(2)**

C11 S. 150(2)(c)-(g) applied (1.1.2006) by [The Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\)](#), arts. 1, **87(2)**

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Commencement Information

I59 S. 150 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

151 Proceedings

- (1) Proceedings for an offence are instituted against a person—
 - (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) when he first appears on petition or when 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.
- (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,
 - (e) the accused's conviction is quashed, or
 - (f) the accused is pardoned.
- (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 and there is no further possibility of an appeal against the decision to quash the order.
- (5) If—
 - (a) the accused is convicted in proceedings for an offence but the court decides not to make a confiscation order against him, and
 - (b) on appeal under section 108(1)(ca) or 175(4)(ca) of the Procedure Act, the High Court of Justiciary refuses the appeal,the proceedings are concluded on the determination of the appeal.

Commencement Information

I60 S. 151 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

152 Applications

- (1) An application under section 104, 105, 111 or 112 is concluded—
 - (a) in a case where the court decides not to make a confiscation order against the accused, when it makes the decision;

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
 - (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 106 or 107 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 or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
 - (c) in a case where the application is withdrawn, when the prosecutor notifies the withdrawal to the court to which the application was made.

Commencement Information

I61 S. 152 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

153 Satisfaction of confiscation orders

- (1) A confiscation order is satisfied—
- (a) when no amount is due under it;
 - ^{F58}(b)
- (2) 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^{F59}....

Textual Amendments

F58 S. 153(1)(b) omitted (1.3.2016) by virtue of [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 45](#); [S.S.I. 2016/11](#), [reg. 2\(j\)](#) (with [reg. 3](#))

F59 Words in s. 153(2) repealed (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 72](#), [Sch. 8 Pt. 4](#); [S.I. 2015/983](#), [art. 2\(2\)\(e\)\(f\)](#), 3(n)

Commencement Information

I62 S. 153 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

^{F60}153A No further possibility of appeal

- (1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—
- (a) an appeal against (or review of) a decision of a court, or
 - (b) an appeal on which an order of a court could be varied or quashed.
- (2) Any power—
- (a) to allow an appeal (or review) out of time, or
 - (b) to extend the time for applying for leave to appeal,

Status: Point in time view as at 06/04/2016.

Changes to legislation: Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

must be ignored.]

Textual Amendments

F60 S. 153A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 73**; S.I. 2015/983, arts. 2(2)(e), 3(n)

154 Other interpretative provisions

(1) In this Part—

“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 92;

“conviction”, in relation to an offence, includes a finding that the offence has been committed;

“court” must be construed in accordance with sections 92(13) and 119(10);

“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 (c. 46);

“restraint order” means an order under section 120.

(2) A reference to the offence (or offences) concerned must be construed in accordance with section 92(12).

(3) A reference to sentencing the accused for an offence includes a reference to dealing with him otherwise in respect of the offence.

Commencement Information

I63 S. 154 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

General

155 Rules of court

(1) Provision may be made by act of sederunt as to—

(a) giving notice or serving any document for the purposes of this Part;

(b) the accountant of court’s functions under Schedule 3;

(c) the accounts to be kept by the administrator in relation to the exercise of his functions.

(2) Subsection (1) is without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) or section 5 of the Court of Session Act 1988 (c. 36).

Status: Point in time view as at 06/04/2016.

Changes to legislation: *Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I64 S. 155 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

Status:

Point in time view as at 06/04/2016.

Changes to legislation:

Proceeds of Crime Act 2002, Part 3 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.