



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

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 [^{F1}£1000].
- (4) Relevant benefit for the purposes of subsection (1)(b) is—
 - (a) benefit from conduct which constitutes the offence;

Status: Point in time view as at 31/01/2018.

Changes to legislation: Proceeds of Crime Act 2002, Cross Heading: Interpretation is up to date with all changes known to be in force on or before 16 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) 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).

Textual Amendments

F1 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

Modifications etc. (not altering text)

C1 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.

Commencement Information

I1 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.

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- (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

I2 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.
- (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

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(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

I3 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.
- (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

I4 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;

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- (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

I5 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;
 - (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

I6 S. 147 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

148 Free property

- [^{F2}(1) Property is free unless it falls within subsection (2) or (3).]
- [^{F3}(2)] [^{F4}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 [^{F5}, 23A] or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders),
^{F6}
...
 - [^{F7}(ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001, or]
 - (f) section [^{F8} 245A,] 246, [^{F9}255A, 256,] 266, 295(2) [^{F10} or 298(2)] [^{F10}, 298(2), 303L(1), 303O(3), 303R(3), 303Z3 or 303Z14(4)] of this Act.

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- [^{F11}(3) Property falls within this subsection if—
- (a) it has been forfeited in pursuance of a forfeiture notice under section 297A [^{F12}or an account forfeiture notice under section 303Z9];
 - (b) it is detained under section 297C [^{F13}297D or [^{F14}298(4)]]^{F14}, 298(4) or 303O(9)].]
 - [^{F15}(c) it is the forfeitable property in relation to an order under section 303Q(1).]
 - [^{F16}(d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;
 - (e) it is detained under paragraph 5B, 5C, 9A or 10G(7) of that Schedule;
 - (f) it is the forfeitable property in relation to an order under paragraph 10I(1) of that Schedule.]

Textual Amendments

- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** Word in s. 148(2)(e) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), ss. 34(3)(a)(i), 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)
- F7** S. 148(2)(ea) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 34(3)(a)(ii)**, 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)
- F8** 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)
- F9** 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)
- F10** Words in s. 148(2)(f) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 24(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F11** 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)
- F12** Words in s. 148(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 24(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F13** Words in s. 148(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 34(3)(b)**, 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)
- F14** Words in s. 148(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 24(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F15** S. 148(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 24(3)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

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F16 S. 148(3)(d)-(f) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 34(3)(c)**, 58(2)(6); [S.S.I. 2017/456](#), reg. 2(d); [S.I. 2018/78](#), reg. 3(r)

Commencement Information

I7 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

I8 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 ^{F17}... trustee in bankruptcy or liquidator^{F18} or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of his estate];
 - (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).

Textual Amendments

F17 Words in s. 150(2)(d) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(4)(a)**

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F18 Words in s. 150(2)(d) inserted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(4)(b)**

Modifications etc. (not altering text)

C2 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)**

C3 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)**

Commencement Information

I9 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.

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Commencement Information

I10 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;
 - (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

I11 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;
 - ^{F19}(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^{F20}....

Textual Amendments

F19 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](#))

F20 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

I12 S. 153 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

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[^{F21}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,
- must be ignored.]

Textual Amendments

F21 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

I13 S. 154 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Status:

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Changes to legislation:

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