



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 4

CONFISCATION: NORTHERN IRELAND

Defendant absconds

177 Defendant convicted or committed

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that a defendant absconds after—
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court, or
 - (b) he is committed to the Crown Court in respect of an offence or offences under section 218 below (committal with a view to a confiscation order being considered).
- (3) The second condition is that—
 - (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 156 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 156 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 156 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 156 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;

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- (c) section 156(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 160, 166(4), 167 and 168 must be ignored;
 - (e) sections 169, 170 and 171 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 169 has effect as if subsection (1)(a) read—
- “(a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156.”
- (7) If the court does not believe it is appropriate for it to proceed under this section, once the defendant ceases to be an absconder section 169 has effect as if subsection (1)(b) read—
- “(b) there is evidence which was not available to the prosecutor or the Director on the relevant date.”

178 Defendant neither convicted nor acquitted

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that—
- (a) proceedings for an offence or offences are started against a defendant but are not concluded,
 - (b) he absconds, and
 - (c) the period of two years (starting with the day the court believes he absconded) has ended.
- (3) The second condition is that—
- (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 156 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 156 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 156 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 156 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
 - (c) section 156(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 160, 166(4) and 167 to 170 must be ignored;
 - (e) section 171 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 171 has effect as if references to the date of conviction were to—

- (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (7) If—
- (a) the court makes an order under section 156 as applied by this section, and
 - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,
- section 156 does not apply so far as that conviction is concerned.

179 Variation of order

- (1) This section applies if—
- (a) the court makes a confiscation order under section 156 as applied by section 178,
 - (b) the defendant ceases to be an absconder,
 - (c) he is convicted of an offence (or any of the offences) mentioned in section 178(2)(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 Crown Court to consider the evidence on which his belief is based.
- (2) If (after considering the evidence) the court concludes that the defendant'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 defendant was convicted of the offence mentioned in section 178(2)(a), or
 - (b) if there are two or more offences and the the convictions were on different dates, the date of the latest.
- (4) But in a case where section 178(2)(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 defendant has not been convicted.

180 Discharge of order

- (1) Subsection (2) applies if—
- (a) the court makes a confiscation order under section 156 as applied by section 178,
 - (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and

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- (c) he applies to the Crown 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 156 as applied by section 178,
 - (b) the defendant ceases to be an absconder,
 - (c) subsection (1)(b) does not apply, and
 - (d) he applies to the Crown 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 178(2), 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 believes is appropriate.