



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Reconsideration

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 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;

Status: Point in time view as at 10/02/2021.

Changes to legislation: Proceeds of Crime Act 2002, Section 107 is up to date with all changes known to be in force on or before 17 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)

- (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.
 - [^{F1}(d) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;
 - (e) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.]
- (5) But in deciding what is just [^{F2}the court—
- (a) must not] have regard to an order falling within subsection (4)(c) if a court has made a direction under section 97(6);
 - [^{F3}(b) must not have regard to an order falling within subsection (4)(d) or (e) if a court has made a direction under section 97A(2) or (4).]
- (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.

Textual Amendments

- F1** S. 107(4)(d)(e) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 41\(2\)](#); S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)
- F2** Words in s. 107(5) substituted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 41\(3\)\(a\)](#); S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)
- F3** S. 107(5)(b) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), [Sch. 4 para. 41\(3\)\(b\)](#); S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

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

Status:

Point in time view as at 10/02/2021.

Changes to legislation:

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