



Serious Crime Act 2015

2015 CHAPTER 9

PART 1

PROCEEDS OF CRIME

CHAPTER 3

NORTHERN IRELAND

Confiscation: assets held by defendant and other

24 Determination of extent of defendant's interest in property

After section 160 of the Proceeds of Crime Act 2002 insert—

“160A Determination of extent of defendant's interest in property

- (1) Where it appears to a court making a confiscation order that—
 - (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
 - (b) a person other than the defendant holds, or may hold, an interest in the property,the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.
- (2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.
- (3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—

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- (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
 - (b) any action or proceedings taken for the purposes of any such realisation or transfer.
- (4) Subsection (3)—
- (a) is subject to section 199(8B), and
 - (b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.
- (5) In this Part, the “extent” of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.”

Commencement Information

II S. 24 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(a)

25 Provision of information

- (1) In section 166 of the Proceeds of Crime Act 2002 (statement of information), after subsection (6) insert—
- “(6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide—
- (a) whether to make a determination under section 160A, or
 - (b) what determination to make (if the court decides to make one).
- (6B) If the court has decided to make a determination under section 160A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.”
- (2) In section 168 of that Act (provision of information by defendant)—
- (a) in subsection (2), after “functions” insert “ (including functions under section 160A) ”;
 - (b) in subsection (6)(b), for “deciding the available amount under section 159,” substitute “deciding—
 - (i) the available amount under section 159, or
 - (ii) whether to make a determination under section 160A, or what determination to make (if the court decides to make one),”.
- (3) After that section insert—

“168A Provision of information as to defendant's interest in property

- (1) This section applies if the court—
- (a) is considering whether to make a determination under section 160A of the extent of the defendant's interest in any property, or

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- (b) is deciding what determination to make (if the court has decided to make a determination under that section).

In this section “interested person” means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

- (2) For the purpose of obtaining information to help it in carrying out its functions under section 160A the court may at any time order an interested person to give it information specified in the order.
- (3) 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.
- (4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.
- (6) If the prosecutor accepts to any extent an allegation made by an interested person—
- (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 a determination under section 160A,
- the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (8) If the court makes an order under this section it may at any time vary it by making another one.
- (9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.”

Commencement Information

I2 S. 25 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(a)

26 Appeals

- (1) In section 181 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert—

“(4) An appeal lies to the Court of Appeal against a determination, under section 160A, of the extent of the defendant's interest in property.

- (5) An appeal under subsection (4) lies at the instance of—
- (a) the prosecutor;
 - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.

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- (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.
- (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.
- (8) An appeal does not lie under subsection (4) where—
- (a) the Court of Appeal believes that an application under section 198 is to be made by the prosecutor for the appointment of a receiver,
 - (b) such an application has been made but has not yet been determined, or
 - (c) a receiver has been appointed under section 198.”
- (2) In section 182 of that Act (court's powers on appeal), after subsection (2) insert—
- “(2A) On an appeal under section 181(4) the Court of Appeal may—
- (a) confirm the determination, or
 - (b) make such order as it believes is appropriate.”
- (3) In section 183 of that Act (appeal to Supreme Court)—
- (a) for subsection (2) substitute—
- “(2) An appeal under this section lies at the instance of—
- (a) the defendant or the prosecutor (except where paragraph (b) applies);
 - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 181(4), any person who was a party to those proceedings.”;
- (b) after subsection (3) insert—
- “(3A) On an appeal under this section from a decision under section 182(2A) the Supreme Court may—
- (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.”

Commencement Information

I3 S. 26 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(a)

27 Enforcement receivers

In section 199 of the Proceeds of Crime Act 2002 (powers of receivers etc), after subsection (8A) insert—

- “(8B) Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 160A, unless—
- (a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or
 - (b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;

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and the determination does not bind the court if paragraph (a) or (b) applies.”

Commencement Information

I4 S. 27 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(a)

Confiscation: other amendments

28 Time for payment

(1) For section 161 of the Proceeds of Crime Act 2002 substitute—

“161 Time for payment

- (1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.
- (2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid—
 - (a) in a specified period, or
 - (b) in specified periods each of which relates to a specified amount.
- (3) A specified period—
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed three months.
- (4) If—
 - (a) within any specified period the defendant applies to the Crown Court for that period to be extended, and
 - (b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,the court may make an order extending the period (for all or any part or parts of the amount in question).
- (5) An extended period—
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed six months.
- (6) An order under subsection (4)—
 - (a) may be made after the end of the specified period to which it relates, but
 - (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.
- (7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able—
 - (a) to pay the amount remaining to be paid, or
 - (b) to pay an amount towards what remains to be paid,

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that amount is required to be paid no later than that day.

(8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.”

(2) In section 162 of that Act (interest on unpaid sums), for subsection (3) substitute—

“(3) If—

- (a) an application has been made under section 161(4) for a specified period to be extended,
- (b) the application has not been determined by the court, and
- (c) the period of six months starting with the day on which the confiscation order was made has not ended,

the amount on which interest is payable under this section does not include the amount to which the specified period relates.”

(3) In section 235 of that Act (interpretation: confiscation orders), after subsection (1) insert—

“(1A) The “amount payable” under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.”

Commencement Information

I5 S. 28 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(b)

29 Orders for securing compliance with confiscation order

After section 163 of the Proceeds of Crime Act 2002 insert—

“163A 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 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 defendant'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) any person affected by the order.

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163B Appeals against orders under section 163A

- (1) If on an application under section 163A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.
- (2) The following persons may appeal to the Court of Appeal in respect of the Crown Court's decision to make, discharge or vary a compliance order—
 - (a) the prosecutor;
 - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may—
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.
- (4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).
- (5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (6) On an appeal under subsection (4) the Supreme Court may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.
- (7) In this section “compliance order” means an order made under section 163A.”

Commencement Information

I6 S. 29 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(c)

30 Variation or discharge

- (1) In section 173 of the Proceeds of Crime Act 2002 (inadequacy of available amount: variation of confiscation order), in subsection (1)(b), after “the defendant” insert “ or the prosecutor ”.
- (2) After section 175 of that Act insert—

“175A Recovery from estate of deceased defendant impractical: discharge of order

- (1) This section applies if—
 - (a) a court has made a confiscation order,
 - (b) the defendant dies while the order is not satisfied, and
 - (c) the prosecutor applies to the Crown Court for the discharge of the order.
- (2) The court may discharge the order if it appears to the court that—
 - (a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or

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- (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.”
- (3) Section 175A of that Act (inserted by subsection (2) above) applies to—
- (a) a confiscation order made under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), or
 - (b) a confiscation order made under Part 2 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)),
- as it applies to a confiscation order made under the Proceeds of Crime Act 2002.

Commencement Information

I7 S. 30 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(d)

31 Absconding defendants

- (1) In section 177 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute—

“(2) The first condition is that a defendant falls within either of the following paragraphs—

- (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;
- (b) he absconds after being 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).”

- (2) For subsections (6) and (7) of that section substitute—

“(6) Once the defendant ceases to be an absconder—

- (a) section 169 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156,
 - (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 156, and
 - (c) the court believes it is appropriate for it to do so.”;
- (b) section 170 has effect as if subsection (4) read—

“(4) The second condition is that—

- (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and
 - (b) the court believes it is appropriate for it to do so.”;
- (c) section 171 has effect as if subsection (1) read—

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- “(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 defendant'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 defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
 - (d) the court believes it is appropriate for it to do so.”;
- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 169, 170 or 171 (as applied by this subsection).”
- (3) In section 178 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “ three months ”.
- (4) For subsection (6) of that section substitute—
- “(6) Once the defendant has ceased to be an absconder—
- (a) section 171 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 defendant'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 defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
 - (d) the court believes it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 171 (as applied by this subsection).”

Commencement Information

18 S. 31 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(e)

32 Default sentences

- (1) In section 185 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert—
- “(2A) Where a court is fixing a term of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

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TABLE

| <i>Amount</i> | <i>Maximum term</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 Department of Justice in Northern Ireland may by order—

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) 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 the power in paragraph (a) of this subsection) or to add any entry.”

(2) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), after “section” insert “ 185(2B), ”.

Commencement Information

I9 S. 32 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(f)

33 Conditions for exercise of restraint order powers

(1) In section 189 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for “is reasonable cause to believe” substitute “ are reasonable grounds to suspect ”.

(2) In section 190 of that Act (restraint orders), after subsection (7) insert—

“(7A) Subsections (7B) and (7C) apply where the High Court makes a restraint order (by virtue of the first condition in section 189) as a result of a criminal investigation having been started in Northern Ireland with regard to an offence.

(7B) The court—

- (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 discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 191(3)).

(7C) The duty under subsection (7B)(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—

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- (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 191(3)).”

Commencement Information

I10 S. 33 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(g)

34 Continuation of restraint order after quashed conviction

In section 191 of the Proceeds of Crime Act 2002 (application, discharge and variation of restraint orders), after subsection (6) insert—

“(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—

- (a) the proceedings are concluded by reason of a defendant's conviction for an offence being quashed,
- (b) the order is in force at the time when the conviction is quashed, and
- (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.

(6B) But the court must discharge the restraint order—

- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
- (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
- (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.”

Commencement Information

I11 S. 34 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(h)

35 Conditions for exercise of search and seizure powers

(1) In section 195B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “ are reasonable grounds to suspect ”.

(2) In section 195G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert—

- “(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,”.

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Commencement Information

I12 S. 35 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(i)

36 Seized money etc

- (1) In section 215 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute—

“(5) If—

- (a) a confiscation order is made against a person holding money to which this section applies, and
- (b) a receiver has not been appointed under section 198 in relation to the money,

a magistrates' court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order.”

- (2) After subsection (5) of that section insert—

“(5A) A person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.

(5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates' court—

- (a) may make an order under subsection (5) only if the extent of the person's interest in the money has been determined under section 160A, and
- (b) must have regard to that determination in deciding what is the appropriate order to make.”

- (3) After subsection (7) of that section insert—

“(7A) The Department of Justice in Northern Ireland may by order amend this section so that it applies not only to money held in an account maintained with a bank or building society but also to—

- (a) money held in an account maintained with a financial institution of a specified kind, or
- (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.”

- (4) In section 215A of that Act (seized personal property), for subsections (2) and (3) substitute—

“(3) If—

- (a) a confiscation order is made against the person by whom the property is held, and
- (b) a receiver has not been appointed under section 198 in relation to the property,

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a magistrates' court may by order authorise an appropriate officer to realise the property.”

(5) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), before “223(7) or (8)” insert “ 215(7A), ”.

Commencement Information

I13 S. 36 in force at 1.6.2015 by S.R. 2015/190, reg. 3(1)(j)

Status:

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Changes to legislation:

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