



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 3

#### CONFISCATION: SCOTLAND

#### *Accused unlawfully at large*

#### **111 Conviction or other disposal of accused**

- (1) This section applies if an accused is unlawfully at large <sup>[F1]</sup>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;
  - (e) sections 104, 105 and 106 do not apply while the accused is still unlawfully at large.

*Status: Point in time view as at 26/04/2024.*

*Changes to legislation: Proceeds of Crime Act 2002, Cross Heading: Accused unlawfully at large is up to date with all changes known to be in force on or before 09 June 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)*

- [<sup>F2</sup>(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

- F1** 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)
- F2** 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)

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

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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 [<sup>F3</sup>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.
- [<sup>F4</sup>(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

- F3** 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\(c\)](#)

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**F4** 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**

**I2** 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**

**I3** 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**

**I4** S. 114 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

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