



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Confiscation orders

92 Making of order

- (1) The court must act under this section where the following three conditions are satisfied.
- (2) The first condition is that an accused falls within either of the following paragraphs—
 - (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.
- (3) The second condition is that the prosecutor asks the court to act under this section.
- (4) The third condition is that the court decides to order some disposal in respect of the accused; and an absolute discharge is a disposal for the purpose of this subsection.
- (5) If the court acts under this section it must proceed as follows—
 - (a) it must decide whether the accused has a criminal lifestyle;
 - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
 - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (6) If the court decides under subsection (5)(b) or (c) that the accused has benefited from the conduct referred to—
 - (a) it must decide the recoverable amount, and
 - (b) it must make an order (a confiscation order) requiring him to pay that amount.

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[^{F1}Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the accused to pay the recoverable amount.]

- (7) But the court must treat the duty in subsection (6) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the accused in respect of loss, injury or damage sustained in connection with the conduct.
- (8) Before making an order under this section the court must take into account any representations made to it by any person whom the court thinks is likely to be affected by the order.
- (9) The standard of proof required to decide any question arising under subsection (5) or (6) is the balance of probabilities.
- (10) The first condition is not satisfied if the accused is unlawfully at large (but section 111 may apply).
- (11) For the purposes of any appeal or review, an order under this section is a sentence.
- (12) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).
- (13) In this section and sections 93 to 118 “the court” means the High Court of Justiciary^{F2}, the Sheriff Appeal Court] or the sheriff.

Textual Amendments

- F1** Words in s. 92(6) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), **Sch. 4 para. 35**; [S.S.I. 2016/11](#), reg. 2(j)
- F2** Words in s. 92(13) inserted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 3** (with art. 4(2))

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. 92 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)** (with arts. 3(1), 5, 7)

93 Recoverable amount

- (1) The recoverable amount for the purposes of section 92 is an amount equal to the accused’s benefit from the conduct concerned.
- (2) But if the accused shows that the available amount is less than that benefit the recoverable amount is—
 - (a) the available amount, or
 - (b) a nominal amount, if the available amount is nil.
- (3) But if section 92(7) applies the recoverable amount is such amount as—
 - (a) the court believes is just, but

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- (b) does not exceed the amount found under subsection (1) or (2) (as the case may be).
- (4) In calculating the accused's benefit from the conduct concerned for the purposes of subsection (1), ^{F3}the following must be ignored—
- (a) any property in respect of which a recovery order is in force under section 266,
 - (b) any property which has been forfeited in pursuance of a forfeiture notice under section 297A ^{F4}[or an account forfeiture notice under section 303Z9], ^{F5}...
 - (c) any property in respect of which a forfeiture order is in force under section 298(2) ^{F6}], 303O(3), 303R(3) or 303Z14(4) ^{F7}], and
 - (d) any property which is the forfeitable property in relation to an order under section 303Q(1).]
- (5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

Textual Amendments

- F3** Words in s. 93(4) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 102](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F4** Words in s. 93(4)(b) 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. 23\(a\)](#); [S.I. 2018/78](#), reg. 5(3)(b)(i)(ii)
- F5** Word in s. 93(4)(b) omitted (27.4.2017 for specified purposes, 16.4.2018 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 23\(b\)](#); [S.I. 2018/78](#), reg. 5(3)(c)
- F6** Words in s. 93(4)(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. 23\(c\)](#); [S.I. 2018/78](#), reg. 5(3)(b)(i)(ii)
- F7** S. 93(4)(d) and word 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. 23\(d\)](#); [S.I. 2018/78](#), reg. 5(3)(b)(i)(ii)

Commencement Information

- I2** S. 93 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

94 Accused's benefit

- (1) If the court is acting under section 92 this section applies for the purpose of—
- (a) deciding whether the accused has benefited from conduct, and
 - (b) deciding his benefit from the conduct.
- (2) The court must take account of—
- (a) conduct occurring up to the time it makes its decision;
 - (b) property obtained up to that time.
- (3) Subsection (4) applies if—
- (a) the conduct concerned is general criminal conduct,
 - (b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the accused, and

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- (c) his benefit for the purposes of that order was benefit from his general criminal conduct.
- (4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.
- (5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
- (a) the amount ordered to be paid under each confiscation order previously made against the accused;
 - (b) the amount ordered to be paid under each confiscation order previously made against him under—
 - (i) the Drug Trafficking Offences Act 1986 (c. 32);
 - (ii) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
 - (iii) Part 6 of the Criminal Justice Act 1988 (c. 33);
 - (iv) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I.17));
 - (v) Part 1 of the Drug Trafficking Act 1994 (c. 37);
 - (vi) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
 - (vii) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/ 1299 (N.I.9)); or
 - (viii) Part 2 or 4 of this Act.
- (6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.
- (7) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (5)(b) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

Commencement Information

I3 S. 94 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

95 Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
- (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the accused minus the total amount payable in pursuance of obligations which then have priority, and
 - (b) the total of the values (at that time) of all tainted gifts.
- (2) An obligation has priority if—
- (a) it is an obligation of the accused to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction for an offence and at any time before the confiscation order is made, or
 - (b) it is an obligation of the accused to pay a sum which would be—

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- (i) a preferred debt if the accused's estate were sequestrated on the date of the confiscation order, or
 - (ii) a preferential debt if his winding up were ordered on that date.
- (3) In subsection (2)—
- “preferred debt” has the meaning given by section [F8129(2) of the Bankruptcy (Scotland) Act 2016];
 - “preferential debt” has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

Textual Amendments

F8 Words in s. 95(3) substituted (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(3)**

Commencement Information

I4 S. 95 in force at 24.3.2003 by [S.S.I. 2003/210](#), art. 2(1)(a)

96 Assumptions to be made in case of criminal lifestyle

- (1) Where the court decides under section 92 that the accused has a criminal lifestyle it must make the following four assumptions for the purpose of—
 - (a) deciding whether he has benefited from his general criminal conduct, and
 - (b) deciding his benefit from the conduct.
- (2) The first assumption is that any property transferred to the accused at any time after the relevant day was obtained by him—
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.
- (3) The second assumption is that any property held by the accused at any time after the date of conviction was obtained by him—
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the accused at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the accused, he obtained it free of any other interests in it.
- (6) But the court must not make any of those assumptions in relation to particular property or expenditure if—
 - (a) the assumption is shown to be incorrect, or
 - (b) there would be a serious risk of injustice if the assumption were made.
- (7) If the court does not make one or more of those assumptions it must state its reasons.
- (8) The relevant day is the first day of the period of six years ending with—

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- (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) But if a confiscation order mentioned in section 94(3)(c) has been made against the accused at any time during the period mentioned in subsection (8)—
- (a) the relevant day is the day when the accused’s benefit was calculated for the purposes of the last such confiscation order;
 - (b) the second assumption does not apply to any property which was held by him on or before the relevant day.
- (10) The date of conviction is—
- (a) the date on which the accused was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions are on different dates, the date of the latest.

Commencement Information

I5 S. 96 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

97 Effect of order on court’s other powers

- (1) If the court decides to make a confiscation order it must act as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- (2) The court must take account of the confiscation order before—
 - (a) it imposes a fine on the accused, or
 - (b) it makes an order falling within subsection (3).
- (3) These orders fall within this subsection—
 - (a) an order involving payment by the accused, other than a compensation order under section 249 of the Procedure Act (compensation orders);
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture orders);
 - (d) an order under section 23 [^{F9}or 23A] of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the accused.
- (5) Subsection (6) applies if—
 - (a) a court makes both a confiscation order and a compensation order under section 249 of the Procedure Act against the same person in the same proceedings, and
 - (b) the court believes he will not have sufficient means to satisfy both the orders in full.
- (6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount

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it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Textual Amendments

F9 Words in s. 97(3)(d) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), s. 100(5), [Sch. 3 para. 7\(4\)](#) (with s. 101(2)); S.I. 2009/1256, art. 2(c)

Commencement Information

I6 S. 97 in force at 24.3.2003 by [S.S.I. 2003/210](#), art. 2(1)(a)

[^{F10}97B 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 in relation to the accused 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 accused'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) the accused.
- (6) For the purposes of any appeal or review, a compliance order is a sentence.

Textual Amendments

F10 Ss. 97B-97D inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 16, 88\(2\)\(a\)](#) (with s. 86(3)); [S.S.I. 2016/11](#), reg. 2(a)

97C Breach of compliance order

- (1) This section applies where—
 - (a) a compliance order has been made in relation to an accused, and
 - (b) it appears to the court that the accused has failed to comply with the compliance order.
- (2) The court may—
 - (a) issue a warrant for the accused's arrest, or
 - (b) issue a citation to the accused requiring the accused to appear before the court.
- (3) If the accused fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the accused.

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- (4) The unified citation provisions (as defined in section 307(1) of the Procedure Act) apply in relation to a citation under subsection (2)(b).
- (5) The court must, before considering the alleged failure—
- (a) provide the accused with written details of the alleged failure,
 - (b) inform the accused that the accused is entitled to be legally represented, and
 - (c) inform the accused that no answer need be given to the allegation before the accused—
 - (i) has been given an opportunity to take legal advice, or
 - (ii) has indicated that the accused does not wish to take legal advice.
- (6) If the court is satisfied that the accused has failed without reasonable excuse to comply with the compliance order, the court may—
- (a) impose on the accused a fine not exceeding level 3 on the standard scale,
 - (b) revoke the compliance order and impose on the accused a sentence of imprisonment for a term not exceeding 3 months,
 - (c) vary the compliance order, or
 - (d) both impose a fine under paragraph (a) and vary the order under paragraph (c).
- (7) The court may vary the compliance order if the court is satisfied—
- (a) that the accused has failed to comply with the order,
 - (b) that the accused had a reasonable excuse for the failure, and
 - (c) that, having regard to the circumstances which have arisen since the order was imposed, it is in the interests of justice to vary the order.
- (8) Evidence of one witness is sufficient for the purpose of establishing that an accused has failed without reasonable excuse to comply with a compliance order.

Textual Amendments

F10 Ss. 97B-97D inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 16, 88\(2\)\(a\)](#) (with [s. 86\(3\)](#)); [S.S.I. 2016/11](#), [reg. 2\(a\)](#)

97D Appeals against variation or discharge of compliance orders

The prosecutor or the accused may appeal against a decision of the court under section 97B(5)—

- (a) to vary or refuse to vary a compliance order, or
- (b) to discharge or refuse to discharge a compliance order.]

Textual Amendments

F10 Ss. 97B-97D inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 16, 88\(2\)\(a\)](#) (with [s. 86\(3\)](#)); [S.S.I. 2016/11](#), [reg. 2\(a\)](#)

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98 Disposal of family home

- (1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person's interest in his family home has been acquired as a benefit from his criminal conduct.
- (2) Where this section applies, then, before the administrator disposes of any right or interest in the person's family home he shall—
 - (a) obtain the relevant consent; or
 - (b) where he is unable to do so, apply to the court for authority to carry out the disposal.
- (3) On an application being made to it under subsection (2)(b), the court, after having regard to all the circumstances of the case including—
 - (a) the needs and financial resources of the spouse or former spouse of the person concerned;
 - (b) the needs and financial resources of any child of the family;
 - (c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b),may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.
- (4) Subsection (3) shall apply—
 - (a) to an action for division and sale of the family home of the person concerned; or
 - (b) to an action for the purpose of obtaining vacant possession of that home,brought by the administrator as it applies to an application under subsection (2)(b) and, for the purposes of this subsection, any reference in subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action.
- (5) In this section—

“family home”, in relation to any person (in this subsection referred to as “the relevant person”) means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person's spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family;

“child of the family” includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and

“relevant consent” means in relation to the disposal of any right or interest in a family home—

 - (a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person;

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- (b) where paragraph (a) does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.

Commencement Information

I7 S. 98 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

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