



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Realisation of property: general

128 Enforcement administrators

- (1) This section applies if—
 - (a) a confiscation order is made,
 - (b) it is not satisfied, and
 - (c) it is not subject to appeal.
- (2) In such a case the court may on the application of the prosecutor exercise the powers conferred on it by this section.
- (3) The court may appoint an administrator in respect of realisable property.
- (4) An appointment of an administrator may be made subject to conditions or exceptions.
- (5) The court may confer the powers mentioned in subsection (6) on an administrator appointed under subsection (3) above.
- (6) Those powers are—
 - (a) power to take possession of any realisable property;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise any realisable property, in such manner as the court may specify.
- (7) The court may order any person who has possession of realisable property to give possession of it to an administrator referred to in subsection (5).
- (8) The clerk of court must notify the accused and any person subject to an order under subsection (7) of the making of the order.

Status: Point in time view as at 25/11/2019.

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- (9) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment.
- (10) The court—
- (a) may order a person holding an interest in realisable property to make to the administrator such payment as the court specifies in respect of a beneficial interest held by the accused or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (11) The court must not—
- (a) confer the power mentioned in subsection (6)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (10) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (12) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.
- (13) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (14) Subsection (6) does not apply to property for the time being subject to a charge under—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 199/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

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

- II** S. 128 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

129 Management administrators: discharge

- (1) This section applies if—
- (a) an administrator stands appointed under section 125 in respect of realisable property (the management administrator), and

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- (b) the court appoints an administrator under section 128.
- (2) The court must order the management administrator to transfer to the other administrator all property held by him by virtue of the powers conferred on him by section 125.
- (3) If the management administrator complies with an order under subsection (2) he is discharged—
 - (a) from his appointment under that section,
 - (b) from any obligation under this Act arising from his appointment.

Commencement Information

I2 S. 129 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

130 Application of sums by enforcement administrator

- (1) This section applies to sums which—
 - (a) are in the hands of an administrator appointed under section 128(3), and
 - (b) fall within subsection (2).
- (2) These sums fall within this subsection—
 - (a) the proceeds of the realisation of property under section 128(6)(c);
 - (b) any sums (other than those mentioned in paragraph (a)) in which the accused holds an interest.
- (3) The sums must be applied as follows—
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
 - (b) second, they must be applied in making any payments as directed by the court;
 - (c) third, they must be applied on the accused's behalf towards satisfaction of the confiscation order.
- (4) If the amount payable under any confiscation order has been fully paid and any sums remain in the administrator's hands he must distribute them—
 - (a) among such persons who held (or hold) interests in the property concerned as the court directs, and
 - (b) in such proportions as it directs.
- (5) Before making a direction under subsection (4) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (6) For the purposes of subsections (4) and (5) the property concerned is—
 - (a) the property represented by the proceeds mentioned in subsection (2)(a);
 - (b) the sums mentioned in subsection (2)(b).
- (7) The administrator applies sums as mentioned in subsection (3)(c) by paying them to the appropriate clerk of court on account of the amount payable under the order.

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- (8) The appropriate clerk of court is the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1) of this Act.

Commencement Information

I3 S. 130 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

131 Sums received by clerk of court

- (1) This section applies if a clerk of court receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 130 or otherwise).
- (2) The clerk of court's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
- are payable under this subsection by virtue of section 432, but
 - are not already paid under section 130(3)(a) [^{F1} or 131D(2)(a)] .
- (4) If the Lord Advocate has reimbursed the administrator in respect of remuneration or expenses under section 133 the clerk of court must next apply the sums in reimbursing the Lord Advocate.
- (5) If the clerk of court received the sums under section 130 [^{F2} or 131D] he must next apply them in payment of the administrator's remuneration and expenses.
- [^{F3}(5A) If the clerk of court received the sums from an appropriate officer under section 130 or 131D, the clerk of court must next apply them in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 131B.]
- (6) If a direction was made under section 97(6) [^{F4} or 97A(4)] for an amount of compensation to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount.
- [^{F5}(6A) If a direction was made under section 97A(2) or (4) for an amount payable under a restitution order or a victim surcharge under section 253F(2) of the Procedure Act to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount.]
- (7) If any amount remains after the clerk of court makes any payments required by the preceding provisions of this section, the amount must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section 118(1) of this Act.

Textual Amendments

- F1** Words in s. 131(3)(b) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 59\(3\)\(a\)](#), 116(1); [S.I. 2015/983](#), [art. 2\(2\)\(a\)](#)
- F2** Words in s. 131(5) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 59\(3\)\(b\)](#), 116(1); [S.I. 2015/983](#), [art. 2\(2\)\(a\)](#)

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- F3** S. 131(5A) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 59(3)(c)**, 116(1); S.I. 2015/983, art. 2(2)(a)
- F4** Words in s. 131(6) inserted (25.11.2019 for specified purposes) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 44(a)**; S.S.I. 2019/281, reg. 2
- F5** S. 131(6A) inserted (25.11.2019 for specified purposes) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 44(b)**; S.S.I. 2019/281, reg. 2

Commencement Information

- I4** S. 131 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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