



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Restraint orders etc

119 Conditions for exercise of powers

- (1) The court may exercise the powers conferred by section 120 if any of the following conditions is satisfied.
- (2) The first condition is that—
 - (a) a criminal investigation has been instituted in Scotland with regard to an offence, and
 - (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.
- (3) The second condition is that—
 - (a) proceedings for an offence have been instituted in Scotland and not concluded, and
 - (b) there is reasonable cause to believe that the accused has benefited from his criminal conduct.
- (4) The third condition is that—
 - (a) an application by the prosecutor has been made under section 104, 105, 111 or 112 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the accused has benefited from his criminal conduct.
- (5) The fourth condition is that—
 - (a) an application by the prosecutor has been made under section 106 and not concluded, or the court believes that such an application is to be made, and

Status: Point in time view as at 01/06/2015.

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- (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused’s benefit exceeds the relevant amount (as defined in that section).
- (6) The fifth condition is that—
 - (a) an application by the prosecutor has been made under section 107 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (7) The second condition is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
- (8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor does not intend to proceed.
- (9) If the first condition is satisfied—
 - (a) references in this Part to the accused are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;
 - (c) section 144(8) has effect as if proceedings for the offence had been instituted against the accused when the investigation was instituted.
- (10) In this section, sections 120 to 140 and Schedule 3 “the court” means—
 - (a) the Court of Session, where a trial diet or a diet fixed for the purposes of section 76 of the Procedure Act in proceedings for the offence or offences concerned is to be, is being or has been held in the High Court of Justiciary;
 - (b) the sheriff exercising his civil jurisdiction, where a diet referred to in paragraph (a) is to be, is being or has been held in the sheriff court.

Modifications etc. (not altering text)

- C1** Pt. 3 functions of administrator extended (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **4(1)(a)**
- C2** 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. 119 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)** (with arts. 4, 7)

120 Restraint orders etc

- (1) If any condition set out in section 119 is satisfied the court may make an order (a restraint order) interdicting any specified person from dealing with any realisable property held by him.
- (2) A restraint order may provide that it applies—

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- (a) to all realisable property held by the specified person whether or not the property is described in the order;
 - (b) to realisable property transferred to the specified person after the order is made.
- (3) A restraint order may be made subject to exceptions, and an exception may in particular—
- (a) make provision for reasonable living expenses and reasonable legal expenses;
 - (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
 - (c) be made subject to conditions.
- (4) But an exception to a restraint order may not make provision for any legal expenses which—
- (a) relate to an offence which falls within subsection (5), and
 - (b) are incurred by a person against whom proceedings for the offence have been instituted or by a recipient of a tainted gift.
- (5) These offences fall within this subsection—
- (a) the offence mentioned in section 119(2) or (3), if the first or second condition (as the case may be) is satisfied;
 - (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.
- (6) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- (7) A restraint order does not affect property subject to a charge under—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32),
 - (b) Part 6 of the Criminal Justice Act 1988 (c. 33),
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)),
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37), or
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) Dealing with property includes removing the property from Scotland.

Commencement Information

I2 S. 120 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#) (with [arts. 4, 7](#))

[^{F1}120A Restraint orders: power to retain seized property etc.

- (1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
- (a) is seized by an appropriate officer under a relevant seizure power, or
 - (b) is produced to an appropriate officer in compliance with a production order under section 380.
- (2) Provision under subsection (1) may, in particular—

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- (a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
 - (b) relate to property that has already been seized or produced or to property that may be seized or produced in future.
- (3) “Appropriate officer” means—
- (a) a constable;
 - (b) an officer of Revenue and Customs;
 - [an immigration officer;]
 - ^{F2}(ba)
 - [^{F3}(c) a National Crime Agency officer;]
- (4) “Relevant seizure power” means a power to seize property conferred by or by virtue of—
- (a) section 127C or 387,
 - (b) a warrant granted under any other enactment or any rule of law, or
 - (c) any other enactment, or any rule of law, under which the authority of a warrant is not required.]

Textual Amendments

- F1** S. 120A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 53(2)**, 116(1); [S.I. 2015/983](#), art. 2(2)(a)
- F2** S. 120A(3)(ba) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), Sch. 21 para. 20 (with Sch. 21 para. 40); [S.I. 2014/3098](#), art. 2(e)
- F3** S. 120A(3)(c) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), Sch. 8 para. 115; [S.I. 2013/1682](#), art. 3(v)

121 Application, recall and variation

- (1) This section applies to a restraint order.
- (2) An order may be made on an ex parte application by the prosecutor, which may be heard in chambers.
- (3) The prosecutor must intimate an order to every person affected by it.
- (4) Subsection (3) does not affect the time when the order becomes effective.
- (5) The prosecutor and any other person affected by the order may apply to the court to recall an order or to vary it; and subsections (6) to (9) apply in such a case.
- (6) If an application under subsection (5) in relation to an order has been made but not determined, realisable property to which the order applies must not be realised.
- (7) The court may—
 - (a) recall the order;
 - (b) vary the order.
- (8) In the case of a restraint order, if the condition in section 119 which was satisfied was that proceedings were instituted or an application was made, the court must recall the order on the conclusion of the proceedings or of the application (as the case may be).

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- (9) In the case of a restraint order, if the condition in section 119 which was satisfied was that an investigation was instituted or an application was to be made, the court must recall the order if within a reasonable time proceedings for the offence are not instituted or the application is not made (as the case may be).

Commencement Information

I3 S. 121 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

122 Appeals

- (1) If on an application for a restraint order the court decides not to make one, the prosecutor may reclaim or appeal to the Court of Session against the decision.
- (2) The prosecutor and any person affected by the order may reclaim or appeal to the Court of Session against the decision of the court on an application under section 121(5).

Commencement Information

I4 S. 122 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

[^{F4}122A Detention of property pending appeal

- (1) This section applies where—
- (a) a restraint order includes provision under section 120A authorising the detention of property, and
 - (b) the restraint order is recalled under section 121(7).
- (2) This section also applies where—
- (a) a restraint order includes provision under section 120A authorising the detention of property, and
 - (b) the restraint order is varied under section 121(7) so as to omit any such provision.
- (3) The property may be detained until there is no further possibility of an appeal against (or review of)—
- (a) the decision to recall or vary the restraint order, or
 - (b) any decision made on an appeal against (or review of) that decision.]

Textual Amendments

F4 S. 122A inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 53\(3\)](#), [116\(1\)](#); [S.I. 2015/983](#), [art. 2\(2\)\(a\)](#)

123 Inhibition of property affected by order

- (1) On the application of the [^{F5}prosecutor, the court] may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a restraint order.

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- (2) That property is the heritable realisable property to which the restraint order applies (whether generally or such of it as is specified in the application).
- (3) The warrant for inhibition—
 - (a) has effect as if granted on the dependence of an action for debt by the [^{F6}prosecutor] against the person and may be executed, recalled, loosed or restricted accordingly, and
 - [^{F7}(b) must forthwith be registered by the prosecutor in the Register of Inhibitions]
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) ^{F8}....
- (5) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property.
- (6) An inhibition executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the [^{F9}prosecutor] must—
 - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
 - (b) ensure that the recall or restriction is reflected in the Register of Inhibitions and Adjudications.

Textual Amendments

- F5** Words in s. 123(1) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), s. 227\(3\), sch. 5 para. 29\(a\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F6** Word in s. 123(3)(a) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), s. 227\(3\), sch. 5 para. 29\(b\)\(i\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F7** S. 123(3)(b) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), s. 227\(3\), sch. 5 para. 29\(b\)\(ii\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F8** Words in s. 123(4) repealed (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), s. 227\(3\), sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 2 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F9** Word in s. 123(7) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), s. 227\(3\), sch. 5 para. 29\(c\)](#) (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

Modifications etc. (not altering text)

- C3** S. 123 applied (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(1)**

Commencement Information

- I5** S. 123 in force at 24.3.2003 by [S.S.I. 2003/210](#), art. **2(1)(a)**

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124 Arrestment of property affected by order

- (1) On the application of the prosecutor the court may, in relation to moveable realisable property to which a restraint order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.
- (2) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (3) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
- (4) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property.
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the prosecutor must apply to the court for an order recalling, or as the case may be, restricting the arrestment.

Modifications etc. (not altering text)

- C4** S. 124 applied (24.2.2003) by [Proceeds of Crime Act 2002 \(Enforcement in different parts of the United Kingdom\) Order 2002 \(S.I. 2002/3133\)](#), arts. 1, **12(2)**

Commencement Information

- I6** S. 124 in force at 24.3.2003 by [S.S.I. 2003/210](#), art. **2(1)(a)**

125 Management administrators

- (1) If the court makes a restraint order it may at any time, on the application of the prosecutor—
 - (a) appoint an administrator to take possession of any realisable property to which the order applies and (in accordance with the court's directions) to manage or otherwise deal with the property;
 - (b) order a person who has possession of property in respect of which an administrator is appointed to give him possession of it.
- (2) An appointment of an administrator may be made subject to conditions or exceptions.
- (3) Where the court makes an order under subsection (1)(b), the clerk of court must notify the accused and any person subject to the order of the making of the order.
- (4) 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.
- (5) The court—
 - (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the administrator such payment as the court

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- 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.
- (6) The court must not—
- (a) confer the power mentioned in subsection (1) to manage or otherwise deal with the property, or
- (b) exercise the power conferred on it by subsection (5),
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (7) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- (8) 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.
- (9) Subsections (1)(b) and (5) do 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. 1990/2588 (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)).

Commencement Information

I7 S. 125 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

^{F10} 126 Seizure

Textual Amendments

F10 S. 126 repealed (1.6.2015) by [Policing and Crime Act 2009](#) (c. 26), ss. 56(3), 116(1), [Sch. 8 Pt. 4](#); [S.I. 2015/983](#), [art. 2\(2\)\(a\)\(f\)](#) (with [art. 4\(3\)\(4\)](#))

Commencement Information

I8 S. 126 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

Status: Point in time view as at 01/06/2015.

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127 Restraint orders: restriction on proceedings and remedies

- (1) While a restraint order has effect, the court may sist any action, execution or any legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a restraint order has been made or applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by subsection (2), the court must give an opportunity to be heard to—
 - (a) the applicant for the restraint order;
 - (b) any administrator appointed under section 125.

Commencement Information

19 S. 127 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

Status:

Point in time view as at 01/06/2015.

Changes to legislation:

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