



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 4

CONFISCATION: NORTHERN IRELAND

Confiscation orders

156 Making of order

- (1) The Crown Court must proceed under this section if the following two conditions are satisfied.
- (2) The first condition is that a defendant falls within either of the following paragraphs—
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court;
 - (b) he is 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).
- (3) The second condition is that—
 - (a) the prosecutor ^{F1}... asks the court to proceed under this section, or
 - (b) the court believes it is appropriate for it to do so.
- (4) The court must proceed as follows—
 - (a) it must decide whether the defendant 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.
- (5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—
 - (a) decide the recoverable amount, and

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(b) make an order (a confiscation order) requiring him to pay that amount.

[^{F2}Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.]

- (6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.
- (7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.
- (8) The first condition is not satisfied if the defendant absconds (but section 177 may apply).
- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

Textual Amendments

- F1** Words in s. 156(3)(a) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 36](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F2** Words in s. 156(5) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(3)(b), [Sch. 4 para. 46](#); [S.R. 2015/190](#), reg. 3(2)(b)

Modifications etc. (not altering text)

- C1** Pt. 4 applied by [S.I. 1989/1341 \(N.I. 12\)](#), [arts. 57\(5B\)](#), [59\(8B\)](#) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), Supreme Court s. 458(1), [Sch. 11 para. 19\(2\)\(3\)](#); [S.I. 2003/333](#), art. 2, [Sch.](#))
- C2** Pt. 4 applied by [S.I. 1989/1341 \(N.I. 12\)](#), art. 59(8B) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), [Sch. 11 para. 19\(3\)](#); [S.I. 2003/333](#), art. 2, [Sch.](#))

Commencement Information

- I1** S. 156 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#) (with arts. 4(1), 8, 10-13) (as amended (6.3.2003) by [S.I. 2003/531](#), art. 3)

157 Recoverable amount

- (1) The recoverable amount for the purposes of section 156 is an amount equal to the defendant's benefit from the conduct concerned.
- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—
- the available amount, or
 - a nominal amount, if the available amount is nil.
- (3) But if section 156(6) applies the recoverable amount is such amount as—
- the court believes is just, but
 - does not exceed the amount found under subsection (1) or (2) (as the case may be).
- (4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), [^{F3}the following must be ignored—

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- (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. 157(4) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 104](#); [S.I. 2015/983](#), arts. 2(2)(e), 3(ff)
- F4** Words in s. 157(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. 25\(a\)](#); [S.I. 2018/78](#), reg. 5(3)(d)(i)(ii)
- F5** Word in s. 157(4)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 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. 25\(b\)](#); [S.I. 2018/78](#), reg. 5(3)(d)(i)(ii)
- F6** Words in s. 157(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. 25\(c\)](#); [S.I. 2018/78](#), reg. 5(3)(d)(i)(ii)
- F7** S. 157(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. 25\(d\)](#); [S.I. 2018/78](#), reg. 5(3)(d)(i)(ii)

Commencement Information

- I2** S. 157 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

158 Defendant's benefit

- (1) If the court is proceeding under section 156 this section applies for the purpose of—
- (a) deciding whether the defendant has benefited from conduct, and
 - (b) deciding his benefit from the conduct.
- (2) The court must—
- (a) take account of conduct occurring up to the time it makes its decision;
 - (b) take account of 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 defendant, and
 - (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.

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- (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 defendant;
 - (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (7).
- (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) These are the provisions—
- (a) the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
 - (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
 - (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
 - (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
 - (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
 - (h) Part 2 or 3 of this Act.
- (8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) 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. 158 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

159 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 defendant 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 it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
 - (b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.
- (3) "Preferential debts" has the meaning given by Article 346 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

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Commencement Information

I4 S. 159 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

160 Assumptions to be made in case of criminal lifestyle

- (1) If the court decides under section 156 that the defendant 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 defendant 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 defendant 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 defendant 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 defendant, he obtained it free of any other interests in it.
- (6) But the court must not make a required assumption 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 the required assumptions it must state its reasons.
- (8) The relevant day is the first day of the period of six years ending with—
 - (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (9) But if a confiscation order mentioned in section 158(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8)—
 - (a) the relevant day is the day when the defendant'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 defendant was convicted of the offence concerned, or

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- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

Commencement Information

I5 S. 160 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

[^{F8}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—
- (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.]

Textual Amendments

F8 S. 160A inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 24, 88\(3\)\(a\)](#); [S.R. 2015/190](#), reg. [3\(1\)\(a\)](#)

[^{F9}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.

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- (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,
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.]

Textual Amendments

- F9** S. 161 substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 28(1)**, 88(3)(a); S.R. 2015/190, [reg. 3\(1\)\(b\)](#)

Commencement Information

- I6** S. 161 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

162 Interest on unpaid sums

- (1) If [^{F10}any amount required to be paid] by a person under a confiscation order is not paid when it is required to be paid, he [^{F11}must pay interest on that amount] for the period for which it remains unpaid.
- (2) The rate of interest is the same rate as that for the time being applying to a money judgment of the High Court.
- [^{F12}(3) If—
 - (a) an application has been made under section 161(4) for a specified period to be extended,

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- (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.]

- (4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

Textual Amendments

- F10** Words in s. 162(1) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(3)(b), [Sch. 4 para. 47\(a\)](#); [S.R. 2015/190](#), reg. 3(2)(b)
- F11** Words in s. 162(1) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(3)(b), [Sch. 4 para. 47\(b\)](#); [S.R. 2015/190](#), reg. 3(2)(b)
- F12** S. 162(3) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 28\(2\)](#), 88(3)(a); [S.R. 2015/190](#), reg. 3(1)(b)

Modifications etc. (not altering text)

- C3** Pt. 4 applied (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), [Sch. 2 para. 11\(5\)](#)
- C4** Pt. 4 applied (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), [Sch. 2 para. 6\(5\)](#)
- C5** S. 162 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), [Sch. 2 para. 11\(6\)](#)

Commencement Information

- I7** S. 162 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

163 Effect of order on court's other powers

- (1) If the court makes a confiscation order it must proceed 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 defendant, or
 - (b) it makes an order falling within subsection (3).
- (3) These orders fall within this subsection—
 - (a) an order involving payment by the defendant, other than an order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders);
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);
 - (d) an order under section 23 [^{F13}or 23A] or 111 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 defendant.

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- (5) Subsection (6) applies if—
- (a) a court makes [^{F14}a confiscation order and one or both of] an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15) [^{F15}and a slavery and trafficking reparation order under Schedule 2 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015,]) against the same person in the same proceedings, and
 - (b) the court believes he will not have sufficient means to satisfy [^{F16}all the orders] in full.
- (6) In such a case the court must direct that so much [^{F17}as it specifies of the amount (or amounts) payable under the other order (or orders) mentioned in subsection (5) (a)] is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Textual Amendments

- F13** Words in s. 163(3)(d) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), s. 100(5), [Sch. 3 para. 7\(6\)](#) (with s. 101(2)); [S.I. 2009/1256](#), art. 2(c)
- F14** Words in s. 163(5)(a) substituted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), [Sch. 4 para. 13\(3\)\(a\)](#)
- F15** Words in s. 163(5)(a) inserted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), [Sch. 4 para. 13\(3\)\(a\)](#)
- F16** Words in s. 163(5)(b) substituted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), [Sch. 4 para. 13\(3\)\(b\)](#)
- F17** Words in s. 163(6) substituted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), [Sch. 4 para. 13\(4\)](#)

Commencement Information

- I8** S. 163 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

[^{F18}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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Textual Amendments

F18 S. 163A, 163B inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 29**, 88(3)(a) (with s. 86(4)); S.R. 2015/190, reg. 3(1)(c)

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.]

Textual Amendments

F18 S. 163A, 163B inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 29**, 88(3)(a) (with s. 86(4)); S.R. 2015/190, reg. 3(1)(c)

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