



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 3

#### CONFISCATION: SCOTLAND

##### *Payment and enforcement*

#### **116 Time for payment**

- (1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section.
- (2) If the accused shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.
- (3) The specified period—
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed six months.
- (4) If within the specified period the accused applies to the sheriff court for the period to be extended and the court, after giving the prosecutor an opportunity of being heard, believes there are exceptional circumstances, it may make an order extending the period.
- (5) The extended period—
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed 12 months.
- (6) An order under subsection (4)—
  - (a) may be made after the end of the specified period, but
  - (b) must not be made after the end of the period of twelve months starting with the day on which the confiscation order is made.

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- (7) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.

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

**<sup>F1</sup>116A Further time for payment due to coronavirus**

**Textual Amendments**

- F1** S. 116A inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 16(1), **sch. 2 para. 9(3)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 9(1))

**117 Interest on unpaid sums**

- (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether when the order is made or within a period specified under section 116), he must pay interest on the amount for the period for which it remains unpaid.
- (2) The rate of interest is the rate payable under a decree of the Court of Session.
- (3) For the purposes of this section no amount is required to be paid under a confiscation order if—
- an application has been made under section 116(4),
  - the application has not been determined by the court, and
  - the period of 12 months starting with the day on which the confiscation order was made has not ended.
- (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.

**Modifications etc. (not altering text)**

- C2** Pt. 3 applied (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), **Sch. 1 para. 6(5)**
- C3** Pt. 3 applied (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), **Sch. 1 para. 11(5)**
- C4** S. 117 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), reg. 1(b), **Sch. 1 para. 11(6)**

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### Commencement Information

**I2** S. 117 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

## 118 Application of provisions about fine enforcement

- (1) The provisions of the Procedure Act specified in subsection (2) apply, with the qualifications mentioned in that subsection, in relation to a confiscation order as if the amount ordered to be paid were a fine imposed on the accused by the court making the confiscation order.
- (2) Those provisions are—
  - (a) section 211(3) to (6);
  - (b) section 214(4) to (6), but as if the references in subsection (4) to payment by instalments were omitted;
  - (c) section 216, but as if subsection (1)—
    - (i) gave the prosecutor an opportunity to be heard at any enquiry under that subsection; and
    - (ii) applied whether the offender was in prison or not;
  - (d) section 217;
  - (e) section 218(2) and (3);
  - (f) section 219, provided that—
    - (i) where a court imposes a period of imprisonment in respect of both a fine and a confiscation order the amounts in respect of which the period is imposed must, for the purposes of subsection (2), be aggregated;
    - (ii) before imposing a period of imprisonment by virtue of that section the court must require a report from any administrator appointed in relation to the confiscation order as to whether and how he is likely to exercise his powers and duties under this Part and must take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition; and
    - (iii) where an administrator has not been appointed in relation to the confiscation order, or where the accused does not ask under section 116 for time for payment of any confiscation order imposed by the court, the prosecutor may apply to the court to postpone the imposition of any period of imprisonment for a period not exceeding 3 months to enable the prosecutor to apply to the court for the appointment of an administrator;
  - (g) section 220, but as if the reference in subsection (1) to payment of a sum by the person included a reference to payment of the sum in respect of the person by an administrator appointed in relation to the confiscation order;
  - (h) section 221 <sup>F2</sup>(other than subsection (3) and as if the words “Subject to subsection (3) below,” were omitted); but that section does not apply] where an administrator is appointed in relation to the confiscation order;
  - (i) section 222, except that for the purposes of that section “confiscation order” in subsection (1) above must be construed as including such an order within the meaning of the Drug Trafficking Act 1994 (c. 37), the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) or of Part 2 or 4 of this Act;

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- (j) section 223;  
<sup>F3</sup>(k) .....

<sup>F4</sup>(2A) In its application in relation to confiscation orders, subsection (2) of section 219 of the Procedure Act is to be read as if for the Table in that subsection there were substituted the following Table—

<i>Amount to be Paid under Compensation Order</i>	<i>Maximum Period of Imprisonment</i>
£10,000 or less	6 months
More than £10,000 but no more than £500,000	5 years
More than £500,000 but no more than £1 million	7 years
More than £1 million	14 years

(2B) The Scottish Ministers may by order—

- (a) amend section 219(2) of the Procedure Act (as applied by this section) so as to provide for minimum periods of imprisonment in respect of amounts ordered to be paid under a confiscation order;
- (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of paragraph (a) of this subsection) or to add any entry;
- (c) apply (with or without modifications) any provision of the Procedure Act relating to enforcement of fines in consequence of exercising the power in paragraph (a) or (b) (including modifying any such provision in its application in relation to confiscation orders by virtue of this section).

(2C) In its application in relation to a confiscation order under Part 2 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if, in relation to a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, for “[<sup>F5</sup>129 of the Sentencing Code]” there were substituted “ 35(2A) of the Proceeds of Crime Act 2002 ”.

(2D) In its application in relation to a confiscation order under Part 4 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if—

- (a) before the words “section 90” there were inserted “section 35 of the Criminal Justice Act (Northern Ireland) 1945,”;
- (b) in relation to a transfer of fine order under section 35 of that Act, for “[<sup>F6</sup>129 of the Sentencing Code]” there were substituted “ 185(2A) of the Proceeds of Crime Act 2002 ”.]

(3) Where a court, by virtue of subsection (1), orders the amount ordered to be paid under a confiscation order to be recovered by civil diligence under section 221 of the Procedure Act, any arrestment executed by a prosecutor under subsection (3) of section 124 of this Act is to be treated as having been executed by the court as if that subsection authorised such execution.

(4) Subsection (5) applies where—

- (a) a warrant for apprehension of the accused is issued for a default in payment of the amount ordered to be paid under a confiscation order in respect of an offence or offences, and

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- (b) at the time the warrant is issued the accused is liable to serve a period of imprisonment or detention (other than one of life imprisonment or detention for life) in respect of the offence (or any of the offences).
- (5) In such a case any period of imprisonment or detention to which the accused is liable by virtue of section 219 of the Procedure Act runs from the expiry of the period of imprisonment or detention mentioned in subsection (4)(b).

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#### Textual Amendments

- F2** Words in s. 118(2)(h) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 19(1)(a)**, 88(2)(a); [S.S.I. 2016/11](#), [reg. 2\(d\)](#) (with [reg. 3](#))
- F3** S. 118(2)(k) omitted (1.3.2016) by virtue of [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), **Sch. 4 para. 42**; [S.S.I. 2016/11](#), [reg. 2\(j\)](#) (with [reg. 3](#))
- F4** S. 118(2A)-(2D) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 19(1)(b)**, 88(2)(a); [S.S.I. 2016/11](#), [reg. 2\(d\)](#) (with [reg. 3](#))
- F5** Words in s. 118(2C) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 197** (with [Sch. 27](#)); [S.I. 2020/1236](#), [reg. 2](#)
- F6** Words in s. 118(2D)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 197** (with [Sch. 27](#)); [S.I. 2020/1236](#), [reg. 2](#)

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#### Modifications etc. (not altering text)

- C5** S. 118 excluded (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) Regulations 2014 \(S.I. 2014/3141\)](#), [reg. 1\(b\)](#), **Sch. 1 para. 11(6)**

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#### Commencement Information

- I3** S. 118 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)