



# Serious Crime Act 2015

## 2015 CHAPTER 9

### PART 1

#### PROCEEDS OF CRIME

#### CHAPTER 1

##### ENGLAND AND WALES

*Confiscation: assets held by defendant and other*

## **1 Determination of extent of defendant's interest in property**

After section 10 of the Proceeds of Crime Act 2002 insert—

### **“10A 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—

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- (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 51(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.”

## 2 Provision of information

(1) In section 16 of the Proceeds of Crime Act 2002 (statement of information), after subsection (6) insert—

“(6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide—

- (a) whether to make a determination under section 10A, or
- (b) what determination to make (if the court decides to make one).

(6B) If the court has decided to make a determination under section 10A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.”

(2) In section 18 of that Act (provision of information by defendant)—

- (a) in subsection (2), after “functions” insert “(including functions under section 10A)”;
- (b) in subsection (6)(b), for “deciding the available amount under section 9,” substitute “deciding—
  - (i) the available amount under section 9, or
  - (ii) whether to make a determination under section 10A, or what determination to make (if the court decides to make one),”.

(3) After that section insert—

### “18A Provision of information as to defendant’s interest in property

(1) This section applies if the court—

- (a) is considering whether to make a determination under section 10A of the extent of the defendant’s interest in any property, or
- (b) is deciding what determination to make (if the court has decided to make a determination under that section).

In this section “interested person” means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

- (2) For the purpose of obtaining information to help it in carrying out its functions under section 10A the court may at any time order an interested person to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.
- (6) If the prosecutor accepts to any extent an allegation made by an interested person—
  - (a) in giving information required by an order under this section, or
  - (b) in any other statement given to the court in relation to any matter relevant to a determination under section 10A,the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (8) If the court makes an order under this section it may at any time vary it by making another one.
- (9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.”

### **3 Appeals**

- (1) In section 31 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert—
  - “(4) An appeal lies to the Court of Appeal against a determination, under section 10A, of the extent of the defendant’s interest in property.
  - (5) An appeal under subsection (4) lies at the instance of—
    - (a) the prosecutor;
    - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.
  - (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.
  - (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.
  - (8) An appeal does not lie under subsection (4) where—
    - (a) the Court of Appeal believes that an application under section 50 is to be made by the prosecutor for the appointment of a receiver,
    - (b) such an application has been made but has not yet been determined, or

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- (c) a receiver has been appointed under section 50.”
- (2) In section 32 of that Act (court’s powers on appeal), after subsection (2) insert—
  - “(2A) On an appeal under section 31(4) the Court of Appeal may—
    - (a) confirm the determination, or
    - (b) make such order as it believes is appropriate.”
- (3) In section 33 of that Act (appeal to Supreme Court)—
  - (a) for subsection (2) substitute—
    - “(2) An appeal under this section lies at the instance of—
      - (a) the defendant or the prosecutor (except where paragraph (b) applies);
      - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 31(4), any person who was a party to those proceedings.”;
  - (b) after subsection (3) insert—
    - “(3A) On an appeal under this section from a decision under section 32(2A) the Supreme Court may—
      - (a) confirm the decision of the Court of Appeal, or
      - (b) make such order as it believes is appropriate.”

#### **4 Enforcement receivers**

In section 51 of the Proceeds of Crime Act 2002 (powers of receivers etc), after subsection (8A) insert—

- “(8B) Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 10A, unless—
  - (a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or
  - (b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;
 and the determination does not bind the court if paragraph (a) or (b) applies.”

#### *Confiscation: other amendments*

#### **5 Time for payment**

- (1) For section 11 of the Proceeds of Crime Act 2002 substitute—

##### **“11 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.

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- (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.
  - (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.”
- (2) In section 12 of that Act (interest on unpaid sums), for subsection (3) substitute—
- “(3) If—
- (a) an application has been made under section 11(4) for a specified period to be extended,
  - (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.”
- (3) In section 87 of that Act (interpretation: confiscation orders), after subsection (1) insert—

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“(1A) The “amount payable” under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.”

## **6 Confiscation and victim surcharge orders**

(1) Section 13 of the Proceeds of Crime Act 2002 (effect of order on court’s other powers) is amended as follows.

(2) In subsection (3), in paragraph (a), for the words from “an order under section 130” to the end substitute “a priority order”.

(3) After subsection (3) insert—

“(3A) In this section “priority order” means any of the following—

- (a) a compensation order under section 130 of the Sentencing Act;
- (b) an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003;
- (c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.”

(4) For subsection (5) substitute—

“(5) Subsection (6) applies if—

- (a) the Crown Court makes both a confiscation order and one or more priority orders against the same person in the same proceedings, and
- (b) the court believes the person will not have sufficient means to satisfy all those orders in full.”

(5) In subsection (6), for “compensation or amount payable under the unlawful profit order (or both)” substitute “amount payable under the priority order (or orders)”.

## **7 Orders for securing compliance with confiscation order**

After section 13 of the Proceeds of Crime Act 2002 insert—

### **“13A 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.

### **13B Appeals against orders under section 13A**

- (1) If on an application under section 13A(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 13A.”

## **8 Variation or discharge**

- (1) In section 23 of the Proceeds of Crime Act 2002 (inadequacy of available amount: variation of confiscation order), in subsection (1)(b), after “the defendant” insert “or the prosecutor”.
- (2) After section 25 of that Act insert—

### **“25A Recovery from estate of deceased defendant impractical: discharge of order**

- (1) This section applies if—
  - (a) a court has made a confiscation order,
  - (b) the defendant dies while the order is not satisfied, and
  - (c) the designated officer for a magistrates’ court applies to the Crown Court for the discharge of the order.
- (2) The court may discharge the order if it appears to the court that—
  - (a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or
  - (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.”

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- (3) Section 25A of that Act (inserted by subsection (2) above) applies to—
- (a) a confiscation order made under Part 6 of the Criminal Justice Act 1988, or
  - (b) a confiscation order made under the Drug Trafficking Act 1994,
- as it applies to a confiscation order made under the Proceeds of Crime Act 2002.

## **9 Absconding defendants**

- (1) In section 27 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute—

“(2) The first condition is that a defendant falls within any of the following paragraphs—

- (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;
- (b) he absconds after being committed to the Crown Court for sentence in respect of an offence or offences under section 3, 3A, 3B, 3C, 4, 4A or 6 of the Sentencing Act;
- (c) he absconds after being committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).”

- (2) For subsections (6) and (7) of that section substitute—

“(6) Once the defendant ceases to be an absconder—

- (a) section 19 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) at a time when the first condition in section 27 was satisfied the court did not proceed under section 6,
- (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 6, and
- (c) the court believes it is appropriate for it to do so.”;

- (b) section 20 has effect as if subsection (4) read—

“(4) The second condition is that—

- (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and
- (b) the court believes it is appropriate for it to do so.”;

- (c) section 21 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
- (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in



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- pursuance of this section it would exceed the relevant amount,
- (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
- (d) the court believes it is appropriate for it to do so.”;
- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 19, 20 or 21 (as applied by this subsection).”
- (3) In section 28 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “three months”.
- (4) For subsection (6) of that section substitute—
- “(6) Once the defendant has ceased to be an absconder—
- (a) section 21 has effect as if subsection (1) read—
- “(1) This section applies if—
- (a) a court has made a confiscation order,
- (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
- (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
- (d) the court believes it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 21 (as applied by this subsection).”

## 10 Default sentences

- (1) In section 35 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert—
- “(2A) Where a court is fixing a term of imprisonment or detention under section 139(2) of the Sentencing Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

TABLE

| <i>Amount</i>                                  | <i>Maximum term</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             |

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| <i>Amount</i>        | <i>Maximum term</i> |
|----------------------|---------------------|
| More than £1 million | 14 years            |

(2B) In the application of subsection (9) of section 139 of the Sentencing Act by virtue of subsection (2) above, the reference to subsections (2) to (4) of that section is to be read as a reference to—

- (a) subsections (2) and (3) of that section, and
- (b) subsection (2A) above.

(2C) The Secretary of State may by order—

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 139(2) of the Sentencing Act (as applied by subsection (2) above) 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 the power in paragraph (a) of this subsection) or to add any entry.”

(2) In section 459(6)(a) of that Act (orders subject to affirmative resolution procedure), after “section” insert “35(2C),”.

(3) In section 258 of the Criminal Justice Act 2003 (early release of fine defaulters etc), after subsection (2A) insert—

“(2B) Subsection (2) does not apply to a person within subsection (1)(a) if the sum in question is a sum of more than £10 million ordered to be paid under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002.

(2C) The Secretary of State may by order amend the amount for the time being specified in subsection (2B).”

(4) In section 330(5) of that Act (orders subject to affirmative resolution procedure), at the appropriate place in the list of provisions in paragraph (a) insert “section 258(2C),”.

## **11 Conditions for exercise of restraint order powers**

(1) In section 40 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.

(2) In section 41 of that Act (restraint orders), after subsection (7) insert—

“(7A) Subsections (7B) and (7C) apply where the Crown Court makes a restraint order (by virtue of the first condition in section 40) as a result of a criminal investigation having been started in England and Wales with regard to an offence.

(7B) The court—

- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and

- (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 42(3)).

(7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—

- (a) must give reasons for its decision, and
- (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 42(3)).”

## **12 Continuation of restraint order after quashed conviction**

In section 42 of the Proceeds of Crime Act 2002 (application, discharge and variation of restraint orders), after subsection (6) insert—

“(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—

- (a) the proceedings are concluded by reason of a defendant’s conviction for an offence being quashed,
- (b) the order is in force at the time when the conviction is quashed, and
- (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.

(6B) But the court must discharge the restraint order—

- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
- (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
- (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.”

## **13 Conditions for exercise of search and seizure powers**

(1) In section 47B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.

(2) In section 47G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert—

- “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,”.

## **14 Seized money etc**

(1) In section 67 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute—

“(5) If—

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- (a) a confiscation order is made against a person holding money to which this section applies, and
- (b) a receiver has not been appointed under section 50 in relation to the money,

a magistrates' court may order the bank or building society to pay the money to the designated officer for the court on account of the amount payable under the confiscation order."

(2) After subsection (5) of that section insert—

"(5A) A person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.

(5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates' court—

- (a) may make an order under subsection (5) only if the extent of the person's interest in the money has been determined under section 10A, and
- (b) must have regard to that determination in deciding what is the appropriate order to make."

(3) After subsection (7) of that section insert—

"(7A) The Secretary of State may by order amend this section so that it applies not only to money held in an account maintained with a bank or building society but also to—

- (a) money held in an account maintained with a financial institution of a specified kind, or
- (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it."

(4) In section 67A of that Act (seized personal property), for subsections (2) and (3) substitute—

"(3) If—

- (a) a confiscation order is made against the person by whom the property is held, and
- (b) a receiver has not been appointed under section 50 in relation to the property,

a magistrates' court may by order authorise an appropriate officer to realise the property."

(5) In section 459(6)(a) of that Act (orders subject to affirmative resolution procedure), before "75(7) or (8)" insert "67(7A),".

## CHAPTER 2

### SCOTLAND

#### *Confiscation*

#### **15 Restitution order and victim surcharge**

- (1) In section 97 of the Proceeds of Crime Act 2002 (effect of order on court's other powers), in subsection (3)(a), at the end insert “, a restitution order or a victim surcharge under section 253F(2) of the Procedure Act”.
- (2) After that section insert—

##### **“97A Application of receipts: restitution order and victim surcharge**

- (1) Subsection (2) applies if—
  - (a) a court makes a confiscation order and a relevant order against the same person in the same proceedings, and
  - (b) the court believes that the person will not have sufficient means to satisfy both orders in full.
- (2) In such a case the court must direct that so much of the amount payable under the relevant order as it specifies is to be paid out of any sums recovered under the confiscation order.
- (3) Subsection (4) applies if—
  - (a) a court makes a confiscation order, a compensation order under section 249 of the Procedure Act and a relevant order against the same person in the same proceedings, and
  - (b) the court believes that the person will not have sufficient means to satisfy all the orders in full.
- (4) In such a case the court must direct that so much of the compensation, and so much of the amount payable under the relevant order, as it specifies is to be paid out of any sums recovered under the confiscation order.
- (5) The amount a court specifies under subsection (2) or (4) must be the amount the court believes will not be recoverable because of the insufficiency of the person's means.
- (6) Where the amount a court specifies in a direction under subsection (4) is sufficient to satisfy in full the compensation, the direction must provide for the compensation to be so satisfied before payment of the amount payable under the relevant order.
- (7) Where the amount a court specifies in a direction under subsection (4) is not sufficient to satisfy in full the compensation, the direction must provide for the compensation to be satisfied to the extent of the amount specified in the direction.
- (8) In this section, “relevant order” means—
  - (a) a restitution order, or
  - (b) a victim surcharge under section 253F(2) of the Procedure Act.

- (9) In this Part, “restitution order” is to be construed in accordance with section 253A(2) of the Procedure Act.”

## **16 Orders for securing compliance with confiscation order**

After section 97A of the Proceeds of Crime Act 2002 (inserted by section 15(2) above) insert—

### **“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.

### **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.
- (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.

#### **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.”

### **17 Compliance orders: appeals by prosecutor**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 108 (Lord Advocate’s right of appeal in solemn proceedings)—
  - (a) in subsection (1), after paragraph (cc) insert—
    - “(cd) a decision under section 97B(2) of the Proceeds of Crime Act 2002 to make or not to make a compliance order;”;
  - (b) in subsection (2)(b)—
    - (i) in sub-paragraph (ii), for “or (cc)” substitute “, (cc) or (cd)”;
    - (ii) in sub-paragraph (iii), after “paragraph” insert “(cd) or”.
- (3) In section 175 (right of appeal in summary proceedings)—
  - (a) in subsection (4), after paragraph (cc) insert—
    - “(cd) a decision under section 97B(2) of the Proceeds of Crime Act 2002 to make or not to make a compliance order;”;

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(b) in subsection (4A)(b)—

- (i) in sub-paragraph (ii), for “or (cc)” substitute “, (cc) or (cd)”;
- (ii) in sub-paragraph (iii), after “paragraph” insert “(cd) or”.

## **18 Accused persons unlawfully at large**

(1) In section 111 of the Proceeds of Crime Act 2002 (conviction or other disposal of accused), in subsection (1), for “after” substitute “and, either before or after he became unlawfully at large”.

(2) For subsection (4) of that section substitute—

“(4) Once the accused has ceased to be unlawfully at large—

(a) section 104 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) in a case where section 111 applies the court did not proceed under section 92,
- (b) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under section 92, and
- (c) the court thinks it is appropriate for it to do so.”;

(b) section 105 has effect as if subsection (3) read—

“(3) The second condition is that—

- (a) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to reconsider whether the accused has benefited from his general or particular criminal conduct (as the case may be), and
- (b) the court thinks it is appropriate for it to do so.”;

(c) section 106 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
- (b) the prosecutor believes that if the court were to find the amount of the accused’s benefit in pursuance of this section it would exceed the relevant amount,
- (c) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under this section, and
- (d) the court thinks it is appropriate for it to do so.”;

(d) the modifications set out in subsection (3)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 104, 105 or 106 (as applied by this subsection).”

(3) In section 112 of that Act (accused neither convicted nor acquitted), in subsection (1) (c), for “two years” substitute “three months”.



(4) For subsection (4) of that section substitute—

“(4) Once the accused has ceased to be unlawfully at large—  
(a) section 106 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
  - (b) the prosecutor believes that if the court were to find the amount of the accused’s benefit in pursuance of this section it would exceed the relevant amount,
  - (c) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under this section, and
  - (d) the court thinks it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (3)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 106 (as applied by this subsection).”

## 19 Enforcement of confiscation orders

(1) In section 118 of the Proceeds of Crime Act 2002 (application of provisions about fine enforcement in relation to confiscation orders)—

- (a) in subsection (2)(h), for “, except” substitute “(other than subsection (3) and as if the words “Subject to subsection (3) below,” were omitted); but that section does not apply”;
- (b) after subsection (2) insert—

“(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<br/>Compensation Order</i> | <i>Maximum Period<br/>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;

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- (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 "139 of the Powers of Criminal Courts (Sentencing) Act 2000" 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 "139 of the Powers of Criminal Courts (Sentencing) Act 2000" there were substituted "185(2A) of the Proceeds of Crime Act 2002".
- (2) In section 459 of that Act (orders and regulations)—
  - (a) after subsection (3) insert—
 

"(3A) Subsection (3) does not apply to the power of the Scottish Ministers to make an order under section 118(2B).";
  - (b) in subsection (5)(a), after "section" insert "118(2B).";
  - (c) in subsection (6)(b), after "section" insert "118(2B).".
- (3) In section 219 of the Criminal Procedure (Scotland) Act 1995 (fines: periods of imprisonment for non-payment), in subsection (8)(b), after "section 118(2)" insert " (2A) and (2B)".

## **20 Conditions for exercise of restraint order powers**

- (1) In section 119 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for "is reasonable cause to believe" substitute "are reasonable grounds to suspect".
- (2) In section 120 of that Act (restraint orders etc), after subsection (6) insert—
 

"(6A) Subsections (6B) and (6C) apply where the court makes a restraint order (by virtue of the first condition in section 119) as a result of a criminal investigation having been instituted in Scotland with regard to an offence.

(6B) The court—

  - (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a "reporting requirement"), and

- (b) must recall the order if proceedings for the offence are not instituted within a reasonable time (and this duty applies whether or not an application to recall the order is made under section 121(5)).

(6C) The duty under subsection (6B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—

- (a) must give reasons for its decision, and
- (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 121(5)).”

## **21 Continuation of restraint order after conviction quashed or verdict set aside**

In section 121 of the Proceeds of Crime Act 2002 (application, recall and variation), after subsection (8) insert—

“(8A) The duty in subsection (8) to recall a restraint order on the conclusion of proceedings does not apply where—

- (a) the proceedings are concluded by reason of—
  - (i) an accused’s conviction for an offence being quashed under section 118(1)(c) of the Procedure Act, or
  - (ii) the setting aside of the verdict against the accused under section 183(1)(d) of the Procedure Act,
- (b) the restraint order is in force at the time when the conviction is quashed or the verdict set aside (as the case may be), and
- (c) the High Court of Justiciary has granted authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution or the prosecutor has requested that the court grant such authority.

(8B) But the court must recall the restraint order—

- (a) if the High Court of Justiciary refuses a request to grant authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution,
- (b) if the High Court of Justiciary has granted authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution but no proceedings are commenced by the expiry of the time mentioned in section 119(5) or 185(5) of that Act (as the case may be), or
- (c) otherwise, on the conclusion of the proceedings in the new prosecution of the accused under section 119 or 185 of the Procedure Act.”

## **22 Conditions for exercise of search and seizure powers**

(1) In section 127B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.

(2) In section 127G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert—

- “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any

other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.”.

*Civil recovery*

## **23 Prohibitory property orders: PPO receivers**

(1) The Proceeds of Crime Act 2002 is amended as follows.

(2) After section 255F insert—

### **“255G Receivers in connection with prohibitory property orders**

- (1) Subsection (2) applies if—
  - (a) the Court of Session makes a prohibitory property order on an application by an enforcement authority, and
  - (b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the prohibitory property order or at any time afterwards).
- (2) The Court of Session may by order appoint a person (a “PPO receiver”) in respect of any property to which the prohibitory property order applies.
- (3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) In its application for an order under this section, the enforcement authority must nominate a suitably qualified person for appointment as a PPO receiver.
- (5) Such a person may be a member of staff of the enforcement authority.
- (6) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a PPO receiver appointed under this section.
- (7) Subsection (6) does not apply in relation to the remuneration of the PPO receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the PPO receiver is a person providing services under arrangements made by the enforcement authority).

### **255H Powers of receivers appointed under section 255G**

- (1) If the Court of Session appoints a PPO receiver under section 255G on an application by an enforcement authority, the court may act under this section on the application of the authority.
- (2) The court may by order authorise or require the PPO receiver—
  - (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the PPO receiver is appointed,
  - (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the

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detention, custody or preservation of the property in order to manage it).

- (3) The court may by order require any person in respect of whose property the PPO receiver is appointed—
  - (a) to bring the property to a place in Scotland specified by the PPO receiver or to place it in the custody of the PPO receiver (if, in either case, he is able to do so),
  - (b) to do anything he is reasonably required to do by the PPO receiver for the preservation of the property.
- (4) The court may by order require any person in respect of whose property the PPO receiver is appointed to bring any documents relating to the property which are in his possession or control to a place in Scotland specified by the PPO receiver or to place them in the custody of the PPO receiver.
- (5) In subsection (4) “document” means anything in which information of any description is recorded.
- (6) Any prohibition on dealing with property imposed by a prohibitory property order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (7) If—
  - (a) the PPO receiver deals with any property which is not property in respect of which he is appointed under section 255G, and
  - (b) at the time he deals with the property the PPO receiver believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the PPO receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

### **255I Supervision of PPO receiver and variations**

- (1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a PPO receiver—
  - (a) the PPO receiver,
  - (b) any party to the proceedings for the appointment of the PPO receiver or the prohibitory property order concerned,
  - (c) any person affected by any action taken by the PPO receiver,
  - (d) any person who may be affected by any action proposed to be taken by the PPO receiver.
- (2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to—
  - (a) the PPO receiver,
  - (b) the parties to the proceedings for the appointment of the PPO receiver and for the prohibitory property order concerned,
  - (c) any person who may be interested in the application under subsection (1).
- (3) The court may at any time vary or recall—

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- (a) an order appointing a PPO receiver,
  - (b) any order under section 255H, or
  - (c) any directions under this section.
- (4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—
  - (a) the PPO receiver,
  - (b) the parties to the proceedings for—
    - (i) the appointment of the PPO receiver,
    - (ii) the order under section 255H, or
    - (iii) (as the case may be) the directions under this section,
  - (c) the parties to the proceedings for the prohibitory property order concerned,
  - (d) any person who may be affected by the court’s decision.”
- (3) After section 282C insert—

**“282CA Enforcement abroad before recovery order: PPO receiver**

- (1) This section applies if—
  - (a) a prohibitory property order made by the Court of Session has effect in relation to property, and
  - (b) the PPO receiver appointed under section 255G in respect of the property believes that it is in a country outside the United Kingdom (the “receiving country”).
- (2) The PPO receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (3) The Secretary of State must forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
  - (a) to secure that any person is prohibited from dealing with the property,
  - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.”

## CHAPTER 3

### NORTHERN IRELAND

*Confiscation: assets held by defendant and other*

## 24 Determination of extent of defendant’s interest in property

After section 160 of the Proceeds of Crime Act 2002 insert—

**“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.”

**25 Provision of information**

- (1) In section 166 of the Proceeds of Crime Act 2002 (statement of information), after subsection (6) insert—

“(6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide—

  - (a) whether to make a determination under section 160A, or
  - (b) what determination to make (if the court decides to make one).

(6B) If the court has decided to make a determination under section 160A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.”
- (2) In section 168 of that Act (provision of information by defendant)—
  - (a) in subsection (2), after “functions” insert “(including functions under section 160A)”;
  - (b) in subsection (6)(b), for “deciding the available amount under section 159,” substitute “deciding—

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- (i) the available amount under section 159, or
- (ii) whether to make a determination under section 160A, or what determination to make (if the court decides to make one),”.

(3) After that section insert—

**“168A Provision of information as to defendant’s interest in property**

- (1) This section applies if the court—
  - (a) is considering whether to make a determination under section 160A of the extent of the defendant’s interest in any property, or
  - (b) is deciding what determination to make (if the court has decided to make a determination under that section).

In this section “interested person” means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

- (2) For the purpose of obtaining information to help it in carrying out its functions under section 160A the court may at any time order an interested person to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.
- (6) If the prosecutor accepts to any extent an allegation made by an interested person—
  - (a) in giving information required by an order under this section, or
  - (b) in any other statement given to the court in relation to any matter relevant to a determination under section 160A,
 the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (8) If the court makes an order under this section it may at any time vary it by making another one.
- (9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.”

## **26 Appeals**

- (1) In section 181 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert—



- “(4) An appeal lies to the Court of Appeal against a determination, under section 160A, of the extent of the defendant’s interest in property.
- (5) An appeal under subsection (4) lies at the instance of—
- (a) the prosecutor;
  - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.
- (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.
- (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.
- (8) An appeal does not lie under subsection (4) where—
- (a) the Court of Appeal believes that an application under section 198 is to be made by the prosecutor for the appointment of a receiver,
  - (b) such an application has been made but has not yet been determined, or
  - (c) a receiver has been appointed under section 198.”
- (2) In section 182 of that Act (court’s powers on appeal), after subsection (2) insert—
- “(2A) On an appeal under section 181(4) the Court of Appeal may—
- (a) confirm the determination, or
  - (b) make such order as it believes is appropriate.”
- (3) In section 183 of that Act (appeal to Supreme Court)—
- (a) for subsection (2) substitute—
- “(2) An appeal under this section lies at the instance of—
- (a) the defendant or the prosecutor (except where paragraph (b) applies);
  - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 181(4), any person who was a party to those proceedings.”;
- (b) after subsection (3) insert—
- “(3A) On an appeal under this section from a decision under section 182(2A) the Supreme Court may—
- (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.”

## 27 Enforcement receivers

In section 199 of the Proceeds of Crime Act 2002 (powers of receivers etc), after subsection (8A) insert—

- “(8B) Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 160A, unless—

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- (a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or
  - (b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;
- and the determination does not bind the court if paragraph (a) or (b) applies.”

*Confiscation: other amendments*

## **28 Time for payment**

- (1) For section 161 of the Proceeds of Crime Act 2002 substitute—

**“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.
- (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.”

(2) In section 162 of that Act (interest on unpaid sums), for subsection (3) substitute—

“(3) If—

- (a) an application has been made under section 161(4) for a specified period to be extended,
- (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.”

(3) In section 235 of that Act (interpretation: confiscation orders), after subsection (1) insert—

“(1A) The “amount payable” under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.”

## **29 Orders for securing compliance with confiscation order**

After section 163 of the Proceeds of Crime Act 2002 insert—

### **“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.

### **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.

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- (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.”

### **30 Variation or discharge**

- (1) In section 173 of the Proceeds of Crime Act 2002 (inadequacy of available amount: variation of confiscation order), in subsection (1)(b), after “the defendant” insert “or the prosecutor”.
- (2) After section 175 of that Act insert—

**“175A Recovery from estate of deceased defendant impractical:  
discharge of order**

- (1) This section applies if—
  - (a) a court has made a confiscation order,
  - (b) the defendant dies while the order is not satisfied, and
  - (c) the prosecutor applies to the Crown Court for the discharge of the order.
- (2) The court may discharge the order if it appears to the court that—
  - (a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or
  - (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.”
- (3) Section 175A of that Act (inserted by subsection (2) above) applies to—
  - (a) a confiscation order made under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 ([S.I. 1990/2588 \(N.I. 17\)](#)), or
  - (b) a confiscation order made under Part 2 of the Proceeds of Crime (Northern Ireland) Order 1996 ([S.I. 1996/1299 \(N.I. 9\)](#)),
 as it applies to a confiscation order made under the Proceeds of Crime Act 2002.

### 31 Absconding defendants

- (1) In section 177 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute—

“(2) The first condition is that a defendant falls within either of the following paragraphs—

- (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;
- (b) he absconds after being 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).”

- (2) For subsections (6) and (7) of that section substitute—

“(6) Once the defendant ceases to be an absconder—

- (a) section 169 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156,
  - (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 156, and
  - (c) the court believes it is appropriate for it to do so.”;
- (b) section 170 has effect as if subsection (4) read—

“(4) The second condition is that—

- (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and
  - (b) the court believes it is appropriate for it to do so.”;
- (c) section 171 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
  - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
  - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
  - (d) the court believes it is appropriate for it to do so.”;
- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 169, 170 or 171 (as applied by this subsection).”

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*Status: This is the original version (as it was originally enacted).*

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(3) In section 178 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “three months”.

(4) For subsection (6) of that section substitute—

“(6) Once the defendant has ceased to be an absconder—

(a) section 171 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
  - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
  - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
  - (d) the court believes it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 171 (as applied by this subsection).”

## **32 Default sentences**

(1) In section 185 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert—

“(2A) Where a court is fixing a term of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

TABLE

| <i>Amount</i>                                  | <i>Maximum term</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 Department of Justice in Northern Ireland may by order—

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) 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 the power in paragraph (a) of this subsection) or to add any entry.”

- (2) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), after “section” insert “185(2B),”.

### **33 Conditions for exercise of restraint order powers**

- (1) In section 189 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.

- (2) In section 190 of that Act (restraint orders), after subsection (7) insert—

“(7A) Subsections (7B) and (7C) apply where the High Court makes a restraint order (by virtue of the first condition in section 189) as a result of a criminal investigation having been started in Northern Ireland with regard to an offence.

(7B) The court—

- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
- (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 191(3)).

(7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—

- (a) must give reasons for its decision, and
- (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 191(3)).”

### **34 Continuation of restraint order after quashed conviction**

In section 191 of the Proceeds of Crime Act 2002 (application, discharge and variation of restraint orders), after subsection (6) insert—

“(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—

- (a) the proceedings are concluded by reason of a defendant’s conviction for an offence being quashed,
- (b) the order is in force at the time when the conviction is quashed, and
- (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.

(6B) But the court must discharge the restraint order—

- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
- (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or

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*Status: This is the original version (as it was originally enacted).*

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- (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.”

### **35 Conditions for exercise of search and seizure powers**

- (1) In section 195B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.
- (2) In section 195G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert—
  - “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,”.

### **36 Seized money etc**

- (1) In section 215 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute—
  - “(5) If—
    - (a) a confiscation order is made against a person holding money to which this section applies, and
    - (b) a receiver has not been appointed under section 198 in relation to the money,
 a magistrates’ court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order.”
- (2) After subsection (5) of that section insert—
  - “(5A) A person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.
  - (5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates’ court—
    - (a) may make an order under subsection (5) only if the extent of the person’s interest in the money has been determined under section 160A, and
    - (b) must have regard to that determination in deciding what is the appropriate order to make.”
- (3) After subsection (7) of that section insert—
  - “(7A) The Department of Justice in Northern Ireland may by order amend this section so that it applies not only to money held in an account maintained with a bank or building society but also to—
    - (a) money held in an account maintained with a financial institution of a specified kind, or
    - (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.



- (7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.”
- (4) In section 215A of that Act (seized personal property), for subsections (2) and (3) substitute—
- “(3) If—
- (a) a confiscation order is made against the person by whom the property is held, and
  - (b) a receiver has not been appointed under section 198 in relation to the property,
- a magistrates’ court may by order authorise an appropriate officer to realise the property.”
- (5) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), before “223(7) or (8)” insert “215(7A).”.

## CHAPTER 4

### DISCLOSURES, INVESTIGATIONS, CO-OPERATION AND ENFORCEMENT

#### **37 Exemption from civil liability for money-laundering disclosures**

In section 338 of the Proceeds of Crime Act 2002 (money laundering: authorised disclosures), after subsection (4) insert—

“(4A) Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.”

#### **38 Confiscation investigations**

- (1) In section 341 of the Proceeds of Crime Act 2002, at the end of subsection (1) insert “, or
- (c) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of him.”
- (2) In section 353 of that Act (requirements where production order not available), in subsection (6)(a), after “of his benefit from his criminal conduct” insert “or of realisable property available for satisfying a confiscation order made in respect of him”.
- (3) In section 388 of that Act (requirements where production order not available), in subsection (6)(a), after “of his benefit from his criminal conduct” insert “or of realisable property available for satisfying a confiscation order made in respect of him”.

#### **39 External orders and investigations: meaning of “obtaining property”**

In section 447 of the Proceeds of Crime Act 2002 (interpretation of Part 11 (co-operation)), after subsection (6) insert—

“(6A) A person who obtains a pecuniary advantage as a result of or in connection with conduct is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(6B) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.”

#### **40      Confiscation orders by magistrates’ courts**

(1) The Serious Organised Crime and Police Act 2005 is amended as follows.

(2) In section 97 (confiscation orders by magistrates’ courts), after subsection (1) insert—

“(1ZA) But an order under subsection (1) may not enable such a confiscation order to be made by any magistrates’ court in respect of an amount exceeding £10,000.

(1ZB) The Secretary of State may by order amend subsection (1ZA) so as to substitute a different amount.”

(3) In subsection (2) of that section omit “(1) or”.

(4) After that subsection insert—

“(2A) The Department of Justice may by order amend subsection (2) so as to substitute a different amount.”

(5) In section 172 (orders etc)—

(a) in subsection (5) (orders made by Secretary of State that are subject to affirmative resolution procedure), in paragraph (i), after “section 97(1)” insert “or (1ZB)”;

(b) in subsection (13) (orders made by Department of Justice in Northern Ireland that are subject to affirmative resolution procedure), in paragraph (d), after “section 97(1A)” insert “or (2A)”.