



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Administrators: general

133 Protection of administrators

- (1) If an administrator appointed under section 125 or 128(3)—
 - (a) takes action in relation to property which is not realisable property,
 - (b) would be entitled to take the action if it were realisable property, and
 - (c) believes on reasonable grounds that he is entitled to take the action,he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.
- (2) Subsection (3) applies if an administrator incurs expenses in the exercise of his functions at a time when—
 - (a) a confiscation order has not been made, or
 - (b) a confiscation order has been made but the administrator has recovered no money.
- (3) As soon as is practicable after they have been incurred the expenses must be reimbursed by the Lord Advocate.
- (4) Subsection (5) applies if—
 - (a) an amount is due in respect of the administrator's remuneration and expenses, but
 - (b) nothing (or not enough) is available to be applied in payment of them under section 131(4).
- (5) The remuneration and expenses must be paid (or must be paid to the extent of the shortfall) by the Lord Advocate.

Changes to legislation: Proceeds of Crime Act 2002, Cross Heading: Administrators: general is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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

- I1** S. 133 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

134 Protection of persons affected

- (1) This section applies where an administrator is appointed under section 125 or 128(3).
- (2) The following persons may apply to the court—
 - (a) any person affected by action taken by the administrator;
 - (b) any person who may be affected by action the administrator proposes to take.
- (3) On an application under this section the court may make such order as it thinks appropriate.

Commencement Information

- I2** S. 134 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

135 Recall and variation of order

- (1) The prosecutor, an administrator and any other person affected by an order made under section 125 or 128 may apply to the court to vary or recall the order.
- (2) On an application under this section the court—
 - (a) may vary the order;
 - (b) may recall the order.
- (3) But in the case of an order under section 125—
 - (a) if the condition in section 119 which was satisfied was that proceedings were started or an application was made, the court must recall the order on the conclusion of the proceedings or of the application (as the case may be);
 - (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must recall the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

Commencement Information

- I3** S. 135 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

136 Appeals

- (1) If on an application for an order under section 125 or 128 the court decides not to make one, the prosecutor may appeal to the Court of Session against the decision.

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- (2) If the court makes an order under section 125 or 128 the following persons may appeal to the Court of Session in respect of the court's decision—
 - (a) the prosecutor;
 - (b) any person affected by the order.
- (3) If on an application for an order under section 134 the court decides not to make one, the person who applied for the order may appeal to the Court of Session against the decision.
- (4) If the court makes an order under section 134, the following persons may appeal to the Court of Session in respect of the court's decision—
 - (a) the person who applied for the order;
 - (b) any person affected by the order;
 - (c) the administrator.
- (5) The following persons may appeal to the Court of Session against a decision of the court on an application under section 135—
 - (a) the person who applied for the order in respect of which the application was made;
 - (b) any person affected by the court's decision;
 - (c) the administrator.
- (6) On an appeal under this section the Court of Session may—
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

Commencement Information

I4 S. 136 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

137 Administrators: further provision

Schedule 3, which makes further provision about administrators appointed under section 125 and 128(3), has effect.

Commencement Information

I5 S. 137 in force at 24.3.2003 by [S.S.I. 2003/210](#), [art. 2\(1\)\(a\)](#)

138 Administrators: restriction on proceedings and remedies

- (1) Where an administrator is appointed under section 128, the court may sist any action, execution or other legal process in respect of the property to which the order appointing the administrator relates.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that an application has been made for the appointment of an administrator or that an administrator has been appointed in relation to that property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.

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- (3) Before exercising any power conferred by subsection (2) the court must give an opportunity to be heard to—
- (a) the prosecutor;
 - (b) if appointed, the administrator.

Commencement Information

I6 S. 138 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\(4\)](#)