



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Procedural matters

99 Postponement

- (1) The court may—
 - (a) proceed under section 92 before it sentences the accused for the offence (or any of the offences concerned), or
 - (b) postpone proceedings under section 92 for a specified period.
- (2) A period of postponement may be extended.
- (3) A period of postponement (including one as extended) must not end after the permitted period ends.
- (4) But subsection (3) does not apply if there are exceptional circumstances or if the accused has failed to comply with an order under section 102(1).
- (5) The permitted period is the period of two years starting with the date of conviction.
- (6) But if—
 - (a) the accused appeals against his conviction for the offence (or any of the offences) concerned, and
 - (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (5),the permitted period is that period of three months.
- (7) A postponement or extension may be made—
 - (a) on application by the accused;
 - (b) on application by the prosecutor;

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- (c) by the court of its own motion.
- (8) If—
- (a) proceedings are postponed for a period, and
 - (b) an application to extend the period is made before it ends,
- the application may be granted even after the period ends.
- (9) The date of conviction is—
- (a) the date on which the accused was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (10) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.
- (11) But subsection (10) does not apply if before it made the confiscation order the court has—
- (a) imposed a fine on the accused;
 - (b) made an order falling within section 97(3);
 - (c) made an order under section 249 of the Procedure Act.

100 Effect of postponement

- (1) If the court postpones proceedings under section 92 it may proceed to sentence the accused for the offence (or any of the offences) concerned.
- (2) Subsection (1) is without prejudice to sections 201 and 202 of the Procedure Act.
- (3) In sentencing the accused for the offence (or any of the offences) concerned in the postponement period the court must not—
- (a) impose a fine on him,
 - (b) make an order falling within section 97(3), or
 - (c) make an order for the payment of compensation under section 249 of the Procedure Act.
- (4) If the court sentences the accused for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by—
- (a) imposing a fine on him,
 - (b) making an order falling within section 97(3), or
 - (c) making an order for the payment of compensation under section 249 of the Procedure Act.
- (5) But the court may proceed under subsection (4) only within the period of 28 days which starts with the last day of the postponement period.
- (6) Where the court postpones proceedings under section 92 following conviction on indictment, section 109(1) of the Procedure Act (intimation of intention to appeal against conviction or conviction and sentence) has effect as if the reference to the final determination of the proceedings were a reference to the relevant day.

- (7) Despite subsection (6), the accused may appeal under section 106 of the Procedure Act against any confiscation order made, or any other sentence passed, after the end of the postponement period, in respect of the conviction.
- (8) Where the court postpones proceedings under section 92 following conviction on complaint—
 - (a) section 176(1) of the Procedure Act (stated case: manner and time of appeal) has effect in relation to an appeal under section 175(2)(a) or (d) as if the reference to the final determination of the proceedings were a reference to the relevant day, and
 - (b) the draft stated case in such an appeal must be prepared and issued within 3 weeks of the relevant day.
- (9) Despite subsection (8), the accused may appeal under section 175(2)(b), and the prosecutor may appeal under section 175(3)(b), of the Procedure Act against any confiscation order made, or any other sentence passed, after the end of the postponement period, in respect of the conviction.
- (10) The relevant day is—
 - (a) in the case of an appeal against conviction where the court has sentenced the accused under subsection (1), the day on which the postponement period commenced;
 - (b) in any other case, the day on which sentence is passed in open court.
- (11) The postponement period is the period for which proceedings under section 92 are postponed.

101 Statement of information

- (1) When the court is proceeding under section 92 the prosecutor must, within such period as the court may order, give the court a statement of information.
- (2) If the prosecutor believes the accused has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues—
 - (a) whether the accused has a criminal lifestyle;
 - (b) whether he has benefited from his general criminal conduct;
 - (c) his benefit from the conduct.
- (3) A statement under subsection (2) must include information the prosecutor believes is relevant—
 - (a) in connection with the making by the court of a required assumption under section 96;
 - (b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.
- (4) If the prosecutor does not believe the accused has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues—
 - (a) whether the accused has benefited from his particular criminal conduct;
 - (b) his benefit from the conduct.
- (5) If the prosecutor gives the court a statement of information—

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- (a) he may at any time give the court a further statement of information;
 - (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders.
- (6) If the court makes an order under this section it may at any time vary it by making another one.

102 Accused's response to statement of information

- (1) When the prosecutor gives the court a statement of information and the court is satisfied that he has served a copy on the accused, the court shall order the accused—
- (a) to indicate the extent to which he accepts each allegation in the statement, and
 - (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on,
- within the period it orders.
- (2) Where by virtue of section 99 the court postpones proceedings under section 92, the period ordered by the court under subsection (1) shall be a period ending not less than six months before the end of the permitted period mentioned in section 99.
- (3) If the accused accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 101(2) or (4) (as the case may be).
- (4) If the accused fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (3) as accepting every allegation in the statement of information apart from—
- (a) any allegation in respect of which he has complied with the requirement;
 - (b) any allegation that he has benefited from his general or particular criminal conduct.
- (5) Where—
- (a) an allegation in a statement of information is challenged by the accused, or
 - (b) the matters referred to in subsection (1)(b) are challenged by the prosecutor,
- the court must consider the matters being challenged at a hearing.
- (6) The judge presiding at the hearing may, if he is not the trial judge and he considers it in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.
- (7) If the court makes an order under this section it may at any time vary it by making another one.
- (8) No acceptance under this section that the accused has benefited from conduct is admissible in evidence in proceedings for an offence.

103 Provision of information by accused

- (1) For the purpose of obtaining information to help it in carrying out its functions under section 92 the court may at any time order the accused to give it information specified in the order.
- (2) 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.

- (3) If the accused fails without reasonable excuse to comply with an order under this section the court may draw such inference as it thinks appropriate.
- (4) Subsection (3) does not affect any power of the court to deal with the accused in respect of a failure to comply with an order under this section.
- (5) If the prosecutor accepts to any extent an allegation made by the accused—
 - (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 deciding the available amount under section 95,the court may treat the acceptance as conclusive of the matters to which it relates.
- (6) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (7) If the court makes an order under this section it may at any time vary it by making another order.
- (8) No information given under this section which amounts to an admission by the accused that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.