# Proceeds of Crime Act 2002

**2002 CHAPTER 29**

## PART 3

CONFISCATION: SCOTLAND

*Restraint orders etc*

### 121 Application, recall and variation

(1) This section applies to a restraint order.

(2) An order may be made on an ex parte application by the prosecutor, which may be heard in chambers.

(3) The prosecutor must intimate an order to every person affected by it.

(4) Subsection (3) does not affect the time when the order becomes effective.

(5) The prosecutor and any other person affected by the order may apply to the court to recall an order or to vary it; and subsections (6) to **[**[F1](10)**]** apply in such a case.

(6) If an application under subsection (5) in relation to an order has been made but not determined, realisable property to which the order applies must not be realised.

(7) The court may—

(a) recall the order;

(b) vary the order.

(8) In the case of a restraint order, if the condition in section 119 which was satisfied was that proceedings were instituted 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).

**[**[F2](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—

***Changes to legislation:*** *Proceeds of Crime Act 2002, Section 121 is up to date with all changes known to be in force on or before 12 June 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*

(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.**]**

**[**[F3](9) In the case of a restraint order, if the condition in section 119 which was satisfied was that an investigation was instituted—

(a) the court must discharge the order if within a reasonable time proceedings for the offence are not instituted;

(b) otherwise, the court must recall the order on the conclusion of the proceedings.

(10) In the case of a restraint order, if the condition in section 119 which was satisfied was that an application was to be made—

(a) the court must discharge the order if within a reasonable time the application is not made;

(b) otherwise, the court must recall the order on the conclusion of the application.**]**

**Textual Amendments**

**F1** Word in s. 121(5) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 43(2)**; S.S.I. 2016/11, reg. 2(j)

**F2** S. 121(8A)(8B) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 21**, 88(2)(a); S.S.I. 2016/11, reg. 2(f)

**F3** S. 121(9)(10) substituted for s. 121(9) (1.3.2016) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 43(3)**; S.S.I. 2016/11, reg. 2(j)

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

**C1** Pt. 3 functions of administrator extended (24.2.2003) by Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 (S.I. 2002/3133), arts. 1, **4(1)(a)**

**C2** 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. 121 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

**Changes to legislation:**
Proceeds of Crime Act 2002, Section 121 is up to date with all changes known to be in force on or before 12 June 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.
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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)