



# Serious Crime Act 2015

## 2015 CHAPTER 9

### PART 1

#### PROCEEDS OF CRIME

#### 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—

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- (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.

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- (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;”;
  - (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.”;

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(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).”

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

(2B) The Scottish Ministers may by order—

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

(2C) In its application in relation to a confiscation order under Part 2 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if, in relation to a transfer of fine order under section 90 of the Magistrates’ Courts Act 1980, for “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

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- (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,”.