

SCHEDULE 2 OPERATION OF THE JUSTICE SYSTEM

PART 2

PROCEEDS OF CRIME

Extension of permitted period for purpose of confiscation order

- 8 (1) The Proceeds of Crime Act 2002 applies in accordance with the modifications in this paragraph.
- (2) Section 99 (postponement) has effect as if—
- (a) after subsection (4) there were inserted—

“(4A) For the purposes of subsection (4), “exceptional circumstances”, in relation to proceedings, includes the effect (whether direct or indirect) of coronavirus on the proceedings.”,
 - (b) after subsection (11) there were inserted—

“(12) In subsection (4A), “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

Time limits for payment of confiscation orders

- 9 (1) The Proceeds of Crime Act 2002 applies in accordance with the modifications in this paragraph.
- (2) Section 116 (time for payment) has effect as if—
- (a) in subsection (1)—
 - (i) the existing words “the following provisions of this section” were paragraph (a),
 - (ii) after that paragraph there were inserted “, and
(b) section 116A.”,
 - (b) in subsection (5)(b), after “12 months” there were inserted “unless subsection (5A) applies”,
 - (c) after subsection (5) there were inserted—

“(5A) This subsection applies if the court making the order under subsection (4) is satisfied that the accused is, for a reason relating to coronavirus, unable to pay the amount ordered to be paid under the confiscation order within the period of 12 months beginning with the day on which the confiscation order is made.

(5B) Where subsection (5A) applies, the extended period may continue until such day as the court considers appropriate in the circumstances.”,
 - (d) in subsection (6)(b) after “made”, in the second place where it occurs, there were inserted “unless subsection (5A) applies (see subsection (6A))”,
 - (e) after subsection (6) there were inserted—

Status: This is the original version (as it was originally enacted).

“(6A) Where subsection (5A) applies, subsection (6) applies as if the words from “but” to the end of the subsection were omitted.”,

(f) after subsection (7) there were inserted—

“(8) In this section and sections 116A and 117, “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

(3) The Act has effect as if after section 116 there were inserted—

“116A Further time for payment due to coronavirus

(1) Where a court has made an order under section 116(4) extending the specified period relating to a confiscation order (“the extended period”), the accused may apply to the sheriff court for an order further extending the specified period.

(2) The accused may make an application under subsection (1)—

(a) before the expiry of the extended period, or

(b) after the expiry of the extended period if—

(i) the extended period expired during the period beginning with 1 March 2020 and ending on the day before the commencement day, or

(ii) the extended period expired on or after the commencement day and the accused was unable to make an application under subsection (1) before the expiry of the extended period for a reason relating to coronavirus.

(3) Where an application is made under subsection (1) after the expiry of the extended period, the application must be made—

(a) where the condition set out in subsection (2)(b)(i) is met, as soon as is reasonably practicable after the commencement day,

(b) where the conditions set out in subsection (2)(b)(ii) are met, as soon as is reasonably practicable after the expiry of the extended period.

(4) If, following receipt of an application under subsection (1), the court is satisfied that the accused is or (as the case may be) was unable to pay the amount ordered to be paid under the confiscation order before the expiry of the extended period for a reason relating to coronavirus, the court may make an order further extending the specified period relating to the confiscation order (“the further extended period”).

(5) The further extended period—

(a) must start with the day on which the confiscation order is made, and

(b) may continue until such day as the court considers appropriate in the circumstances.

(6) The court must not make an order under subsection (4) unless it gives the prosecutor an opportunity to make representations.

(7) Subsection (8) applies where an application is made under subsection (1) after the expiry of the extended period and the court makes an order under subsection (4) following receipt of the application.

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

- (8) The order under subsection (4) is to be treated for the purposes of sections 116 and 117 as if it were made by the court immediately before the expiry of the extended period.
- (9) In this section—
- “commencement day” means the day on which paragraph 9 of schedule 2 of the Coronavirus (Scotland) (No.2) Act 2020 comes into force,
 - “specified period”, in relation to a confiscation order, means the period specified under section 116(2) within which the amount ordered to be paid under the confiscation order must be paid.”.
- (4) Section 117 (interest on unpaid sums) has effect as if—
- (a) in subsection (1), after “section 116” there were inserted “(or within such a period as extended under section 116A)”,
 - (b) in subsection (3)(c), after “ended” there were inserted “(but see subsection (3A))”,
 - (c) after subsection (3) there were inserted—
- “(3A) Subsection (3)(c) does not apply to an application made under subsection (4) of section 116 where the accused invites the court to make a finding as mentioned in subsection (5A) of that section in the context of making an order under subsection (4) of that section.
- (3B) For the purposes of this section, no amount is required to be paid under a confiscation order if—
- (a) an application has been made under section 116A(1) in relation to the confiscation order before the expiry of the period specified under section 116(4) in respect of the order, and
 - (b) the application has not been determined by the court.”.