Proceeds of Crime Act 2002

2002 CHAPTER 29

An Act to establish the Assets Recovery Agency and make provision about the appointment of its Director and his functions (including Revenue functions), to provide for confiscation orders in relation to persons who benefit from criminal conduct and for restraint orders to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering, to make provision about investigations relating to benefit from criminal conduct or to property which is or represents property obtained through unlawful conduct or to money laundering, to make provision to give effect to overseas requests and orders made where property is found or believed to be obtained through criminal conduct, and for connected purposes. [24th July 2002]

B E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act modified (21.2.2009) by Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), arts. 1, 3, **Sch.**

C2 Act applied (with modifications) (8.2.2011) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), reg. 1, **Sch. 6 Pt. 1** (with reg. 27(a))

C3 Act applied (with modifications) (10.5.2021) by The West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021 (S.I. 2021/112), arts. 1(4), 35(1)(2), **Sch. 5 para. 12**

C4 Act applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), reg. 2, Sch. 3 paras. 2, **3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 21(4))

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

PART 1

[F1 INTRODUCTORY]

Textual Amendments

F1 Pt. 1 heading substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 122**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F2 1 The Agency and its Director

. . . . . .

Textual Amendments

F2 S. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 123, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F3 2 Director's functions: general

. . . . . .

Textual Amendments

F3 S. 2 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 123, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

[F4 2A Contribution to the reduction of crime

(1) A relevant authority must exercise its functions under this Act in the way which it considers is best calculated to contribute to the reduction of crime.

(2) In this section "a relevant authority" means—

(a) [F5 the National Crime Agency],

(b) the Director of Public Prosecutions,

(c) the Director of Public Prosecutions for Northern Ireland,

F6 (d) . . . . . F7 ...

(e) the Director of the Serious Fraud Office.

F8 (f) [Her Majesty's Revenue and Customs, or

(g) the Financial Conduct Authority.]

(3) In considering under subsection (1) the way which is best calculated to contribute to the reduction of crime a relevant authority must have regard to any guidance given to it by—

(a) in the case of [F9 the National Crime Agency], the Secretary of State,

(b) in the case of the Director of Public Prosecutions F10 ... or the Director of the Serious Fraud Office, the Attorney General, F11 ...

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(c) in the case of the Director of Public Prosecutions for Northern Ireland, the Advocate General for Northern Ireland **[**[F12], and

(d) in the case of Her Majesty's Revenue and Customs or the Financial Conduct Authority, the Treasury.**]**

(4) The guidance must indicate that the reduction of crime is in general best secured by means of criminal investigations and criminal proceedings.

(5) The reference in this section to the Advocate General for Northern Ireland is to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as a reference to the Attorney General for Northern Ireland.

Textual Amendments

F4 Ss. 2A-2C inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 124**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F5 Words in s. 2A(2)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 109**; S.I. 2013/1682, art. 3(v)

F6 S. 2A(2)(d) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 20(2)**

F7 Word in s. 2A(2) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 18(2)(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(e)

F8 S. 2A(2)(f)(g) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 18(2)(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(e)

F9 Words in s. 2A(3)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 109**; S.I. 2013/1682, art. 3(v)

F10 Words in s. 2A(3)(b) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 20(3)**

F11 Word in s. 2A(3)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 18(3)(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(e)

F12 S. 2A(3)(d) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 18(3)(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(e)

2B **[**[F13]**The National Crime Agency and its officers]**

[F14](1) . . . . . .

(2) Anything which **[**[F15]the National Crime Agency**]** is authorised or required to do under this Act (whether directly or through its staff) may be done by a person providing services under arrangements made by **[**[F16]that Agency**]** if the person is authorised by **[**[F16]that Agency**]** (whether generally or specifically) for that purpose.

[F17](3) . . . . . .

Textual Amendments

F4 Ss. 2A-2C inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 124**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F13 S. 2B title substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 110(2)**; S.I. 2013/1682, art. 3(v)

F14 S. 2B(1) omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 110(3)**; S.I. 2013/1682, art. 3(v)

F15 Words in s. 2B(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 110(4)(a)**; S.I. 2013/1682, art. 3(v)

F16 Words in s. 2B(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 110(4)(b)**; S.I. 2013/1682, art. 3(v)

F17 S. 2B(3) omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 110(5)**; S.I. 2013/1682, art. 3(v)

2C Prosecuting authorities

(1) Anything which the Director of Public Prosecutions is authorised or required to do under, or in relation to, Part 5 or 8 of this Act may be done by a member of his staff if the member of staff is authorised by the Director (generally or specifically) for that purpose.

(2) Anything which [F18]... the Director of the Serious Fraud Office is authorised or required to do under, or in relation to, Part **[**[F19]2, 4,**]** 5, **[**[F20]7**]** or 8 of this Act may be done by a member of his staff if the member of staff is authorised by the Director [F21]... (generally or specifically) for that purpose.

(3) Anything which a relevant Director or a member of his staff is authorised or required to do under, or in relation to, Part **[**[F22]2, 4,**]** 5 or 8 of this Act may be done by a person providing services under arrangements made by the relevant Director if the person is authorised by the relevant Director (whether generally or specifically) for that purpose.

[F23](3A) **[** Subsection (3) does not apply to the functions of the Director of Public Prosecutions for Northern Ireland [F24]... under section 302A**][**[F25], 303X or 303Z19**]**

(4) In this section "relevant Director" means—

(a) the Director of Public Prosecutions,

(b) the Director of Public Prosecutions for Northern Ireland,

[F26](c) . . . . . .

(d) the Director of the Serious Fraud Office.**]**

Textual Amendments

F4 Ss. 2A-2C inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 124**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F18 Words in s. 2C(2) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 21(2)(a)**

F19 Words in s. 2C(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 2(2)**; S.I. 2018/78, reg. 3(z); S.I. 2021/724, reg. 3(a)

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F20 Word in s. 2C(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 19(2)**; S.I. 2018/78, reg. 5(1)(d); S.I. 2021/724, reg. 4(e)

F21 Word in s. 2C(2) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 21(2)(b)**

F22 Words in s. 2C(3) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 2(3)**; S.I. 2018/78, reg. 3(z); S.I. 2021/724, reg. 3(a)

F23 S. 2C(3A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 84(2)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F24 Words in s. 2C(3A) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 21(3)**

F25 Words in s. 2C(3A) inserted (27.4.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 19(3)**; S.I. 2021/724, reg. 4(e)

F26 S. 2C(4)(c) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 21(4)**

3 Accreditation and training

(1) The **[**[F27]National Crime Agency**]** must **[**[F28]provide**]** a system for the accreditation of financial investigators.

(2) The system of accreditation must include provision for—

(a) the monitoring of the performance of accredited financial investigators, and

(b) the withdrawal of accreditation from any person who contravenes or fails to comply with any condition subject to which he was accredited **[**[F29], and

(c) securing that decisions under that system which concern—

(i) the grant or withdrawal of accreditations, or

(ii) the monitoring of the performance of accredited financial investigators,

are taken without regard to their effect on operations by the National Crime Agency or any other person**]**.

(3) A person may be accredited—

(a) in relation to this Act;

(b) in relation to particular provisions of this Act.

(4) But the accreditation may be limited to specified purposes.

(5) A reference in this Act to an accredited financial investigator is to be construed accordingly.

[F30](6) . . . . . .

(7) The **[**[F31]National Crime Agency**]** must make provision for the training of persons in—

(a) financial investigation, and

(b) the operation of this Act.

[F32](8) . . . . . .

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Textual Amendments

F27 Words in s. 3(1) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 111(2)**; S.I. 2013/1682, art. 3(v)

F28 Word in s. 3(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 120(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F29 S. 3(2)(c) and word inserted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 111(3)**; S.I. 2013/1682, art. 3(v)

F30 S. 3(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 120(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F31 Words in s. 3(7) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 111(4)**; S.I. 2013/1682, art. 3(v)

F32 S. 3(8) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 120(5), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F33 4 Co-operation

. . . . . .

Textual Amendments

F33 S. 4 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 125, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F34 5 Advice and assistance

. . . . . .

Textual Amendments

F34 S. 5 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 125, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

PART 2

CONFISCATION: ENGLAND AND WALES

Modifications etc. (not altering text)

C5 Pt. 2 applied by Terrorism Act 2000 (c. 11), Sch. 8 paras. 8(5A), **34(3A)** (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7); S.I. 2003/333, art. 2, **Sch.**)

C6 Pt. 2 applied by Police and Criminal Evidence Act 1984 (c. 60), **ss. 56(5B)**, 58(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, **Sch.**)

C7 Pt. 2: power to amend conferred (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 97(3)**, 178(8); S.I. 2005/1521, art. 3(1)(a)

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C8 Pt. 2 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(5)**

C9 Pt. 2 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **10(5)**

C10 Pt. 2: power to modify conferred (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 47**, 61(2); S.I. 2015/813, art. 2(b)

C11 Pt. 2 applied (with modifications) (1.6.2015) by The Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015 (S.I. 2015/868), regs. 1, **5** (with reg. 4)

C12 Pt. 2 applied (12.2.2019 for specified purposes, 13.8.2020 in so far as not already in force) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(g), **Sch. 3 para. 33(5)** (with s. 25(9)); S.I. 2020/792, reg. 2(g)

Confiscation orders

6 Making of order

(1) The Crown Court must proceed under this section if the following two conditions are satisfied.

(2) The first condition is that a defendant falls within any of the following paragraphs—

(a) he is convicted of an offence or offences in proceedings before the Crown Court;

(b) he is committed to the Crown Court for sentence in respect of an offence or offences under **[**[F35]section 3, 4 or 6**]**[F36]**[**[F35]section 3, 3A, 3B, 3C, 4, 4A or 6**]** of the Sentencing Act**]**[F36]any provision of sections 14 to 20 of the Sentencing Code**]**;

(c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).

(3) The second condition is that—

(a) the prosecutor [F37]... asks the court to proceed under this section, or

(b) the court believes it is appropriate for it to do so.

(4) The court must proceed as follows—

(a) it must decide whether the defendant has a criminal lifestyle;

(b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;

(c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

(a) decide the recoverable amount, and

(b) make an order (a confiscation order) requiring him to pay that amount.

[[F38]Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.**]**

(6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against

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the defendant in respect of loss, injury or damage sustained in connection with the conduct.

[[F39](6A) The court must also treat the duty in subsection (5) as a power if—

(a) an order has been made, or it believes an order may be made, against the defendant under section 4 (criminal unlawful profit orders) of the Prevention of Social Housing Fraud Act 2013 in respect of profit made by the defendant in connection with the conduct, or

(b) it believes that a person has at any time started or intends to start proceedings against the defendant under section 5 (civil unlawful profit orders) of that Act in respect of such profit.**]**

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) The first condition is not satisfied if the defendant absconds (but section 27 may apply).

(9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

Textual Amendments

F35 Words in s. 6(2)(b) substituted (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 3 para. 75(2)**; S.I. 2012/1320, art. 4(1)(c)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(2)(3) (with arts. 3, 4)

F36 Words in s. 6(2)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 181** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F37 Words in s. 6(3)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 2, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F38 Words in s. 6(5) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 19**; S.I. 2015/820, reg. 3(q)(iii)

F39 S. 6(6A) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 12**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

Commencement Information

I1 S. 6 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 3(1), 7, 10-13) (as amended (6.3.2003) by S.I. 2003/531, art. 3)

7 Recoverable amount

(1) The recoverable amount for the purposes of section 6 is an amount equal to the defendant's benefit from the conduct concerned.

(2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—

(a) the available amount, or

(b) a nominal amount, if the available amount is nil.

(3) But if section 6(6) **[**[F40]or 6(6A)**]** applies the recoverable amount is such amount as—

(a) the court believes is just, but

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(b) does not exceed the amount found under subsection (1) or (2) (as the case may be).

(4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), **[**[F41]the following must be ignored—

(a) any property in respect of which a recovery order is in force under section 266,

(b) any property which has been forfeited in pursuance of a forfeiture notice under section 297A **[**[F42]or an account forfeiture notice under section 303Z9**]**, [F43]...

(c) any property in respect of which a forfeiture order is in force under section 298(2)**][**[F44], 303O(3), 303R(3) or 303Z14(4)**][**[F45], and

(d) any property which is the forfeitable property in relation to an order under section 303Q(1).**]**

(5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

Textual Amendments

F40 Words in s. 7(3) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 13**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F41 Words in s. 7(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 100**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F42 Words in s. 7(4)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 20(a)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

F43 Word in s. 7(4)(b) omitted (27.4.2017 for specified purposes, 16.4.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), Sch. 5 para. 20(b); S.I. 2018/78, reg. 5(3)(c)

F44 Words in s. 7(4)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 20(c)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

F45 S. 7(4)(d) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 20(d)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

Commencement Information

I2 S. 7 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

8 Defendant's benefit

(1) If the court is proceeding under section 6 this section applies for the purpose of—

(a) deciding whether the defendant has benefited from conduct, and

(b) deciding his benefit from the conduct.

(2) The court must—

(a) take account of conduct occurring up to the time it makes its decision;

(b) take account of property obtained up to that time.

(3) Subsection (4) applies if—

(a) the conduct concerned is general criminal conduct,

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(b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the defendant, and

(c) his benefit for the purposes of that order was benefit from his general criminal conduct.

(4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.

(5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—

(a) the amount ordered to be paid under each confiscation order previously made against the defendant;

(b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (7).

(6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(7) These are the provisions—

(a) the Drug Trafficking Offences Act 1986 (c. 32);

(b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);

(c) Part 6 of the Criminal Justice Act 1988 (c. 33);

(d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(e) Part 1 of the Drug Trafficking Act 1994 (c. 37);

(f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);

(g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));

(h) Part 3 or 4 of this Act.

(8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

Commencement Information

I3 S. 8 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

9 Available amount

(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—

(a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and

(b) the total of the values (at that time) of all tainted gifts.

(2) An obligation has priority if it is an obligation of the defendant—

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(a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or

(b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.

(3) "Preferential debts" has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

Commencement Information

I4 S. 9 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

10 Assumptions to be made in case of criminal lifestyle

(1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—

(a) deciding whether he has benefited from his general criminal conduct, and

(b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

(6) But the court must not make a required assumption in relation to particular property or expenditure if—

(a) the assumption is shown to be incorrect, or

(b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of the required assumptions it must state its reasons.

(8) The relevant day is the first day of the period of six years ending with—

(a) the day when proceedings for the offence concerned were started against the defendant, or

(b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

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(9) But if a confiscation order mentioned in section 8(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8)—

(a) the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order;

(b) the second assumption does not apply to any property which was held by him on or before the relevant day.

(10) The date of conviction is—

(a) the date on which the defendant 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.

Commencement Information

I5 S. 10 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F46]10A Determination of extent of defendant's interest in property

(1) Where it appears to a court making a confiscation order that—

(a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and

(b) a person other than the defendant holds, or may hold, an interest in the property,

the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.

(2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—

(a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or

(b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3)—

(a) is subject to section 51(8B), and

(b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.

(5) In this Part, the "extent" of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.**]**

Textual Amendments

F46 S. 10A inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 1**, 88(1); S.I. 2015/820, reg. 3(a)

Status: *Point in time view as at 05/01/2023.*
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[F47 11 Time for payment

(1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.

(2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid—
  (a) in a specified period, or
  (b) in specified periods each of which relates to a specified amount.

(3) A specified period—
  (a) must start with the day on which the confiscation order is made, and
  (b) must not exceed three months.

(4) If—
  (a) within any specified period the defendant applies to the Crown Court for that period to be extended, and
  (b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,

  the court may make an order extending the period (for all or any part or parts of the amount in question).

(5) An extended period—
  (a) must start with the day on which the confiscation order is made, and
  (b) must not exceed six months.

(6) An order under subsection (4)—
  (a) may be made after the end of the specified period to which it relates, but
  (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.

(7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able—
  (a) to pay the amount remaining to be paid, or
  (b) to pay an amount towards what remains to be paid,

  that amount is required to be paid no later than that day.

(8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.]

Textual Amendments

F47 S. 11 substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 5(1)**, 88(1); S.I. 2015/820, reg. 3(b)

Commencement Information

I6 S. 11 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
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12 Interest on unpaid sums

(1) If **[**[F48]any amount required to be paid**]** by a person under a confiscation order is not paid when it is required to be paid, he **[**[F49]must pay interest on that amount**]** for the period for which it remains unpaid.

(2) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts).

[[F50](3) If—

(a) an application has been made under section 11(4) for a specified period to be extended,

(b) the application has not been determined by the court, and

(c) the period of six months starting with the day on which the confiscation order was made has not ended,

the amount on which interest is payable under this section does not include the amount to which the specified period relates.**]**

(4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

Textual Amendments

F48 Words in s. 12(1) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 20(a)**; S.I. 2015/820, reg. 3(q)(iii)

F49 Words in s. 12(1) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 20(b)**; S.I. 2015/820, reg. 3(q)(iii)

F50 S. 12(3) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 5(2)**, 88(1); S.I. 2015/820, reg. 3(b)

Modifications etc. (not altering text)

C13 S. 12 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(6)**

Commencement Information

I7 S. 12 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

13 Effect of order on court's other powers

(1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.

(2) The court must take account of the confiscation order before—

(a) it imposes a fine on the defendant, or

(b) it makes an order falling within subsection (3).

(3) These orders fall within this subsection—

(a) an order involving payment by the defendant, other than **[**[F51]an order under **[**[F52]section 46 of the Sentencing Code**]** (criminal courts charge) or**][**[F53]a priority order**]**;

(b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);

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(c) an order under **[**[F54]Chapter 4 of Part 7 of the Sentencing Code**]** (deprivation orders);

(d) an order under section 23 **[**[F55]or 23A**]** of the Terrorism Act 2000 (c. 11) (forfeiture orders).

[[F56](3A) In this section "priority order" means any of the following—

(a) a compensation order under **[**[F57]Chapter 2 of Part 7 of the Sentencing Code**]**;

(b) an order requiring payment of a surcharge under **[**[F58]section 42 of the Sentencing Code**]**;

(c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.**]**

[[F59](d) a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015.**]**

(4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

[[F60](5) Subsection (6) applies if—

(a) the Crown Court makes both a confiscation order and one or more priority orders against the same person in the same proceedings, and

(b) the court believes the person will not have sufficient means to satisfy all those orders in full.**]**

(6) In such a case the court must direct that so much of the **[**[F61]amount payable under the priority order (or orders)**]** as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Textual Amendments

F51 Words in s. 13(3)(a) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 12 para. 11**; S.I. 2015/778, art. 3, Sch. 1 para. 78

F52 Words in s. 13(3)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 182(2)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F53 Words in s. 13(3)(a) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 6(2)**, 88(1); S.I. 2015/820, reg. 3(c)

F54 Words in s. 13(3)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 182(2)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F55 Words in s. 13(3)(d) inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), s. 100(5), **Sch. 3 para. 7(2)** (with s. 101(2)); S.I. 2009/1256, art. 2(c)

F56 S. 13(3A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 6(3)**, 88(1); S.I. 2015/820, reg. 3(c)

F57 Words in s. 13(3A)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 182(3)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F58 Words in s. 13(3A)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 182(3)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F59 S. 13(3A)(d) inserted by 2015 c. 30 Sch. 5 para. 15 (as substituted) (17.3.2016) by The Modern Slavery Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/244), regs. 1(1), **26**

F60 S. 13(5) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 6(4)**, 88(1); S.I. 2015/820, reg. 3(c)

F61 Words in s. 13(6) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 6(5)**, 88(1); S.I. 2015/820, reg. 3(c)

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Commencement Information

I8 S. 13 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F62 13A 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 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 defendant'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) any person affected by the order.

Textual Amendments

F62 Ss. 13A, 13B inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 7**, 88(1) (with s. 86(1)); S.I. 2015/820, reg. 3(d)

13B Appeals against orders under section 13A

(1) If on an application under section 13A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.

(2) The following persons may appeal to the Court of Appeal in respect of the Crown Court's decision to make, discharge or vary a compliance order—

(a) the prosecutor;

(b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes is appropriate.

(4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).

(5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(6) On an appeal under subsection (4) the Supreme Court may—

(a) confirm the decision of the Court of Appeal, or

(b) make such order as it believes is appropriate.

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(7) In this section "compliance order" means an order made under section 13A.**]**

Textual Amendments

F62 Ss. 13A, 13B inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 7**, 88(1) (with s. 86(1)); S.I. 2015/820, reg. 3(d)

Procedural matters

14 Postponement

(1) The court may—
- (a) proceed under section 6 before it sentences the defendant for the offence (or any of the offences) concerned, or
- (b) postpone proceedings under section 6 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.

(5) The permitted period is the period of two years starting with the date of conviction.

(6) But if—
- (a) the defendant 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 defendant;
- (b) on application by the prosecutor [F63]...;
- (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 defendant 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) References to appealing include references to applying under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case).

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(11) 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.

(12) But subsection (11) does not apply if before it made the confiscation order the court—

(a) imposed a fine on the defendant;

(b) made an order falling within section 13(3);

(c) made an order under **[**[F64]Chapter 2 of Part 7 of the Sentencing Code**]** (compensation orders) **[**[F65];

[[F66](ca) made an order under **[**[F67]section 42 of the Sentencing Code**]** (orders requiring payment of surcharge);**]**

(d) made an order under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)**]**.

Textual Amendments

F63 Words in s. 14(7)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 4, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F64 Words in s. 14(12)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 183(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F65 S. 14(12)(d) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 15**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F66 S. 14(12)(ca) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 21**; S.I. 2015/820, reg. 3(q)(iii)

F67 Words in s. 14(12)(ca) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 183(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Commencement Information

I9 S. 14 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

15 Effect of postponement

(1) If the court postpones proceedings under section 6 it may proceed to sentence the defendant for the offence (or any of the offences) concerned.

(2) In sentencing the defendant 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 13(3), [F68]...

(c) make an order for the payment of compensation under **[**[F69]Chapter 2 of Part 7 of the Sentencing Code**][**[F70], [F71]...

[[F72](ca) make an order for the payment of a surcharge under **[**[F73]section 42 of the Sentencing Code**]**, or**]**

(d) make an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013**]**.

(3) If the court sentences the defendant 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 13(3), [F74]...

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(c) making an order for the payment of compensation under **[**[F75]Chapter 2 of Part 7 of the Sentencing Code **][**[F76], [F77]...

[[F78](ca) making an order for the payment of a surcharge under **[**[F79]section 42 of the Sentencing Code**]**, or**]**

(d) making an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013**]**.

(4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.

(5) For the purposes of—

(a) section 18(2) of the Criminal Appeal Act 1968 (c. 19) (time limit for notice of appeal or of application for leave to appeal), and

(b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (c. 33) (time limit for notice of application for leave to refer a case under section 36 of that Act),

the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3).

(6) If the court proceeds to sentence the defendant under subsection (1), section 6 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) The postponement period is the period for which proceedings under section 6 are postponed.

Textual Amendments

F68 Word in s. 15(2)(b) omitted (15.10.2013 for E., 5.11.2013 for W.) by virtue of Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 16(2)(a)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F69 Words in s. 15(2)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 184(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F70 S. 15(2)(d) and word inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 16(2)(b)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F71 Word in s. 15(2)(c) omitted (1.6.2015) by virtue of Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(2)(a)**; S.I. 2015/820, reg. 3(q)(iii)

F72 S. 15(2)(ca) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(2)(b)**; S.I. 2015/820, reg. 3(q)(iii)

F73 Words in s. 15(2)(ca) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 184(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F74 Word in s. 15(3)(b) omitted (15.10.2013 for E., 5.11.2013 for W.) by virtue of Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 16(3)(a)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F75 Words in s. 15(3)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 184(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F76 S. 15(3)(d) and word inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 16(3)(b)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F77 Word in s. 15(3)(c) omitted (1.6.2015) by virtue of Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(3)(a)**; S.I. 2015/820, reg. 3(q)(iii)

F78 S. 15(3)(ca) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 22(3)(b)**; S.I. 2015/820, reg. 3(q)(iii)

F79 Words in s. 15(3)(ca) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 184(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

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Commencement Information

I10 S. 15 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

16 Statement of information

(1) If the court is proceeding under section 6 in a case where section 6(3)(a) applies, the prosecutor [F80]... must give the court a statement of information within the period the court orders.

(2) If the court is proceeding under section 6 in a case where section 6(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders.

(3) If the prosecutor [F81]... believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor [F82]...believes are relevant in connection with deciding these issues—

(a) whether the defendant has a criminal lifestyle;

(b) whether he has benefited from his general criminal conduct;

(c) his benefit from the conduct.

(4) A statement under subsection (3) must include information the prosecutor [F83]... believes is relevant—

(a) in connection with the making by the court of a required assumption under section 10;

(b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.

(5) If the prosecutor [F84]... does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor [F85]... believes are relevant in connection with deciding these issues—

(a) whether the defendant has benefited from his particular criminal conduct;

(b) his benefit from the conduct.

(6) If the prosecutor [F86]... gives the court a statement of information—

(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.

[[F87](6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide—

(a) whether to make a determination under section 10A, or

(b) what determination to make (if the court decides to make one).

(6B) If the court has decided to make a determination under section 10A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.**]**

(7) If the court makes an order under this section it may at any time vary it by making another one.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F80 Words in s. 16(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F81 Words in s. 16(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F82 Words in s. 16(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F83 Words in s. 16(4) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F84 Words in s. 16(5) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(5)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F85 Words in s. 16(5) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(5)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F86 Words in s. 16(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 5(6), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F87 S. 16(6A)(6B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 2(1)**, 88(1); S.I. 2015/820, reg. 3(a)

Commencement Information

I11 S. 16 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

17 Defendant's response to statement of information

(1) If the prosecutor [F88]... gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—

(a) to indicate (within the period it orders) 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.

(2) If the defendant 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 16(3) or (5) (as the case may be).

(3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) 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.

(4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.

(5) If the court makes an order under this section it may at any time vary it by making another one.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

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Textual Amendments

F88 Words in s. 17(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 6, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I12 S. 17 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

18 Provision of information by defendant

(1) This section applies if—

(a) the court is proceeding under section 6 in a case where section 6(3)(a) applies, or

(b) it is proceeding under section 6 in a case where section 6(3)(b) applies or it is considering whether to proceed.

(2) For the purpose of obtaining information to help it in carrying out its functions **[**[F89] (including functions under section 10A)**]** the court may at any time order the defendant to give it information specified in the order.

(3) 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.

(4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) Subsection (4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.

(6) If the prosecutor [F90]... accepts to any extent an allegation made by the defendant—

(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 **[**[F91]deciding—

(i) the available amount under section 9, or

(ii) whether to make a determination under section 10A, or what determination to make (if the court decides to make one),**]**

the court may treat the acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(8) If the court makes an order under this section it may at any time vary it by making another one.

(9) No information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Textual Amendments

F89 Words in s. 18(2) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 2(2)(a)**, 88(1); S.I. 2015/820, reg. 3(a)

Status: *Point in time view as at 05/01/2023.*
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F90 Words in s. 18(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 7, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F91 Words in s. 18(6)(b) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 2(2)(b)**, 88(1); S.I. 2015/820, reg. 3(a)

Commencement Information

I13 S. 18 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F92 18A Provision of information as to defendant's interest in property

(1) This section applies if the court—

(a) is considering whether to make a determination under section 10A of the extent of the defendant's interest in any property, or

(b) is deciding what determination to make (if the court has decided to make a determination under that section).

In this section "interested person" means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

(2) For the purpose of obtaining information to help it in carrying out its functions under section 10A the court may at any time order an interested person to give it information specified in the order.

(3) 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.

(4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.

(6) If the prosecutor accepts to any extent an allegation made by an interested person—

(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 a determination under section 10A,

the court may treat the acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(8) If the court makes an order under this section it may at any time vary it by making another one.

(9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.**]**

Textual Amendments

F92 S. 18A inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 2(3)**, 88(1); S.I. 2015/820, reg. 3(a)

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Reconsideration

19 No order made: reconsideration of case

(1) This section applies if—

(a) the first condition in section 6 is satisfied but no court has proceeded under that section,

(b) there is evidence which was not available to the prosecutor on the relevant date,

(c) before the end of the period of six years starting with the date of conviction the prosecutor [F93]... applies to the Crown Court to consider the evidence, and

(d) after considering the evidence the court believes it is appropriate for it to proceed under section 6.

(2) If this section applies the court must proceed under section 6, and when it does so subsections (3) to (8) below apply.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Section 8(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(6) The recoverable amount for the purposes of section 6 is such amount as—

(a) the court believes is just, but

(b) does not exceed the amount found under section 7.

(7) In arriving at the just amount the court must have regard in particular to—

(a) the amount found under section 7;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 **[**[F94]of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**]** (compensation orders) **[**[F95];

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[[F96](da) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 **[**[F97]or section 42 of the Sentencing Code**]** (orders requiring payment of surcharge);**]**

(e) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)**]**.

(8) If an order for the payment of compensation under section 130 **[**[F98]of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**][**[F99], a surcharge under section 161A of the Criminal Justice Act 2003**][**[F100]or section 42 of the Sentencing Code**][**[F101]or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013**]** has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply **[**[F102]in relation to it**]**.

(9) The relevant date is—

(a) if the court made a decision not to proceed under section 6, the date of the decision;

(b) if the court did not make such a decision, the date of conviction.

(10) The date of conviction is—

(a) the date on which the defendant 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.

Textual Amendments

F93 Words in s. 19(1)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 8, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F94 Words in s. 19(7)(d) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 185(2)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F95 S. 19(7)(e) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 17(2)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F96 S. 19(7)(da) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 23(2)**; S.I. 2015/820, reg. 3(q)(iii)

F97 Words in s. 19(7)(da) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 185(2)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F98 Words in s. 19(8) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 185(3)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F99 Words in s. 19(8) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 23(3)**; S.I. 2015/820, reg. 3(q)(iii)

F100 Words in s. 19(8) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 185(3)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F101 Words in s. 19(8) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 17(3)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F102 Words in s. 19(8) inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 16**; S.I. 2015/1476, reg. 2(j)

Commencement Information

I14 S. 19 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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20 No order made: reconsideration of benefit

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that in proceeding under section 6 the court has decided that—

(a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or

(b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct.

[F103](3) . . . . . .

(4) [F104]... the second condition is that—

(a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct,

(b) before the end of the period of six years starting with the date of conviction the prosecutor [F105]... applies to the Crown Court to consider the evidence, and

(c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.

(5) If this section applies the court—

(a) must make a fresh decision under section 6(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);

(b) may make a confiscation order under that section.

(6) Subsections (7) to (12) below apply if the court proceeds under section 6 in pursuance of this section.

(7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(8) Section 8(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(10) The recoverable amount for the purposes of section 6 is such amount as—

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(a) the court believes is just, but

(b) does not exceed the amount found under section 7.

(11) In arriving at the just amount the court must have regard in particular to—

(a) the amount found under section 7;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(d) any order which has been made against him in respect of the offence (or any of the offences) concerned under **[**[F106]section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**]** (compensation orders) **[**[F107]**;**

[[F108](da) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 **[**[F109]or section 42 of that Code**]** (orders requiring payment of surcharge);**]**

(e) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)**]**.

(12) If an order for the payment of compensation under **[**[F110]section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**][**[F111], a surcharge under section 161A of the Criminal Justice Act 2003**][**[F112]or section 42 of the Sentencing Code**][**[F113]or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013**]** has been made against the defendant in respect of the offence or offences concerned, section 13(5) and (6) above do not apply **[**[F114]in relation to it**]**.

(13) The date of conviction is the date found by applying section 19(10).

Textual Amendments

F103 S. 20(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 9(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F104 Words in s. 20(4) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 9(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F105 Words in s. 20(4)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 9(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F106 Words in s. 20(11)(d) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(2)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F107 S. 20(11)(e) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 18(2)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F108 S. 20(11)(da) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 24(2)**; S.I. 2015/820, reg. 3(q)(iii)

F109 Words in s. 20(11)(da) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(2)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F110 Words in s. 20(12) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(3)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

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F111 Words in s. 20(12) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 24(3)**; S.I. 2015/820, reg. 3(q)(iii)

F112 Words in s. 20(12) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 186(3)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F113 Words in s. 20(12) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 18(3)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F114 Words in s. 20(12) inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 17**; S.I. 2015/1476, reg. 2(j)

Commencement Information

I15 S. 20 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

21 Order made: reconsideration of benefit

(1) This section applies if—

(a) a court has made a confiscation order,

(b) there is evidence which was not available to the prosecutor [F115]... at the relevant time,

(c) the prosecutor [F116]... believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,

(d) before the end of the period of six years starting with the date of conviction the prosecutor [F117]... applies to the Crown Court to consider the evidence, and

(e) after considering the evidence the court believes it is appropriate for it to proceed under this section.

(2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply.

(3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Section 8(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;

(b) take account of property obtained up to that time;

(c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(5) In applying section 8(5) the confiscation order must be ignored.

(6) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order;

(b) the third assumption does not apply with regard to expenditure incurred by him after that time;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court—

(a) must make a new calculation of the recoverable amount for the purposes of section 6, and

(b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(8) In applying subsection (7)(a) the court must—

(a) take the new calculation of the defendant's benefit;

(b) apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(9) In applying subsection (7)(b) the court must have regard in particular to—

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under **[**[F118]section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**]** (compensation orders) **[**[F119];

[F120]**[**(ca) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 **[**[F121]or section 42 of the Sentencing Code**]** (orders requiring payment of surcharge);**]**

(d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)**]**.

(10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) **[**[F122], (ca) **][**[F123]or (d)**]** if a court has made a direction under section 13(6).

(11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(12) The relevant time is—

(a) when the court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) when the court last calculated the defendant's benefit in pursuance of this section, if this section has applied previously.

(13) The relevant amount is—

(a) the amount found as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the defendant's benefit in pursuance of this section, if this section has applied previously.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(14) The date of conviction is the date found by applying section 19(10).

Textual Amendments

F115 Words in s. 21(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 10, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F116 Words in s. 21(1)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 10, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F117 Words in s. 21(1)(d) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 10, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F118 Words in s. 21(9)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 187(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F119 S. 21(9)(d) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 19(2)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F120 S. 21(9)(ca) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 25(2)**; S.I. 2015/820, reg. 3(q)(iii)

F121 Words in s. 21(9)(ca) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 187(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F122 Words in s. 21(10) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 25(3)**; S.I. 2015/820, reg. 3(q)(iii)

F123 Words in s. 21(10) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 19(3)**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

Commencement Information

I16 S. 21 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

22 Order made: reconsideration of available amount

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the amount required to be paid was the amount found under section 7(2), and

(c) an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.

(2) These applicants fall within this subsection—

(a) the prosecutor;

F124(b) . . . . . .

(c) a receiver appointed under section 50 F125....

(3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(4) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—

(a) it believes is just, but

(b) does not exceed the amount found as the defendant's benefit from the conduct concerned.

(5) In deciding what is just the court must have regard in particular to—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 9;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under **[**[F126]section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**]** (compensation orders).

[[F127](d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 **[**[F128]or section 42 of the Sentencing Code**]** (orders requiring payment of surcharge).**]**

(6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) **[**[F129] or (d).**]** if a court has made a direction under section 13(6).

(7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(8) The relevant amount is—

(a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.

(9) The amount found as the defendant's benefit from the conduct concerned is—

(a) the amount so found when the confiscation order was made, or

(b) if one or more new calculations of the defendant's benefit have been made under section 21 the amount found on the occasion of the last such calculation.

Textual Amendments

F124 S. 22(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 11(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F125 Words in s. 22(2)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 11(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F126 Words in s. 22(5)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 188(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F127 S. 22(5)(d) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 26(2)**; S.I. 2015/820, reg. 3(q)(iii)

F128 Words in s. 22(5)(d) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 188(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F129 Words in s. 22(6) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 26(3)**; S.I. 2015/820, reg. 3(q)(iii)

Commencement Information

I17 S. 22 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

23 Inadequacy of available amount: variation of order

(1) This section applies if—

(a) a court has made a confiscation order, and

(b) the defendant **[**[F130] or the prosecutor**]** , or a receiver appointed under section 50 [F131]..., applies to the Crown Court to vary the order under this section.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.

(4) If a person has been **[**[F132]made**]** bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

(6) In subsection (4) "company" means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

Textual Amendments

F130 Words in s. 23(1)(b) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 8(1)**, 88(1); S.I. 2015/820, reg. 3(e)

F131 Words in s. 23(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 12, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F132 Word in s. 23(4) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

Commencement Information

I18 S. 23 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

24 Inadequacy of available amount: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) **[**[F133]the designated officer for a magistrates' court**]** applies to the Crown Court for the discharge of the order, and

(c) the amount remaining to be paid under the order is less than £1,000.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 9 as if references to the time the confiscation order is made were to the

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time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court—

(a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and

(b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,

it may discharge the confiscation order.

(4) The specified reasons are—

(a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;

(b) any reason specified by the Secretary of State by order.

(5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).

[[F134](6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked.**]**

Textual Amendments

F133 Words in s. 24(1)(b) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 406(a)**; S.I. 2005/910, art. 3(y)

F134 S. 24(6)(7) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 32(2)**, 58(1)(6) (with s. 32(7)); S.I. 2018/78, reg. 3(p)

Commencement Information

I19 S. 24 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

25 Small amount outstanding: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) **[**[F135]the designated officer for a magistrates' court**]** applies to the Crown Court for the discharge of the order, and

(c) the amount remaining to be paid under the order is £50 or less.

(2) In such a case the court may discharge the order.

(3) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c).

[[F136](4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked.**]**

Textual Amendments

F135 Words in s. 25(1)(b) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 406(b)**; S.I. 2005/910, art. 3(y)

F136 S. 25(4)(5) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 32(3)**, 58(1)(6) (with s. 32(7)); S.I. 2018/78, reg. 3(p)

Commencement Information

I20 S. 25 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F137 25A Recovery from estate of deceased defendant impractical: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the defendant dies while the order is not satisfied, and

(c) the designated officer for a magistrates' court applies to the Crown Court for the discharge of the order.

(2) The court may discharge the order if it appears to the court that—

(a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or

(b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.**]**

Textual Amendments

F137 S. 25A inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 8(2)**, 88(1); S.I. 2015/820, reg. 3(e)

26 Information

(1) This section applies if—

(a) the court proceeds under section 6 in pursuance of section 19 or 20, or

(b) the prosecutor F138... applies under section 21.

(2) In such a case—

(a) the prosecutor F139... must give the court a statement of information within the period the court orders;

(b) section 16 applies accordingly (with appropriate modifications where the prosecutor F140... applies under section 21);

(c) section 17 applies accordingly;

(d) section 18 applies as it applies in the circumstances mentioned in section 18(1).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F138 Words in s. 26(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 13(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F139 Words in s. 26(2)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 13(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F140 Words in s. 26(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 13(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I21 S. 26 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Defendant absconds

27 Defendant convicted or committed

(1) This section applies if the following two conditions are satisfied.

[[F141](2) The first condition is that a defendant falls within any of the following paragraphs—

(a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;

(b) he absconds after being committed to the Crown Court for sentence in respect of an offence or offences under **[**[F142]any provision of sections 14 to 20 of the Sentencing Code**]**;

(c) he absconds after being committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).**]**

(3) The second condition is that—

(a) the prosecutor [F143]... applies to the Crown Court to proceed under this section, and

(b) the court believes it is appropriate for it to do so.

(4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications—

(a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 6 unless the prosecutor [F144]... has taken reasonable steps to contact the defendant;

(c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

(d) sections 10, 16(4), 17 and 18 must be ignored;

(e) sections 19, 20 and 21 must be ignored while the defendant is still an absconder.

[[F145](6) Once the defendant ceases to be an absconder—

(a) section 19 has effect as if subsection (1) read—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

"(1) This section applies if—

(a) at a time when the first condition in section 27 was satisfied the court did not proceed under section 6,

(b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 6, and

(c) the court believes it is appropriate for it to do so.";

(b) section 20 has effect as if subsection (4) read—

"(4) The second condition is that—

(a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and

(b) the court believes it is appropriate for it to do so.";

(c) section 21 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 defendant'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 defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and

(d) the court believes it is appropriate for it to do so.";

(d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 19, 20 or 21 (as applied by this subsection).**]**

Textual Amendments

F141 S. 27(2) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 9(1)**, 88(1); S.I. 2015/820, reg. 3(f)

F142 Words in s. 27(2)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 189** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F143 Words in s. 27(3)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 14(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F144 Words in s. 27(5)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 14(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F145 S. 27(6) substituted for s. 27(6)(7) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 9(2)**, 88(1); S.I. 2015/820, reg. 3(f)

Commencement Information

I22 S. 27 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 3(2), 10-13)

28 Defendant neither convicted nor acquitted

(1) This section applies if the following two conditions are satisfied.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) The first condition is that—

(a) proceedings for an offence or offences are started against a defendant but are not concluded,

(b) he absconds, and

(c) the period of **[**[F146]three months**]** (starting with the day the court believes he absconded) has ended.

(3) The second condition is that—

(a) the prosecutor [F147]... applies to the Crown Court to proceed under this section, and

(b) the court believes it is appropriate for it to do so.

(4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications—

(a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 6 unless the prosecutor [F148]... has taken reasonable steps to contact the defendant;

(c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

(d) sections 10, 16(4) and 17 to 20 must be ignored;

(e) section 21 must be ignored while the defendant is still an absconder.

[[F149](6) Once the defendant has ceased to be an absconder—

(a) section 21 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 defendant'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 defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and

(d) the court believes it is appropriate for it to do so.";

(b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 21 (as applied by this subsection).**]**

(7) If—

(a) the court makes an order under section 6 as applied by this section, and

(b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,

section 6 does not apply so far as that conviction is concerned.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F146 Words in s. 28(2)(c) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 9(3)**, 88(1); S.I. 2015/820, reg. 3(f)

F147 Words in s. 28(3)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 15(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F148 Words in s. 28(5)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 15(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F149 S. 28(6) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 9(4)**, 88(1); S.I. 2015/820, reg. 3(f)

Commencement Information

I23 S. 28 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 3(2), 10-13)

29 Variation of order

(1) This section applies if—

(a) the court makes a confiscation order under section 6 as applied by section 28,

(b) the defendant ceases to be an absconder,

(c) he is convicted of an offence (or any of the offences) mentioned in section 28(2)(a),

(d) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and

(e) before the end of the relevant period he applies to the Crown Court to consider the evidence on which his belief is based.

(2) If (after considering the evidence) the court concludes that the defendant's belief is well founded—

(a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and

(b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with—

(a) the date on which the defendant was convicted of the offence mentioned in section 28(2)(a), or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(4) But in a case where section 28(2)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

Commencement Information

I24 S. 29 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

30 Discharge of order

(1) Subsection (2) applies if—

(a) the court makes a confiscation order under section 6 as applied by section 28,

(b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and

(c) he applies to the Crown Court to discharge the order.

(2) In such a case the court must discharge the order.

(3) Subsection (4) applies if—

(a) the court makes a confiscation order under section 6 as applied by section 28,

(b) the defendant ceases to be an absconder,

(c) subsection (1)(b) does not apply, and

(d) he applies to the Crown Court to discharge the order.

(4) In such a case the court may discharge the order if it finds that—

(a) there has been undue delay in continuing the proceedings mentioned in section 28(2), or

(b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

Commencement Information

I25 S. 30 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Appeals

31 Appeal by prosecutor [F150etc]F151...

(1) If the Crown Court makes a confiscation order the prosecutor F152... may appeal to the Court of Appeal in respect of the order.

(2) If the Crown Court decides not to make a confiscation order the prosecutor F153... may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section [F154 10A,] 19, 20, 27 or 28.

[F155(4) An appeal lies to the Court of Appeal against a determination, under section 10A, of the extent of the defendant's interest in property.

(5) An appeal under subsection (4) lies at the instance of—

(a) the prosecutor;

(b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.

(6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.

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(7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.

(8) An appeal does not lie under subsection (4) where—

(a) the Court of Appeal believes that an application under section 50 is to be made by the prosecutor for the appointment of a receiver,

(b) such an application has been made but has not yet been determined, or

(c) a receiver has been appointed under section 50.**]**

Textual Amendments

F150 Word in s. 31 heading inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 27(2)**; S.I. 2015/820, reg. 3(q)(iii)

F151 Words in s. 31 heading repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 16(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F152 Words in s. 31(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 16(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F153 Words in s. 31(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 16(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F154 Word in s. 31(3) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 27(3)**; S.I. 2015/820, reg. 3(q)(iii)

F155 S. 31(4)-(8) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 3(1)**, 88(1); S.I. 2015/820, reg. 3(a)

Commencement Information

I26 S. 31 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

32 Court's powers on appeal

(1) On an appeal under section 31(1) the Court of Appeal may confirm, quash or vary the confiscation order.

(2) On an appeal under section 31(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

(a) itself proceed under section 6 (ignoring subsections (1) to (3)), or

(b) direct the Crown Court to proceed afresh under section 6.

[[F156](2A) On an appeal under section 31(4) the Court of Appeal may—

(a) confirm the determination, or

(b) make such order as it believes is appropriate.**]**

(3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.

(4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must—

(a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(b) have regard to any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless

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the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 9.

(5) If the Court of Appeal proceeds under section 6 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply.

(6) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under **[**[F157]section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code**]** (compensation orders)**[**[F158], section 161A of the Criminal Justice Act 2003 **[**[F159]or section 42 of the Sentencing Code**]** (orders requiring payment of surcharge)**][**[F160]or section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)**]**—

(a) the court must have regard to it, and

(b) section 13(5) and (6) above do not apply **[**[F161]in relation to it**]**.

(8) Section 8(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(10) Section 26 applies as it applies in the circumstances mentioned in subsection (1) of that section.

(11) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

Textual Amendments

F156 S. 32(2A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 3(2)**, 88(1); S.I. 2015/820, reg. 3(a)

F157 Words in s. 32(7) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 190(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F158 Words in s. 32(7) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 28**; S.I. 2015/820, reg. 3(q)(iii)

F159 Words in s. 32(7) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 190(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F160 Words in s. 32(7) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 20**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F161 Words in s. 32(7)(b) inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 18**; S.I. 2015/1476, reg. 2(j)

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Commencement Information

I27 S. 32 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

33 Appeal to [F162Supreme Court]

(1) An appeal lies to the [F163Supreme Court] from a decision of the Court of Appeal on an appeal under section 31.

[F164(2) An appeal under this section lies at the instance of—

(a) the defendant or the prosecutor (except where paragraph (b) applies);

(b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 31(4), any person who was a party to those proceedings.]

(3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the [F165Supreme Court] may confirm, quash or vary the order.

[F166(3A) On an appeal under this section from a decision under section 32(2A) the Supreme Court may—

(a) confirm the decision of the Court of Appeal, or

(b) make such order as it believes is appropriate.]

(4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the [F165Supreme Court] may—

(a) confirm the decision, or

(b) direct the Crown Court to proceed afresh under section 6 if it believes the decision was wrong.

(5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the [F165Supreme Court] may make.

(6) If a court varies a confiscation order under this section or makes a confiscation order in pursuance of a direction under this section it must—

(a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(b) have regard to any order which falls within section 13(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 9.

(7) If the Crown Court proceeds afresh under section 6 in pursuance of a direction under this section subsections (8) to (12) apply.

(8) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(9) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under [F167section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 2 of Part 7 of the Sentencing Code] (compensation orders) [F168, section 161A of the Criminal Justice Act 2003 [F169or section 42 of the

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Sentencing Code**]** (orders requiring payment of surcharge) **][**[F170]or section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders)**]**—

(a) the Crown Court must have regard to it, and

(b) section 13(5) and (6) above do not apply **[**[F171]in relation to it**]**.

(10) Section 8(2) does not apply, and the rules applying instead are that the Crown Court must—

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(11) In section 10—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(12) Section 26 applies as it applies in the circumstances mentioned in subsection (1) of that section.

(13) The relevant date is—

(a) in a case where the Crown Court made a confiscation order which was quashed by the Court of Appeal, the date on which the Crown Court made the order;

(b) in any other case, the date on which the Crown Court decided not to make a confiscation order.

Textual Amendments

F162 Words in s. 33 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(2)**; S.I. 2009/1604, art. 2(d)

F163 Words in s. 33(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(2)**; S.I. 2009/1604, art. 2(d)

F164 S. 33(2) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 3(3)(a)**, 88(1); S.I. 2015/820, reg. 3(a)

F165 Words in s. 33(3)-(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(2)**; S.I. 2009/1604, art. 2(d)

F166 S. 33(3A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 3(3)(b)**, 88(1); S.I. 2015/820, reg. 3(a)

F167 Words in s. 33(9) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 191(a)** (with Sch. 27); S.I. 2020/1236, reg. 2

F168 Words in s. 33(9) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 29**; S.I. 2015/820, reg. 3(q)(iii)

F169 Words in s. 33(9) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 191(b)** (with Sch. 27); S.I. 2020/1236, reg. 2

F170 Words in s. 33(9) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 21**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F171 Words in s. 33(9)(b) inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 19**; S.I. 2015/1476, reg. 2(j)

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Commencement Information
I28 S. 33 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement authority

[F172]34 Enforcement authority

. . . . . .

Textual Amendments
F172 S. 34 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 18, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information
I29 S. 34 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement as fines etc

35 [[F173]Enforcement as fines]

(1) This section applies if a court—
(a) makes a confiscation order, and
[F174](b) . . . . . .

(2) [[F175]Sections 129(1) to (3) and (5) and 132(1) to (4) of the Sentencing Code] (functions of court as to fines and enforcing fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.

[[F176](2A) Where a court is fixing a term of imprisonment or detention under [[F177]section 129(3) of the Sentencing Code] (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

TABLE

Amount	*Maximum term*
£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) In the application of [[F178]subsection (2) of section 129 of the Sentencing Code] by virtue of subsection (2) above, the reference to [[F179]subsections (3) to (5)] of that section is to be read as a reference to—
(a) [[F180]subsections (3) and (5)] of that section, and

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(b) subsection (2A) above.

(2C) The Secretary of State may by order—

(a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under **[**[F181]section 129(3) of the Sentencing Code**]** (as applied by subsection (2) above) 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 the power in paragraph (a) of this subsection) or to add any entry.**]**

(3) In the application of Part 3 of the Magistrates' Courts Act 1980 (c. 43) to an amount payable under a confiscation order—

(a) ignore section 75 of that Act (power to dispense with immediate payment);

(b) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines) of that Act;

(c) in section 87 of that Act ignore subsection (3) (inquiry into means).

Textual Amendments

F173 S. 35 heading substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 19(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F174 S. 35(1)(b) and preceding word repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 19(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F175 Words in s. 35(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 192(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F176 S. 35(2A)-(2C) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 10(1)**, 88(1); S.I. 2015/820, reg. 3(g)

F177 Words in s. 35(2A) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 192(3)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F178 Words in s. 35(2B) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 192(4)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F179 Words in s. 35(2B) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 192(4)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F180 Words in s. 35(2B)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 192(4)(c)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F181 Words in s. 35(2C)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 192(5)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

C14 S. 35 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(6)**

Commencement Information

I30 S. 35 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F182]36 Director appointed as enforcement authority

. . . . . .

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F182 S. 36 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 20, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I31 S. 36 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F183]37 Director's application for enforcement

. . . . . .

Textual Amendments

F183 S. 37 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 20, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I32 S. 37 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

38 Provisions about imprisonment or detention

(1) Subsection (2) applies if—

(a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and

(b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).

(2) In such a case the term of imprisonment or of detention under section 108 of **[**[F184]the Powers of Criminal Courts (Sentencing) Act 2000**]** (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above.

(3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences).

(4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—

(a) any sentence suspended under **[**[F185]section 264 or 277 of the Sentencing Code**]** which has not taken effect at the time the warrant is issued;

(b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (c. 45) (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison;

(c) any term of imprisonment or detention fixed under **[**[F186]section 129(3) of the Sentencing Code**]** (term to be served in default of payment of fine etc) for

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which a warrant committing the defendant to prison or detention has not been issued at that time.

(5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned.

Textual Amendments

F184 Words in s. 38(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 193(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F185 Words in s. 38(4)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 193(3)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F186 Words in s. 38(4)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 193(3)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

C15 S. 38 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(6)**

Commencement Information

I33 S. 38 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

39 Reconsideration etc: variation of prison term

(1) Subsection (2) applies if—

(a) a court varies a confiscation order under section 21, 22, 23, 29, 32 or 33,

(b) the effect of the variation is to vary the maximum period applicable in relation to the order under **[**[F187]section 35(2A)**]**, and

(c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under **[**[F188]section 129(3) of the Sentencing Code**]**.

(2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under **[**[F189]section 129(3) of the Sentencing Code**]** in place of the term previously fixed.

(3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.

(4) In such a case the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under **[**[F190]section 129(3) of the Sentencing Code**]**.

(5) If the effect of section 12 is to increase the maximum period applicable in relation to a confiscation order under **[**[F191]section 35(2A)**]**, on the application of the **[**[F192]prosecutor**]** the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under **[**[F193]section 129(3) of that Code**]**.

[F194](6) . . . . . .

Textual Amendments

F187 Words in s. 39(1)(b) substituted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), s. 5(2)(3), **Sch. 2 para. 121(a)**; S.I. 2012/1236, reg. 2

F188 Words in s. 39(1)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 194(2)** (with Sch. 27); S.I. 2020/1236, reg. 2

F189 Words in s. 39(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 194(2)** (with Sch. 27); S.I. 2020/1236, reg. 2

F190 Words in s. 39(4) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 194(2)** (with Sch. 27); S.I. 2020/1236, reg. 2

F191 Words in s. 39(5) substituted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), s. 5(2)(3), **Sch. 2 para. 121(b)(i)**; S.I. 2012/1236, reg. 2

F192 Word in s. 39(5) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 21(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F193 Words in s. 39(5) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 194(3)** (with Sch. 27); S.I. 2020/1236, reg. 2 and words in s. 39(5) substituted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), s. 5(2)(3), **Sch. 2 para. 121(b)(ii)**; S.I. 2012/1236, reg. 2

F194 S. 39(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 21(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Modifications etc. (not altering text)

C16 S. 39 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(6)**

Commencement Information

I34 S. 39 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Restraint orders

40 Conditions for exercise of powers

(1) The Crown Court may exercise the powers conferred by section 41 if any of the following conditions is satisfied.

(2) The first condition is that—

(a) a criminal investigation has been started in England and Wales with regard to an offence, and

(b) there **[**[F195]are reasonable grounds to suspect**]** that the alleged offender has benefited from his criminal conduct.

(3) The second condition is that—

(a) proceedings for an offence have been started in England and Wales and not concluded, and

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(4) The third condition is that—

(a) an application by the prosecutor [F196]... has been made under section 19, 20, 27 or 28 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(5) The fourth condition is that—

(a) an application by the prosecutor [F197]... has been made under section 21 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).

(6) The fifth condition is that—

(a) an application by the prosecutor [F198]... has been made under section 22 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(7) The second condition is not satisfied if the court believes that—

(a) there has been undue delay in continuing the proceedings, or

(b) the prosecutor does not intend to proceed.

(8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—

(a) there has been undue delay in continuing the application, or

(b) the prosecutor [F199]... does not intend to proceed.

(9) If the first condition is satisfied—

(a) references in this Part to the defendant are to the alleged offender;

(b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;

(c) section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

Textual Amendments

F195 Words in s. 40(2)(b) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 11(1)**, 88(1); S.I. 2015/820, reg. 3(h)

F196 Words in s. 40(4)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F197 Words in s. 40(5)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F198 Words in s. 40(6)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F199 Words in s. 40(8)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 22(5), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I35 S. 40 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

41 Restraint orders

(1) If any condition set out in section 40 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.

(2) A restraint order may provide that it applies—

(a) to all realisable property held by the specified person whether or not the property is described in the order;

(b) to realisable property transferred to the specified person after the order is made.

[[F200](2A) A restraint order must be made subject to an exception enabling relevant legal aid payments to be made (a legal aid exception).

(2B) A relevant legal aid payment is a payment that the specified person is obliged to make—

(a) by regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and

(b) in connection with services provided in relation to an offence which falls within subsection (5),

whether the obligation to make the payment arises before or after the restraint order is made.**]**

(3) A restraint order may be made subject to **[**[F201] other **]** exceptions, and an exception may in particular—

(a) make provision for reasonable living expenses and reasonable legal expenses;

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

[F202](c) . . . . . .

(4) **[**[F203]But where an exception to a restraint order is made under subsection (3), it**]** must not make provision for any legal expenses which—

(a) relate to an offence which falls within subsection (5), and

(b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

(a) the offence mentioned in section 40(2) or (3), if the first or second condition (as the case may be) is satisfied;

(b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

[[F204](5A) A legal aid exception—

(a) must be made subject to prescribed restrictions (if any) on—

(i) the circumstances in which payments may be made in reliance on the exception, or

(ii) the amount of the payments that may be made in reliance on the exception,

(b) must be made subject to other prescribed conditions (if any), and

(c) may be made subject to other conditions.

(5B) Any other exception to a restraint order may be made subject to conditions.**]**

Status: *Point in time view as at 05/01/2023.*
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(6) Subsection (7) applies if—

(a) a court makes a restraint order, and

(b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).

(7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

[[F205](7A) Subsections (7B) and (7C) apply where the Crown Court makes a restraint order (by virtue of the first condition in section 40) as a result of a criminal investigation having been started in England and Wales with regard to an offence.

(7B) 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 discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 42(3)).

(7C) The duty under subsection (7B)(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 42(3)).**]**

[[F206](7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.**]**

(8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(9) Dealing with property includes removing it from England and Wales.

[[F207](10) In this section "prescribed" means prescribed by regulations made by the Secretary of State.**]**

Textual Amendments

F200 S. 41(2A)(2B) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), **ss. 46(2)**, 61(2); S.I. 2015/813, art. 3(b)

Status: *Point in time view as at 05/01/2023.*
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F201 Word in s. 41(3) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), **ss. 46(3)(a)**, 61(2); S.I. 2015/813, art. 3(b)

F202 S. 41(3)(c) omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), **ss. 46(3)(b)**, 61(2); S.I. 2015/813, art. 3(b)

F203 Words in s. 41(4) substituted (1.6.2015) by Crime and Courts Act 2013 (c. 22), **ss. 46(4)**, 61(2); S.I. 2015/813, art. 3(b)

F204 S. 41(5A)(5B) inserted (20.3.2015 for specified purposes, 1.6.2015 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), **ss. 46(5)**, 61(2); S.I. 2015/813, arts. 2(a)(ii), 3(b)

F205 S. 41(7A)-(7C) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 11(2)**, 88(1); S.I. 2015/820, reg. 3(h)

F206 S. 41(7D) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 31**; S.I. 2015/820, reg. 3(q)(iii)

F207 S. 41(10) inserted (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 46(6)**, 61(2); S.I. 2015/813, art. 2(a)(iii)

Commencement Information

I36 S. 41 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 5, 10-13)

[F208 41A Restraint orders: power to retain seized property etc.

(1) A restraint order may include provision authorising the detention of any property to which it applies if the property—

(a) is seized by an appropriate officer under a relevant seizure power, or

(b) is produced to an appropriate officer in compliance with a production order under section 345.

(2) Provision under subsection (1) may, in particular—

(a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;

(b) relate to property that has already been seized or produced or to property that may be seized or produced in future.

(3) "Appropriate officer" means—

(a) an accredited financial investigator;

(b) a constable;

(c) an officer of Revenue and Customs;

F209 [(ca) an immigration officer;]

[F210 (d) a National Crime Agency officer,]

(e) a member of staff of the relevant director (within the meaning of section 352(5A)).

(4) "Relevant seizure power" means a power to seize property which is conferred by or by virtue of—

(a) section 47C,

(b) section 352, or

(c) Part 2 or 3 of the Police and Criminal Evidence Act 1984 (including as applied by order under section 114(2) of that Act).

(5) The Secretary of State may by order amend the definition of "relevant seizure power".]

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F208 S. 41A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 52(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F209 S. 41A(3)(ca) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), Sch. 21 para. 15 (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F210 S. 41A(3)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), Sch. 8 para. 112; S.I. 2013/1682, art. 3(v)

42 Application, discharge and variation

(1) A restraint order—

(a) may be made only on an application by an applicant falling within subsection (2);

(b) may be made on an ex parte application to a judge in chambers.

(2) These applicants fall within this subsection—

(a) the prosecutor;

F211(b) . . . . . .

(c) an accredited financial investigator.

(3) An application to discharge or vary a restraint order or an order under section 41(7) may be made to the Crown Court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(4) Subsections (5) to **[**F212(8)**]** apply to an application under subsection (3).

(5) The court—

(a) may discharge the order;

(b) may vary the order.

(6) If the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).

[F213(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—

(a) the proceedings are concluded by reason of a defendant's conviction for an offence being quashed,

(b) the order is in force at the time when the conviction is quashed, and

(c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.

(6B) But the court must discharge the restraint order—

(a) if the Court of Appeal declines to make an order for the defendant to be retried,

(b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or

(c) otherwise, on the conclusion of proceedings for the retrial of the defendant.**]**

[F214(7) If the condition in section 40 which was satisfied was that an investigation was started—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

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

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

(8) If the condition in section 40 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 discharge the order on the conclusion of the application.**]**

Textual Amendments

F211 S. 42(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 23, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F212 Word in s. 42(4) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 32(2)**; S.I. 2015/820, reg. 3(q)(iii)

F213 S. 42(6A)(6B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 12**, 88(1); S.I. 2015/820, reg. 3(i)

F214 S. 42(7)(8) substituted for s. 42(7) (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 32(3)**; S.I. 2015/820, reg. 3(q)(iii)

Modifications etc. (not altering text)

C17 S. 42(2)(c) modified (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 1**

Commencement Information

I37 S. 42 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

43 Appeal to Court of Appeal

(1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If an application is made under section 42(3) in relation to a restraint order or an order under section 41(7) the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application—

(a) the person who applied for the order;

(b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes is appropriate.

Commencement Information

I38 S. 43 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

44 Appeal to [F215Supreme Court]

(1) An appeal lies to the **[**F216Supreme Court**]** from a decision of the Court of Appeal on an appeal under section 43.

(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(3) On an appeal under this section the **[**F217Supreme Court**]** may—
- (a) confirm the decision of the Court of Appeal, or
- (b) make such order as it believes is appropriate.

Textual Amendments

F215 Words in s. 44 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(3)**; S.I. 2009/1604, art. 2(d)

F216 Words in s. 44(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(3)**; S.I. 2009/1604, art. 2(d)

F217 Words in s. 44(3) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(3)**; S.I. 2009/1604, art. 2(d)

Commencement Information

I39 S. 44 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F218 44A Detention of property pending appeal

(1) This section applies where—
- (a) a restraint order includes provision under section 41A authorising the detention of property, and
- (b) the restraint order is discharged under section 42(5) or 43(3)(b).

(2) This section also applies where—
- (a) a restraint order includes provision under section 41A authorising the detention of property, and
- (b) the restraint order is varied under section 42(5) or 43(3)(b) so as to omit any such provision.

(3) The property may be detained until there is no further possibility of an appeal against—
- (a) the decision to discharge or vary the restraint order, or
- (b) any decision made on an appeal against that decision.**]**

Textual Amendments

F218 S. 44A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 52(3)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F219 45 Seizure

. . . . . .

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F219 S. 45 repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), ss. 55(3), 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(a)(f) (with art. 4(1)(2))

Commencement Information

I40 S. 45 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

46 Hearsay evidence

(1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) Sections 2 to 4 of the Civil Evidence Act 1995 (c. 38) apply in relation to restraint proceedings as those sections apply in relation to civil proceedings.

(3) Restraint proceedings are proceedings—

(a) for a restraint order;

(b) for the discharge or variation of a restraint order;

(c) on an appeal under section 43 or 44.

(4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

Commencement Information

I41 S. 46 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

47 Supplementary

(1) The registration Acts—

(a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;

(b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions.

(2) The registration Acts are—

(a) the Land Registration Act 1925 (c. 21);

(b) the Land Charges Act 1972 (c. 61);

(c) the Land Registration Act 2002 (c. 9).

(3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a restraint order.

(4) The person applying for a restraint order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—

(a) the application relates, or
(b) a restraint order made in pursuance of the application relates.

Modifications etc. (not altering text)
C18 S. 47 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, **7(1)**

Commencement Information
I42 S. 47 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F220 Search and seizure powers

Textual Amendments
F220 Ss. 47A-47S and cross-heading inserted (22.11.2014 for the insertion of ss. 47A, 47G, 47S(1)-(5) for specified purposes, 1.6.2015 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 55(2)**, 116(1); S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(a)

47A Sections 47B to 47S: meaning of "appropriate officer"

(1) In sections 47B to 47S "appropriate officer" means—
(a) an officer of Revenue and Customs,
[F221 (aa) [an immigration officer;]
(b) a constable, F222...
[F223 (ba) [an SFO officer, or]
(c) an accredited financial investigator.

(2) In subsection (1)(c) the reference to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State [F224 or the Welsh Ministers] under section 453.

Textual Amendments
F221 S. 47A(1)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), **ss. 55(4)(a)**, 61(2) (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(b)
F222 Word in s. 47A(1)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 3(a)**; S.I. 2018/78, **reg. 3(aa)**
F223 S. 47A(1)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 3(b)**; S.I. 2018/78, **reg. 3(aa)**
F224 Words in s. 47A(2) inserted (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(a)**

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Modifications etc. (not altering text)

C19 S. 47A(1)(c) modified (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 2**

47B Conditions for exercise of powers

(1) An appropriate officer may exercise the power conferred by section 47C if satisfied that any of the following conditions is met.

(2) The first condition is that—

(a) a criminal investigation has been started in England and Wales with regard to an indictable offence,

(b) a person has been arrested for the offence,

(c) proceedings for the offence have not yet been started against the person in England and Wales,

(d) there **[**[F225]are reasonable grounds to suspect**]** that the person has benefited from conduct constituting the offence, and

(e) a restraint order is not in force in respect of any realisable property.

(3) The second condition is that—

(a) a criminal investigation has been started in England and Wales with regard to an indictable offence,

(b) a person has been arrested for the offence,

(c) proceedings for the offence have not yet been started against the person in England and Wales, and

(d) a restraint order is in force in respect of any realisable property.

(4) The third condition is that—

(a) proceedings for an indictable offence have been started in England and Wales and have not been concluded,

(b) there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence, and

(c) a restraint order is not in force in respect of any realisable property.

(5) The fourth condition is that—

(a) proceedings for an indictable offence have been started in England and Wales and have not been concluded, and

(b) a restraint order is in force in respect of any realisable property.

(6) The fifth condition is that—

(a) an application by the prosecutor has been made under section 19, 20, 27 or 28 and not concluded, or the officer believes that such an application is to be made, and

(b) there is reasonable cause to believe that the defendant has benefited from criminal conduct.

(7) The sixth condition is that—

(a) an application by the prosecutor has been made under section 21 and not concluded, or the officer believes that such an application is to be made, and

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(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).

(8) The seventh condition is that—

(a) an application by the prosecutor has been made under section 22 and not concluded, or the officer believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(9) The third or fourth condition is not met if the officer believes that—

(a) there has been undue delay in continuing the proceedings, or

(b) the prosecutor does not intend to proceed.

(10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—

(a) there has been undue delay in continuing the application, or

(b) the prosecutor does not intend to proceed.

(11) In relation to the first or second condition references in sections 47C to 47S to the defendant are to the person mentioned in that condition.

(12) In relation to the first or second condition section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

Textual Amendments

F225 Words in s. 47B(2)(d) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 13(1)**, 88(1); S.I. 2016/148, reg. 3(a)

47C Power to seize property

(1) On being satisfied as mentioned in section 47B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—

(a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or

(b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.

(2) But the officer may not seize—

(a) cash, or

(b) exempt property.

(3) “Cash” has the same meaning as in section 289.

(4) “Exempt property” means—

(a) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in the defendant's employment, business or vocation;

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(b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family.

(5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the defendant are to be read as references to the recipient of that gift.

Section 47B(11) is subject to this subsection.

(6) The power conferred by this section—

(a) may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and

[F226](aa) **[** where applicable, in accordance with subsection (6A) or (6B).**]**

[[F227](6A) The power conferred by this section is exercisable**]** by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).

[F228](6B) **[** The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

(a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

(b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.**]**

(7) "Relevant offence" means—

(a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 47B is met, the offence mentioned in that condition,

(b) in a case where the officer is satisfied that any of the other conditions in section 47B is met, the offence (or any of the offences) concerned.

[F229](8) **[** Relevant nationality enactment" means any enactment in—

(a) the British Nationality Act 1981,

(b) the Hong Kong Act 1985,

(c) the Hong Kong (War Wives and Widows) Act 1996,

(d) the British Nationality (Hong Kong) Act 1997,

(e) the British Overseas Territories Act 2002, or

(f) an instrument made under any of those Acts.**]**

Textual Amendments

F226 S. 47C(6)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 16(2)(a)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F227 S. 47C(6A) substituted (22.11.2014) for words by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 16(2)(b)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F228 S. 47C(6B) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 16(3)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F229 S. 47C(8) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 16(4)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

47D Search power: premises

(1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—

(a) the officer has reasonable grounds for suspecting may be found there, and

(b) if found there, the officer intends to seize under section 47C.

(2) The power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) "Premises" has the meaning given by section 23 of the Police and Criminal Evidence Act 1984.

47E Search power: people

(1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 47C.

(2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—

(a) to permit a search of any article with the person,

(b) to permit a search of the person.

(3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.

(4) A power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(5) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

47F Search power: vehicles

(1) The powers specified in subsection (4) are exercisable if—

(a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 47C, and

(b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.

(2) The powers are exercisable only if the vehicle is—

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

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(b) in any other place to which at that time people have ready access but which is not a dwelling.

(3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—

(a) that the person does not reside in the dwelling, and

(b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.

(4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 47C, require the person to—

(a) permit entry to the vehicle,

(b) permit a search of the vehicle.

(5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.

(6) A power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

47G "Appropriate approval"

(1) This section has effect for the purposes of sections 47C, 47D, 47E and 47F.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means—

(a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

[F230] (aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,]

[F231] (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,]

[F232] (ac) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office,]

(b) in relation to the exercise of a power by a constable, a senior police officer,

[F233] (ba) in relation to the exercise of a power by an accredited financial investigator who is—

(i) a member of the civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or

(ii) a member of staff of the City of London police force,

a senior police officer,]

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(c) in relation to the exercise of a power by an accredited financial investigator **[**[F234]who does not fall within any of the preceding paragraphs**]**, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State **[**[F235]or the Welsh Ministers**]** under section 453.

(4) A senior police officer means a police officer of at least the rank of inspector.

Textual Amendments

F230 S. 47G(3)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 17** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F231 S. 47G(3)(ab) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 13(2)**, 88(1); S.I. 2016/148, reg. 3(a)

F232 S. 47G(3)(ac) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 4**; S.I. 2018/78, reg. 3(aa)

F233 S. 47G(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 31(2)**, 58(1)(6); S.I. 2018/78, reg. 3(n)

F234 Words in s. 47G(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 21**; S.I. 2018/78, reg. 5(1)(e)

F235 Words in s. 47G(3)(c) inserted (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(b)**

Modifications etc. (not altering text)

C20 S. 47G(3)(c) modified (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 9**

47H Exercise of powers without judicial approval

(1) An appropriate officer must give a written report to the appointed person in any case where—

(a) the officer seizes property under section 47C without the approval of a justice of the peace, and

(b) any of the property seized is not detained for more than 48 hours.

(2) An appropriate officer must also give a written report to the appointed person in any case where—

(a) the officer exercises any of the powers conferred by sections 47D, 47E and 47F without the approval of a justice of the peace, and

(b) no property is seized under section 47C.

(3) A report under this section must give particulars of the circumstances which led the officer to believe that—

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of a justice of the peace.

(4) The appointed person means a person appointed for the purposes of this subsection by the Secretary of State.

(5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Secretary of State.

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(6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).

(7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—
  (a) any Saturday or Sunday,
  (b) Christmas Day,
  (c) Good Friday, or
  (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

47I Report by appointed person on exercise of powers

(1) As soon as possible after the end of each financial year, the person appointed under section 47H(4) must prepare a report for that year.

(2) "Financial year" means—
  (a) the period beginning with the day on which section 55 of the Policing and Crime Act 2009 comes into force and ending with the next 31 March (which is the first financial year), and
  (b) each subsequent period of twelve months beginning with 1 April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 47C, 47D, 47E and 47F are being exercised in cases where the officer who exercised them is required to give a report under section 47H.

(4) The report may make any recommendations the appointed person considers appropriate.

(5) The appointed person must send a copy of the report to the Secretary of State.

(6) The Secretary of State must—
  (a) publish any report received under subsection (5), and
  (b) lay a copy before Parliament.

(7) Before acting under subsection (6) the Secretary of State must exclude from the report any matter which the Secretary of State thinks is likely to prejudice any criminal investigation or criminal proceedings.

(8) If the Secretary of State excludes any matter from the report the Secretary of State must comply with subsection (6) in relation to the whole of the report as soon as the Secretary of State thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

47J Initial detention of seized property

(1) This section applies if an appropriate officer seizes property under section 47C.

(2) The property may be detained initially for a period of 48 hours.

(3) The period of 48 hours is to be calculated in accordance with section 47H(7).

Status: *Point in time view as at 05/01/2023.*
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47K Further detention pending making of restraint order

(1) This section applies if—
- (a) property is detained under section 47J, and
- (b) no restraint order is in force in respect of the property.

(2) If within the period mentioned in section 47J an application is made for a restraint order which includes provision under section 41A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
- (a) the decision to refuse the application, or
- (b) any decision made on an appeal against that decision.

(4) In subsection (2) the reference to the period mentioned in section 47J includes that period as extended by any order under section 47M.

47L Further detention pending variation of restraint order

(1) This section applies if—
- (a) property is detained under section 47J,
- (b) a restraint order is in force in respect of the property, and
- (c) the order does not include provision under section 41A authorising the detention of the property.

(2) If within the period mentioned in section 47J an application is made for the order to be varied so as to include provision under section 41A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
- (a) the decision to refuse the application, or
- (b) any decision made on an appeal against that decision.

47M Further detention in other cases

(1) This section applies if—
- (a) property is detained under section 47J,
- (b) no restraint order is in force in respect of the property, and
- (c) no application has been made for a restraint order which includes provision under section 41A authorising detention of the property.

(2) A magistrates' court may by order extend the period for which the property or any part of it may be detained under section 47J if satisfied that—
- (a) any of the conditions in section 47B is met (reading references in that section to the officer as references to the court),
- (b) the property or part is realisable property other than exempt property (within the meaning of section 47C(4)), and
- (c) there are reasonable grounds for suspecting that—

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(i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or

(ii) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.

(3) An application for an order may be made by—

(a) the Commissioners for Her Majesty's Revenue and Customs,

F236 [(aa) an immigration officer;]

(b) a constable,

F237 [(ba) an SFO officer,]

(c) an accredited financial investigator, or

(d) the prosecutor.

(4) If the property was seized in reliance on the first or second condition in section 47B, "the prosecutor" means a person who is to have conduct of any proceedings for the offence.

(5) An order under this section must provide for notice to be given to persons affected by it.

(6) In this section "part" includes portion.

Textual Amendments

F236 S. 47M(3)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 18** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F237 S. 47M(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 5**; S.I. 2018/78, reg. 3(aa)

Modifications etc. (not altering text)

C21 S. 47M(3)(c) modified (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 2**

47N Discharge, variation and lapse of detention order

(1) An order under section 47M may be discharged or varied.

(2) An application for variation or discharge of the order may be made by—

(a) a person mentioned in section 47M(3), or

(b) any person affected by the order.

(3) On an application under this section the court must discharge the order if—

(a) the order was made on the ground that the first or second condition in section 47B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,

(b) the order was made on the ground that the third or fourth condition in section 47B was met but proceedings for the offence mentioned in that condition have now been concluded,

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(c) the order was made on the ground that the fifth, sixth or seventh condition in section 47B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.

(4) An order made under section 47M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 41A).

47O Appeals

(1) If on an application for an order under section 47M the magistrates' court decides not to make an order, a person mentioned in subsection (3) of that section may appeal to the Crown Court against the decision.

(2) If an application is made under section 47N in relation to an order the following persons may appeal to the Crown Court in respect of the magistrates' court's decision on the application—

(a) a person mentioned in section 47M(3), or

(b) any person affected by the order.

47P Detention of property pending section 47O appeal

(1) This section applies where—

(a) an application for an order under section 47M is made within the period mentioned in section 47J, and

(b) the application is refused.

(2) This section also applies where—

(a) an order is made under section 47M extending the period for which property may be detained under section 47J, and

(b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.

(3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

47Q Hearsay evidence in detention order proceedings

(1) Evidence must not be excluded in detention order proceedings on the ground that it is hearsay (of whatever degree).

(2) Sections 2 to 4 of the Civil Evidence Act 1995 apply in relation to detention order proceedings as those sections apply in relation to civil proceedings.

(3) Detention order proceedings are proceedings—

(a) for an order under section 47M;

(b) for the discharge or variation of such an order;

(c) on an appeal under section 47O.

(4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

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(5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

47R Release of property

(1) This section applies in relation to property which—
  (a) has been seized by an appropriate officer under section 47C, and
  (b) is detained under or by virtue of any of sections 47J to 47M and 47P.

(2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.

(3) The detention condition is met for so long as—
  (a) any of the conditions in section 47B is met, and
  (b) there are reasonable grounds for the suspicion mentioned in section 47C(1).

(4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 47J to 47M and 47P.

(5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.**]**

[*[F220]Code of practice about search and seizure and detention of property*

47S Codes of practice

(1) The Secretary of State must make a code of practice in connection with—
  (a) the carrying out by appropriate officers of the functions conferred by sections 47C to 47H,
  (b) the carrying out by senior officers of their functions under section 47G, and
  (c) the detention of property under or by virtue of sections 41A, 44A and 47J to 47P.

(2) Where the Secretary of State proposes to issue a code of practice the Secretary of State must—
  (a) publish a draft,
  (b) consider any representations made about the draft,
  (c) if the Secretary of State thinks appropriate, modify the draft in the light of any such representations.

[The Secretary of State must also consult the Attorney General about the draft in its
[F238](2A) application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.**]**

(3) The Secretary of State must lay a draft of the code before Parliament.

(4) When the Secretary of State has laid a draft of the code before Parliament the Secretary of State may bring it into operation by order.

(5) The Secretary of State may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(6) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Textual Amendments

F238 S. 47S(2A) inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 6**; S.I. 2017/991, reg. 2(k)

Management receivers

48 Appointment

(1) Subsection (2) applies if—

(a) the Crown Court makes a restraint order, and

(b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).

(2) The Crown Court may by order appoint a receiver in respect of any realisable property to which the restraint order applies.

Commencement Information

I43 S. 48 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

49 Powers

(1) If the court appoints a receiver under section 48 it may act under this section on the application of the person who applied for the restraint order.

(2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to start, carry on or defend any legal proceedings in respect of the property;

(d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

Status: *Point in time view as at 05/01/2023.*
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(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.

(6) The court—

(a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(8) The court must not—

(a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

F239 **[** (8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.**]**

(9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F239 S. 49(8A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 82(1)**, 94(1); S.I. 2008/755, art. 17(1)(h) (with art. 17(3))

Modifications etc. (not altering text)

C22 S. 49(6) excluded (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, **12(3)**

Commencement Information

I44 S. 49 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement receivers

50 Appointment

(1) This section applies if—
- (a) a confiscation order is made,
- (b) it is not satisfied, and
- (c) it is not subject to appeal.

(2) On the application of the prosecutor the Crown Court may by order appoint a receiver in respect of realisable property.

Commencement Information

I45 S. 50 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

51 Powers

(1) If the court appoints a receiver under section 50 it may act under this section on the application of the prosecutor.

(2) The court may by order confer on the receiver the following powers in relation to the realisable property—
- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the court may specify;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
- (a) search for or inspect anything authorised by the court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to give possession of it to the receiver.

(6) The court—

(a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(8) The court must not—

(a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

F240 (8A) **[** Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.**]**

F241 (8B) **[** Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 10A, unless—

(a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or

(b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;

and the determination does not bind the court if paragraph (a) or (b) applies.**]**

Status: *Point in time view as at 05/01/2023.*
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(9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Textual Amendments

F240 S. 51(8A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 82(2)**, 94(1); S.I. 2008/755, art. 17(1)(h) (with art. 17(3))

F241 S. 51(8B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 4**, 88(1); S.I. 2015/820, reg. 3(a)

Modifications etc. (not altering text)

C23 S. 51(6) excluded (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, **12(3)**

Commencement Information

I46 S. 51 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Director's receivers

F242 52 Appointment

. . . . . .

Textual Amendments

F242 S. 52 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 24, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F243 53 Powers

. . . . . .

Textual Amendments

F243 S. 53 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 24, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Application of sums

54 Enforcement receivers

(1) This section applies to sums which are in the hands of a receiver appointed under section 50 if they are—

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(a) the proceeds of the realisation of property under section 51;

(b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.

(2) The sums must be applied as follows—

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;

(b) second, they must be applied in making any payments directed by the Crown Court;

(c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—

(a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and

(b) in such proportions as it directs.

(4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of subsections (3) and (4) the property concerned is—

(a) the property represented by the proceeds mentioned in subsection (1)(a);

(b) the sums mentioned in subsection (1)(b).

(6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the appropriate **[**[F244]designated officer**]** on account of the amount payable under the order.

(7) The appropriate **[**[F244]designated officer**]** is the one for the magistrates' court responsible for enforcing the confiscation order as if the amount ordered to be paid were a fine.

Textual Amendments

F244 Words in s. 54(6)(7) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 407**; S.I. 2005/910, art. 3(y)

Commencement Information

I47 S. 54 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

55 Sums received by **[**[F245]designated officer**]**

(1) This section applies if a **[**[F245]designated officer**]** receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 54 or otherwise).

(2) The **[**[F246]designated officer's**]** receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—

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(a) are payable under this subsection by virtue of section 432, but

(b) are not already paid under section 54(2)(a) **[**[F247] or 67D(2)(a)**]** .

(4) If the **[**[F245]designated officer**]** received the sums under section 54 **[**[F248] or 67D**]** he must next apply them—

(a) first, in payment of the remuneration and expenses of a receiver appointed under section 48, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 49(2)(d);

(b) second, in payment of the remuneration and expenses of **[**[F249]any receiver**]** appointed under section 50.

[[F250](c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 67B.**]**

(5) If a direction was made under section 13(6) for **[**[F251]an amount payable under a priority order (or orders)**]** to be paid out of sums recovered under the confiscation order, the **[**[F245]designated officer**]** must next apply the sums in payment of that amount.

(6) If any amount remains after the **[**[F245]designated officer**]** makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of **[**[F252]section 38 of the Courts Act 2003**]** (application of fines etc) as if it were a fine imposed by a magistrates' court.

[[F253](7) Subsection (4) does not apply in relation to the remuneration of a receiver if the receiver is a person falling within subsection (8).

(8) The following fall within this subsection—

(a) a constable,

[[F254](aa) a member of a police and crime commissioner's staff (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011),

(ab) a member of the staff of the Mayor's Office for Policing and Crime (within the meaning of that Part of that Act),

(ac) a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of that Part of that Act),**]**

(b) [F255]... a member of staff of the City of London police force,

(c) an accredited financial investigator,

(d) a member of staff of the Crown Prosecution Service,

(e) a member of staff of the Serious Fraud Office,

[F256](f) . . . . . .

(g) a member of staff of the Commissioners for Her Majesty's Revenue and Customs,

[[F257](h) a National Crime Agency officer,**]**

(i) a member of staff of any government department not mentioned above.

(9) It is immaterial for the purposes of subsection (7) whether a person falls within subsection (8) by virtue of a permanent or temporary appointment or a secondment from elsewhere.

(10) The reference in subsection (8) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.**]**

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F245 Words in s. 55 substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 408(1)**(2)**; S.I. 2005/910, art. 3(y)

F246 Words in s. 55(2) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 408(1)**(3)**; S.I. 2005/910, art. 3(y)

F247 Words in s. 55(3)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(4)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F248 Words in s. 55(4) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(5)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F249 Words in s. 55(4)(b) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(5)(b)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F250 S. 55(4)(c) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(5)(c)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F251 Words in s. 55(5) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 33**; S.I. 2015/820, reg. 3(q)(iii)

F252 Words in s. 55(6) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 408(1)**(4)**; S.I. 2005/910, art. 3(y)

F253 S. 55(7)-(10) substituted for s. 55(7) (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 51(2)**, 116(1); S.I. 2009/3096, art. 3(f)

F254 S. 55(8)(aa)-(ac) inserted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), **Sch. 16 para. 305(a)**; S.I. 2011/3019, art. 3, Sch. 1

F255 Words in s. 55(8)(b) omitted (16.1.2012) by virtue of Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), **Sch. 16 para. 305(b)**; S.I. 2011/3019, art. 3, Sch. 1

F256 S. 55(8)(f) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 22**

F257 S. 55(8)(h) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 113**; S.I. 2013/1682, art. 3(v)

Modifications etc. (not altering text)

C24 S. 55(8)(aa) applied (with modifications) (8.5.2017) by The Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017 (S.I. 2017/470), arts. 1(2), 3(2), **Sch. 1 para. 12(2)**

Commencement Information

I48 S. 55 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F258]56 Director's receivers

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Textual Amendments

F258 S. 56 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 25, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

[F259]57 Sums received by Director

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Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F259 S. 57 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 25, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Restrictions

58 Restraint orders

(1) Subsections (2) to (4) apply if a court makes a restraint order.

(2) No distress may be levied **[**[F260], and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** against any realisable property to which the order applies except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(3) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(5) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—

(a) the applicant for the restraint order, and

(b) any receiver appointed in respect of the property under section 48**[**[F261]or 50**]**.

Textual Amendments

F260 Words in s. 58(2) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 143** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F261 Words in s. 58(6)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 26**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I49 S. 58 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

59 Enforcement receivers

(1) Subsections (2) to (4) apply if a court makes an order under section 50 appointing a receiver in respect of any realisable property.

(2) No distress may be levied **[**[F262], and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** against the property except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(5) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 50 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
   (a) the prosecutor, and
   (b) the receiver (if the order under section 50 has been made).

Textual Amendments

F262 Words in s. 59(2) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 144** (with s. 89); S.I. 2014/768, art. 2(1)(b)

Commencement Information

I50 S. 59 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F263]60 Director's receivers

. . . . . .

Textual Amendments

F263 S. 60 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 27, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Receivers: further provisions

61 Protection

If a receiver appointed under section 48**[**[F264]or 50**]**—
   (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.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F264 Words in s. 61 substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 28**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I51 S. 61 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

62 Further applications

(1) This section applies to a receiver appointed under section 48**[**[F265]or 50**]**.

(2) The receiver may apply to the Crown Court for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the Crown Court—

(a) any person affected by action taken by the receiver;

(b) any person who may be affected by action the receiver proposes to take.

(4) On an application under this section the court may make such order as it believes is appropriate.

Textual Amendments

F265 Words in s. 62(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 29**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I52 S. 62 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

63 Discharge and variation

(1) The following persons may apply to the Crown Court to vary or discharge an order made under any of sections 48 **[**[F266]to 51 **]**—

(a) the receiver;

(b) the person who applied for the order [F267]...;

(c) any person affected by the order.

(2) On an application under this section the court—

(a) may discharge the order;

(b) may vary the order.

(3) But in the case of an order under section 48 or 49—

(a) if the condition in section 40 which was satisfied was that proceedings were started or an application was made, the court must discharge 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 discharge 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).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F266 Words in s. 63(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 30(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F267 Words in s. 63(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 30(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I53 S. 63 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

64 Management receivers: discharge

(1) This section applies if—

(a) a receiver stands appointed under section 48 in respect of realisable property (the management receiver), and

(b) the court appoints a receiver under section 50 [F268]....

(2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 49.

[F269](3) . . . . . .

(4) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 49(2)(d).

(5) If the management receiver complies with an order under subsection (2) he is discharged—

(a) from his appointment under section 48;

(b) from any obligation under this Act arising from his appointment.

(6) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

Textual Amendments

F268 Words in s. 64(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 31(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F269 S. 64(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 31(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I54 S. 64 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

65 Appeal to Court of Appeal

(1) If on an application for an order under any of sections 48 to 51 [F270]... the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the court makes an order under any of sections 48 to 51 [F271]..., the following persons may appeal to the Court of Appeal in respect of the court's decision—

Status: *Point in time view as at 05/01/2023.*
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(a) the person who applied for the order;
(b) any person affected by the order.

(3) If on an application for an order under section 62 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the court makes an order under section 62, the following persons may appeal to the Court of Appeal in respect of the court's decision—
(a) the person who applied for the order;
(b) any person affected by the order;
(c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 63—
(a) the person who applied for the order in respect of which the application was made [F272]...;
(b) any person affected by the court's decision;
(c) the receiver.

(6) On an appeal under this section the Court of Appeal may—
(a) confirm the decision, or
(b) make such order as it believes is appropriate.

Textual Amendments

F270 Words in s. 65(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 32(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F271 Words in s. 65(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 32(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F272 Words in s. 65(5)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 32(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I55 S. 65 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

66 Appeal to [[F273]Supreme Court]

(1) An appeal lies to the **[**[F274]Supreme Court**]** from a decision of the Court of Appeal on an appeal under section 65.

(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(3) On an appeal under this section the **[**[F275]Supreme Court**]** may—
(a) confirm the decision of the Court of Appeal, or
(b) make such order as it believes is appropriate.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F273 Words in S. 66 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(3)**; S.I. 2009/1604, art. 2(d)

F274 Words in s. 66(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(3)**; S.I. 2009/1604, art. 2(d)

F275 Words in s. 66(3) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(3)**; S.I. 2009/1604, art. 2(d)

Commencement Information

I56 S. 66 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

*Seized money **[**F276 and personal property**]***

Textual Amendments

F276 Words in s. 67 cross-heading inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(3)**, 116(1); S.I. 2015/983, art. 2(2)(a)

67 Seized money

(1) This section applies to money which—

(a) is held by a person, and

(b) is held in an account maintained by him with a bank or a building society.

(2) This section also applies to money which is held by a person and which—

[F277(a) has been seized under a relevant seizure power by a constable or another person lawfully exercising the power, and

(b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.**]**

[But this section applies to money only so far as the money is free property.**]**
F278(2A)

F279(3) . . . . . .

[F280(5) If—

(a) a confiscation order is made against a person holding money to which this section applies, and

(b) a receiver has not been appointed under section 50 in relation to the money,

a magistrates' court may order the **[**F281appropriate person**]** to pay the money to the designated officer for the court on account of the amount payable under the confiscation order.**]**

[**[**F283Where this section applies to money which is held in an account maintained with
F282(5A) a bank or building society,**]** a person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.

(5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates' court—

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(a) may make an order under subsection (5) only if the extent of the person's interest in the money has been determined under section 10A, and

(b) must have regard to that determination in deciding what is the appropriate order to make.**]**

(6) If a bank or building society fails to comply with an order under subsection (5)—

(a) the magistrates' court may order it to pay an amount not exceeding £5,000, and

(b) for the purposes of the Magistrates' Courts Act 1980 (c. 43) the sum is to be treated as adjudged to be paid by a conviction of the court.

(7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)(a).

F284 **[** The Secretary of State may by order amend this section so that it applies **[**F285by virtue (7A) of subsection (1)**]** not only to money held in an account maintained with a bank or building society but also to—

(a) money held in an account maintained with a financial institution of a specified kind, or

(b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.**]**

F286 **[** In this section—

(8) "appropriate person" means—

(a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;

(b) in any other case, the person on whose authority the money is detained;

"bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;

"building society" has the same meaning as in the Building Societies Act 1986;

"relevant seizure power" means a power to seize money conferred by or by virtue of—

(a) a warrant granted under any enactment or rule of law, or

(b) any enactment, or rule of law, under which the authority of a warrant is not required.**]**

F287 **[** In the definition of "bank" in subsection (8), "authorised deposit-taker" means—

(9) (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;

(b) a person who—

(i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and

(ii) accepts deposits;

F288 (c) . . . . . .

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(10) A reference in subsection (9) to a person [F289]... with permission to accept deposits does not include a person [F289]... with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.**]**

Textual Amendments

F277 S. 67(2)(a)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(2)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F278 S. 67(2A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(3)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F279 S. 67(3) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), ss. 26(4), 58(1)(6); S.I. 2018/78, reg. 3(k)

F280 S. 67(5) substituted for s. 67(4)(5) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 14(1)**, 88(1); S.I. 2015/820, reg. 3(j)

F281 Words in s. 67(5) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(5)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F282 S. 67(5A)(5B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 14(2)**, 88(1); S.I. 2015/820, reg. 3(j)

F283 Words in s. 67(5A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(6)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F284 S. 67(7A)(7B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 14(3)**, 88(1); S.I. 2015/820, reg. 3(j)

F285 Words in s. 67(7A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(7)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F286 S. 67(8) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(8)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F287 S. 67(9)(10) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 26(9)**, 58(1)(6); S.I. 2018/78, reg. 3(k)

F288 S. 67(9)(c) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F289 Words in s. 67(10) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I57 S. 67 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F290]**67A Seized personal property**

(1) This section applies to personal property which is held by a person and which—

(a) has been seized by an appropriate officer under a relevant seizure power, or

(b) has been produced to an appropriate officer in compliance with a production order under section 345.

[[F291](3) If—

(a) a confiscation order is made against the person by whom the property is held, and

(b) a receiver has not been appointed under section 50 in relation to the property,

a magistrates' court may by order authorise an appropriate officer to realise the property.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) In this section "appropriate officer" and "relevant seizure power" have the same meaning as in section 41A.

Textual Amendments

F290 Ss. 67A-67D inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F291 S. 67A(3) substituted for s. 67A(2)(3) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 14(4)**, 88(1); S.I. 2015/820, reg. 3(j)

67B Costs of storage and realisation

(1) This section applies if a magistrates' court makes an order under section 67A.

(2) The court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—

(a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;

(b) realising the property.

(3) If the court makes a determination under this section the appropriate officer is entitled to payment of the amount under section 55(4).

(4) A determination under this section may be made on the same occasion as the section 67A order or on any later occasion; and more than one determination may be made in relation to any case.

(5) In this section "appropriate officer" has the same meaning as in section 41A.

Textual Amendments

F290 Ss. 67A-67D inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

67C Sections 67A and 67B: appeals

(1) If a magistrates' court decides not to make an order under section 67A, an appropriate officer may appeal to the Crown Court.

(2) If a magistrates' court makes an order under section 67A, a person affected by the order may appeal to the Crown Court.

(3) But the person mentioned in section 67A(2)(a) may not appeal.

(4) An appropriate officer may appeal to the Crown Court against—

(a) a determination made by a magistrates' court under section 67B;

(b) a decision by a magistrates' court not to make a determination under that section.

(5) In this section "appropriate officer" has the same meaning as in section 41A.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F290 Ss. 67A-67D inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

67D Proceeds of realisation

(1) This section applies to sums which—

(a) are in the hands of an appropriate officer, and

(b) are the proceeds of the realisation of property under section 67A.

(2) The sums must be applied as follows—

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;

(b) second, they must be applied in making any payments directed by the magistrates' court or the Crown Court;

(c) third, they must be paid to the appropriate designated officer on account of the amount payable under the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—

(a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or the Crown Court directs, and

(b) in such proportions as it directs.

(4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it.

(5) If the magistrates' court has made a direction under subsection (2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.

(6) In this section—

"appropriate officer" has the same meaning as in section 41A;

"appropriate designated officer" means the designated officer for the magistrates' court which, by virtue of section 35, is responsible for enforcing the confiscation order as if it were a fine.**]**

Textual Amendments

F290 Ss. 67A-67D inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 58(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

Status: *Point in time view as at 05/01/2023.*
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Financial investigators

68 Applications and appeals

(1) Subsections (2) and (3) apply to—

(a) an application under section 41, 42, 48, 49 or 63;

(b) an appeal under section 43, 44, 65 or 66.

(2) An accredited financial investigator must not make such an application or bring such an appeal unless he falls within subsection (3).

(3) An accredited financial investigator falls within this subsection if he is one of the following or is authorised for the purposes of this section by one of the following—

(a) a police officer who is not below the rank of superintendent,

(b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank,

(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F292]or the Welsh Ministers**]** under section 453.

(4) If such an application is made or appeal brought by an accredited financial investigator any subsequent step in the application or appeal or any further application or appeal relating to the same matter may be taken, made or brought by a different accredited financial investigator who falls within subsection (3).

(5) If—

(a) an application for a restraint order is made by an accredited financial investigator, and

(b) a court is required under section 58(6) to give the applicant for the order an opportunity to be heard,

the court may give the opportunity to a different accredited financial investigator who falls within subsection (3).

Textual Amendments

F292 Words in s. 68(3)(c) inserted (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(c)**

Modifications etc. (not altering text)

C25 S. 68(3)(c) modified (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 10**

Commencement Information

I58 S. 68 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Exercise of powers

69 Powers of court and receiver [[F293]etc.]

(1) This section applies to—

Status: *Point in time view as at 05/01/2023.*
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(a) the powers conferred on a court by sections 41 to **[**[F294]59 **]** and sections 62 to **[**[F295]67D**]** ;

(b) the powers of a receiver appointed under section 48**[**[F296]or 50**]**.

[F297]**[** (c) the powers conferred on appropriate officers by sections 47C to 47L;

(d) the powers conferred on senior officers by section 47G.**]**

(2) The powers—

(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;

(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;

(c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;

(d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—

(a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;

(b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;

(c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.

Textual Amendments

F293 Word in s. 69 heading inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 55(4)(b)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F294 Word in s. 69(1)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 34(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F295 Word in s. 69(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 67**; S.I. 2015/983, arts. 2(2)(e), 3(n)

F296 Words in s. 69(1)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 34(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F297 S. 69(1)(c)(d) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 55(4)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a)

Commencement Information

I59 S. 69 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Committal

70 Committal by magistrates' court

(1) This section applies if—

(a) a defendant is convicted of an offence by a magistrates' court, and

(b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 6.

(2) In such a case the magistrates' court—

(a) must commit the defendant to the Crown Court in respect of the offence, and

(b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if—

(a) the defendant has been convicted of it by the magistrates' court or any other court, and

(b) the magistrates' court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences—

(a) section 6 applies accordingly, and

(b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 71.

(5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under **[**[F298]section 14(2) of the Sentencing Code**]** (offences triable either way) **[**[F299]or under **[**[F300]section 16(2) **[**[F301]or 16A(2)**]** of that Code**]** (committal of child or young person)**]** the court must state whether it would have done so.

(6) A committal under this section may be in custody or on bail.

Textual Amendments

F298 Words in s. 70(5) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 195(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F299 Words in s. 70(5) inserted (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 3 para. 75(4)**; S.I. 2012/1320, art. 4(1)(c)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(2)(3) (with arts. 3, 4)

F300 Words in s. 70(5) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 195(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F301 Words in s. 70(5) inserted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 19**

Commencement Information

I60 S. 70 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

71 Sentencing by Crown Court

(1) If a defendant is committed to the Crown Court under section 70 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 6).

(2) In the case of an offence in respect of which the magistrates' court has stated under section 70(5) that it would have committed the defendant for sentence, the Crown Court—

(a) must inquire into the circumstances of the case, and

(b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.

(3) In the case of any other offence the Crown Court—

(a) must inquire into the circumstances of the case, and

(b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

Commencement Information

I61 S. 71 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Compensation

72 Serious default

(1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.

(2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.

(3) The first condition is also satisfied if proceedings for an offence are started against a person and—

(a) they do not result in his conviction for the offence, or

(b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.

(4) If subsection (2) applies the second condition is that—

(a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and

(b) the investigation would not have continued if the default had not occurred.

(5) If subsection (3) applies the second condition is that—

(a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and

(b) the proceedings would not have been started or continued if the default had not occurred.

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(6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.

(7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.

(8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.

(9) Compensation under this section is payable to the applicant and—

(a) if the person in default was or was acting as a member of a police force, the compensation is payable out of the police fund from which the expenses of that force are met;

(b) if the person in default was a member of the Crown Prosecution Service or was acting on its behalf, the compensation is payable by the Director of Public Prosecutions;

[F302(ba) if the person in default was a **[**F303National Crime Agency officer**]**, the compensation is payable by **[**F304the National Crime Agency**]**;**]**

(c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;

F305(d) . . . . . .

(e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.

[F306(ea) if the person in default was an immigration officer, the compensation is payable by the Secretary of State;**]**

[F307(f) if the person in default was an accredited financial investigator and none of paragraphs (a) to (e) apply, the compensation is payable in accordance with paragraph (a), (c) **[**F308, (da)**]** or (e) of section 302(7A) (as the case may require).**]**

Textual Amendments

F302 S. 72(9)(ba) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 61(2)(a)**, 116(1); S.I. 2009/3096, art. 3(g)

F303 Words in s. 72(9)(ba) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 114(a)**; S.I. 2013/1682, art. 3(v)

F304 Words in s. 72(9)(ba) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 114(b)**; S.I. 2013/1682, art. 3(v)

F305 S. 72(9)(d) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 23**

F306 S. 72(9)(ea) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 19** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

F307 S. 72(9)(f) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 61(2)(b)**, 116(1); S.I. 2009/3096, art. 3(g)

F308 Word in s. 72(9)(f) inserted (25.1.2018) by Tax Collection and Management (Wales) Act 2016 (anaw 6), ss. 186(1)(2), 194(2); S.I. 2018/33, **art. 2(j)**

Commencement Information

I62 S. 72 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

73 Order varied or discharged

(1) This section applies if—

(a) the court varies a confiscation order under section 29 or discharges one under section 30, and

(b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.

(2) The court may order the payment of such compensation as it believes is just.

(3) Compensation under this section is payable—

(a) to the applicant;

(b) by the Lord Chancellor.

Commencement Information

I63 S. 73 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement abroad

74 Enforcement abroad

(1) This section applies if—

(a) any of the conditions in section 40 is satisfied,

(b) the prosecutor [F309]... believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and

(c) the prosecutor [F310]... sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—

(a) any person is prohibited from dealing with realisable property;

(b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—

(a) that property has been realised in pursuance of a request under subsection (3),

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(b) the date of realisation, and
(c) the proceeds of realisation.

(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Textual Amendments

F309 Words in s. 74(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 35(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F310 Words in s. 74(1)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 35(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I64 S. 74 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 5, 10-13)

Interpretation

75 Criminal lifestyle

(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—
(a) it is specified in Schedule 2;
(b) it constitutes conduct forming part of a course of criminal activity;
(c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—
(a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
(b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.

(4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.

(5) Relevant benefit for the purposes of subsection (2)(b) is—
(a) benefit from conduct which constitutes the offence;
(b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;

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(c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).

(6) Relevant benefit for the purposes of subsection (2)(c) is—

(a) benefit from conduct which constitutes the offence;

(b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).

(7) The Secretary of State may by order amend Schedule 2.

(8) The Secretary of State may by order vary the amount for the time being specified in subsection (4).

Commencement Information

I65 S. 75 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with art. 7) (as amended (6.3.2003) by S.I. 2003/531, art. 3)

76 Conduct and benefit

(1) Criminal conduct is conduct which—

(a) constitutes an offence in England and Wales, or

(b) would constitute such an offence if it occurred in England and Wales.

(2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—

(a) whether conduct occurred before or after the passing of this Act;

(b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

(3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs—

(a) conduct which constitutes the offence or offences concerned;

(b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;

(c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.

(4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.

(7) If a person benefits from conduct his benefit is the value of the property obtained.

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Commencement Information
I66 S. 76 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with art. 9)

77 Tainted gifts

(1) Subsections (2) and (3) apply if—
  (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
  (b) a court has decided that the defendant has a criminal lifestyle.

(2) A gift is tainted if it was made by the defendant at any time after the relevant day.

(3) A gift is also tainted if it was made by the defendant at any time and was of property—
  (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
  (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.

(4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.

(5) A gift is tainted if it was made by the defendant at any time after—
  (a) the date on which the offence concerned was committed, or
  (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.

(6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.

(7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(8) A gift may be a tainted gift whether it was made before or after the passing of this Act.

(9) The relevant day is the first day of the period of six years ending with—
  (a) the day when proceedings for the offence concerned were started against the defendant, or
  (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

Commencement Information
I67 S. 77 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

78 Gifts and their recipients

(1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.

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(2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
  (a) whose numerator is the difference between the two values mentioned in subsection (1), and
  (b) whose denominator is the value of the property at the time of the transfer.

(3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

Commencement Information
I68 S. 78 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

79 Value: the basic rule

(1) This section applies for the purpose of deciding the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).

(4) The provisions are—
  (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
  (b) section 78 of the Criminal Justice Act 1988 (c. 33);
  (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
  (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(5) This section has effect subject to sections 80 and 81.

Commencement Information
I69 S. 79 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

80 Value of property obtained from conduct

(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.

(2) The value of the property at the material time is the greater of the following—
  (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
  (b) the value (at the material time) of the property found under subsection (3).

(3) The property found under this subsection is as follows—

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(a) if the person holds the property obtained, the property found under this subsection is that property;
(b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;
(c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 79.

Commencement Information
I70 S. 80 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

81 Value of tainted gifts

(1) The value at any time (the material time) of a tainted gift is the greater of the following—
(a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
(b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is as follows—
(a) if the recipient holds the property given, the property found under this subsection is that property;
(b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
(c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 79.

Commencement Information
I71 S. 81 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

82 Free property

[Property is free unless it falls within subsection (2) or (3).**]**
[F311](1)

[**[**[F313]Property falls within this subsection if**]** an order is in force in respect of it under [F312](2)**]** any of these provisions—
(a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);

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(b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);

(c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);

(d) section 143 of **[**[F314]the Powers of Criminal Courts (Sentencing) Act 2000 or Chapter 4 of Part 7 of the Sentencing Code**]** (deprivation orders);

(e) section 23 **[**[F315], 23A**]** or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);

[F316]**[**(ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001;**]**

(f) section **[**[F317]245A, **]** 246, **[**[F318]255A, 256,**]** 266, 295(2) **[**[F319], 298(2), 303L(1), 303O(3), 303R(3), 303Z3 or 303Z14(4)**]** of this Act.

[F320]**[** (3) Property falls within this subsection if—

(a) it has been forfeited in pursuance of a forfeiture notice under section 297A **[**[F321]or an account forfeiture notice under section 303Z9**]**;

(b) it is detained under section 297C **[**[F322], 297D **[**[F323], 298(4) or 303O(9)**]]**.**]**

[F324]**[**(c) it is the forfeitable property in relation to an order under section 303Q(1).**]**

[F325]**[**(d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

(e) it is detained under paragraph 5B, 5C, 9A or 10G(7) of that Schedule;

(f) it is the forfeitable property in relation to an order under paragraph 10I(1) of that Schedule.**]**

Textual Amendments

F311 S. 82(1) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 101(2)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F312 S. 82(2): s. 82 renumbered as s. 82(2) (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 101(3)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F313 Words in s. 82(2) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 101(4)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F314 Words in s. 82(2)(d) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 196** (with Sch. 27); S.I. 2020/1236, reg. 2

F315 Word in s. 82(e) inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), s. 100(5), **Sch. 3 para. 7(3)** (with s. 101(2)); S.I. 2009/1256, art. 2(c)

F316 S. 82(2)(ea) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F317 Word in s. 82(f) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 5(a)**; S.I. 2005/3136, art. 3(c)

F318 Words in s. 82(f) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 5(b)**; S.I. 2005/3136, art. 3(c)

F319 Words in s. 82(2)(f) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 22(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F320 S. 82(3) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 101(5)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F321 Words in s. 82(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 22(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F322 Words in s. 82(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(2)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F323 Words in s. 82(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 22(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F324 S. 82(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 22(3)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F325 S. 82(3)(d)-(f) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(2)(c)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

Commencement Information

I72 S. 82 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

83 Realisable property

Realisable property is—

(a) any free property held by the defendant;

(b) any free property held by the recipient of a tainted gift.

Commencement Information

I73 S. 83 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

84 Property: general provisions

(1) Property is all property wherever situated and includes—

(a) money;

(b) all forms of real or personal property;

(c) things in action and other intangible or incorporeal property.

(2) The following rules apply in relation to property—

(a) property is held by a person if he holds an interest in it;

(b) property is obtained by a person if he obtains an interest in it;

(c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;

(d) references to property held by a person include references to property vested in his trustee in bankruptcy **[**[F326]or liquidator or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016), of his estate;**]**

(e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;

(f) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

Textual Amendments

F326 Words in s. 84(2)(d) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(2)**

Modifications etc. (not altering text)

C26 S. 84(2)(a)(c)-(g) applied (1.1.2006) by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181), arts. 1, **49(3)**

C27 S. 84(2)(c)-(g) applied (1.1.2006) by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181), arts. 1, **49(3)**

Commencement Information

I74 S. 84 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

85 Proceedings

(1) Proceedings for an offence are started—

(a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (c. 43) in respect of the offence;

[[F327](aa) when a **[**[F328]relevant prosecutor**]** issues a written charge and requisition **[**[F329]or single justice procedure notice**]** in respect of the offence;**]**

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) in a case falling within subsection (2)(b) of that section (preferment by Court of Appeal or High Court judge) **[**[F330]or subsection (2)(ba) of that section (preferment by Crown Court judge following approval of deferred prosecution agreement)**]**.

(2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.

(3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.

(4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned.

(5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded—

(a) when the order is satisfied or discharged, or

(b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply—

(a) if an application for leave to appeal under section 31(2) is refused, the proceedings are concluded when the decision to refuse is made;

(b) if the time for applying for leave to appeal under section 31(2) expires without an application being made, the proceedings are concluded when the time expires;

(c) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and an application for leave to appeal under section 33 is refused, the proceedings are concluded when the decision to refuse is made;

(d) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 33 expires without an application being made, the proceedings are concluded when the time expires;

(e) if on appeal under section 31(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 33 the **[**[F331]Supreme Court**]** confirms the Court of Appeal's decision, the proceedings are concluded when the **[**[F331]Supreme Court**]** confirms the decision;

(f) if on appeal under section 31(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision;

(g) if on appeal under section 33 the **[**[F331]Supreme Court**]** directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision.

[[F332](7) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored for the purposes of subsection (6).**]**

(8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

[In this section **[**[F334]"relevant prosecutor"**]**, "requisition" **[**[F335], "single justice procedure [F333](9) notice"**]** and "written charge" have the same meaning as in section 29 of the Criminal Justice Act 2003.**]**

Textual Amendments

F327 S. 85(1)(aa) inserted (1.10.2007) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 15(2)**; S.I. 2007/2874, art. 2(1)(4)

F328 Words in s. 85(1)(aa) substituted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(2)(a)**; S.I. 2015/778, art. 3, Sch. 1 para. 77

F329 Words in s. 85(1)(aa) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(2)(b)**; S.I. 2015/778, art. 3, Sch. 1 para. 77

F330 Words in s. 85(1)(c) inserted (24.2.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 17 para. 38** (with Sch. 17 para. 39); S.I. 2014/258, art. 2(b)

F331 Words in s. 85(6) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(4)**; S.I. 2009/1604, art. 2(d)

F332 S. 85(7) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 68**; S.I. 2015/983, arts. 2(2)(e), 3(n)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F333 S. 85(9) inserted (1.10.2007) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 15(3)**; S.I. 2007/2874, art. 2(1)(4)

F334 Words in s. 85(9) substituted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(3)(a)**; S.I. 2015/778, art. 3, Sch. 1 para. 77

F335 Words in s. 85(9) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 11 para. 18(3)(b)**; S.I. 2015/778, art. 3, Sch. 1 para. 77

Commencement Information

I75 S. 85 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

86 Applications

(1) An application under section 19, 20, 27 or 28 is concluded—

(a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;

(b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

(2) An application under section 21 or 22 is concluded—

(a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;

(b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

Commencement Information

I76 S. 86 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

87 Confiscation orders

(1) A confiscation order is satisfied when no amount is due under it.

[The "amount payable" under a confiscation order, where part of that amount has been [F336](1A) paid, means the amount that remains to be paid.**]**

(2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed[F337]....

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F336 S. 87(1A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 5(3)**, 88(1); S.I. 2015/820, reg. 3(b)

F337 Words in s. 87(2) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), Sch. 7 para. 69, **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(e)(f), 3(n)

Commencement Information

I77 S. 87 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F338 87A No further possibility of appeal

(1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—

(a) an appeal against a decision of a court, or

(b) an appeal on which an order of a court could be varied or quashed.

(2) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.**]**

Textual Amendments

F338 S. 87A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 70**; S.I. 2015/983, arts. 2(2)(e), 3(n)

88 Other interpretative provisions

(1) A reference to the offence (or offences) concerned must be construed in accordance with section 6(9).

(2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

(3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).

(4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.

F339(5) . . . . . .

(6) The following paragraphs apply to references to orders—

(a) a confiscation order is an order under section 6;

(b) a restraint order is an order under section 41.

(7) Sections 75 to 87 and this section apply for the purposes of this Part.

Textual Amendments

F339 S. 88(5) repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C28 S. 88(5) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), **ss. 1**, 5(2)(3); S.I. 2012/1236, reg. 2

Commencement Information

I78 S. 88 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

General

89 Procedure on appeal to the Court of Appeal

(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.

(2) Subject to rules of court made under section 53(1) of the **[**[F340]Senior Courts Act 1981**]** (c. 54) (distribution of business between civil and criminal divisions) the criminal division of the Court of Appeal is the division—

(a) to which an appeal to that Court under this Part is to lie, and

(b) which is to exercise that Court's jurisdiction under this Part.

(3) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (c. 19) (subject to any specified modifications).

[F341]**[** (4) Subject to any rules made under section 91, the costs of and incidental to all proceedings on an appeal to the criminal division of the Court of Appeal under—

[F342]**[** (za) section 31(4) (appeals against determinations under section 10A),**]**

(a) section 43(1) or (2) (appeals against orders made in restraint proceedings), or

(b) section 65 (appeals against, or relating to, the making of receivership orders),

are in the discretion of the court.

(5) Such rules may in particular make provision for regulating matters relating to the costs of those proceedings, including prescribing scales of costs to be paid to legal or other representatives.

(6) The court shall have full power to determine by whom and to what extent the costs are to be paid.

(7) In any proceedings mentioned in subsection (4), the court may—

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with rules under section 91.

(8) In subsection (7) "wasted costs" means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

(9) "Legal or other representative", in relation to a party to proceedings means any person exercising a right of audience or right to conduct litigation on his behalf.**]**

Textual Amendments

F340 Words in Act substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, art. 2(d)

F341 S. 89(4)-(9) inserted (20.11.2003) by Courts Act 2003 (c. 39), **ss. 94(2)**(3), 110(2)

F342 S. 89(4)(za) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 34**; S.I. 2015/820, reg. 3(q)(iii)

Commencement Information

I79 S. 89 in force for certain purposes at 30.12.2002 by S.I. 2002/3015, **art. 2**, Sch.

I80 S. 89 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

90 Procedure on appeal to the [F343Supreme Court]

(1) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal) does not prevent an appeal to the **[**F344Supreme Court**]** under this Part.

(2) In relation to appeals to the **[**F344Supreme Court**]** under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Textual Amendments

F343 Words in s. 90 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(5)**; S.I. 2009/1604, art. 2(d)

F344 Words in s. 90(1)(2) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(5)**; S.I. 2009/1604, art. 2(d)

Commencement Information

I81 S. 90 in force for certain purposes (30.12.2002) by S.I. 2002/3015, **art. 2**, Sch.

I82 S. 90 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

91 Crown Court Rules

In relation to—

(a) proceedings under this Part, or

(b) receivers appointed under this Part,

[F345Criminal Procedure Rules**]** may make provision corresponding to provision in Civil Procedure Rules.**]**

Textual Amendments

F345 Words in s. 91 substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 410**; S.I. 2004/2066, art. 2(c)(xxii) (with art. 3)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I83 S. 91 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

PART 3

CONFISCATION: SCOTLAND

Modifications etc. (not altering text)

C29 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)**

C30 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.

C31 Pt. 3 applied (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 1 para. 6(5)**

C32 Pt. 3 applied (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 1 para. 11(5)**

C33 Pt. 3 applied (12.2.2019 for specified purposes, 13.8.2020 in so far as not already in force) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(g), **Sch. 3 para. 39(6)** (with s. 25(9)); S.I. 2020/792, reg. 2(g)

Confiscation orders

92 Making of order

(1) The court must act under this section where the following three conditions are satisfied.

(2) The first condition is that an accused falls within either of the following paragraphs—
- (a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or
- (b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.

(3) The second condition is that the prosecutor asks the court to act under this section.

(4) The third condition is that the court decides to order some disposal in respect of the accused; and an absolute discharge is a disposal for the purpose of this subsection.

(5) If the court acts under this section it must proceed as follows—
- (a) it must decide whether the accused has a criminal lifestyle;
- (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
- (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(6) If the court decides under subsection (5)(b) or (c) that the accused has benefited from the conduct referred to—
- (a) it must decide the recoverable amount, and
- (b) it must make an order (a confiscation order) requiring him to pay that amount.

Status: *Point in time view as at 05/01/2023.*
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[[F346]Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the accused to pay the recoverable amount.**]**

(7) But the court must treat the duty in subsection (6) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the accused in respect of loss, injury or damage sustained in connection with the conduct.

(8) Before making an order under this section the court must take into account any representations made to it by any person whom the court thinks is likely to be affected by the order.

(9) The standard of proof required to decide any question arising under subsection (5) or (6) is the balance of probabilities.

(10) The first condition is not satisfied if the accused is unlawfully at large (but section 111 may apply).

(11) For the purposes of any appeal or review, an order under this section is a sentence.

(12) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

(13) In this section and sections 93 to 118 "the court" means the High Court of Justiciary**[**[F347], the Sheriff Appeal Court**]** or the sheriff.

Textual Amendments

F346 Words in s. 92(6) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 35**; S.S.I. 2016/11, reg. 2(j)

F347 Words in s. 92(13) inserted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 3** (with art. 4(2))

Commencement Information

I84 S. 92 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with arts. 3(1), 5, 7)

93 Recoverable amount

(1) The recoverable amount for the purposes of section 92 is an amount equal to the accused's benefit from the conduct concerned.

(2) But if the accused shows that the available amount is less than that benefit the recoverable amount is—

(a) the available amount, or

(b) a nominal amount, if the available amount is nil.

(3) But if section 92(7) applies the recoverable amount is such amount as—

(a) the court believes is just, but

(b) does not exceed the amount found under subsection (1) or (2) (as the case may be).

(4) In calculating the accused's benefit from the conduct concerned for the purposes of subsection (1), **[**[F348]the following must be ignored—

(a) any property in respect of which a recovery order is in force under section 266,

Status: *Point in time view as at 05/01/2023.*
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(b) any property which has been forfeited in pursuance of a forfeiture notice under section 297A **[**[F349]or an account forfeiture notice under section 303Z9**]**, [F350]...

(c) any property in respect of which a forfeiture order is in force under section 298(2)**][**[F351], 303O(3), 303R(3) or 303Z14(4)**][**[F352], and

(d) any property which is the forfeitable property in relation to an order under section 303Q(1).**]**

(5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

Textual Amendments

F348 Words in s. 93(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 102**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F349 Words in s. 93(4)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 23(a)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

F350 Word in s. 93(4)(b) omitted (27.4.2017 for specified purposes, 16.4.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), Sch. 5 para. 23(b); S.I. 2018/78, reg. 5(3)(c)

F351 Words in s. 93(4)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 23(c)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

F352 S. 93(4)(d) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 23(d)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

Commencement Information

I85 S. 93 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

94 Accused's benefit

(1) If the court is acting under section 92 this section applies for the purpose of—

(a) deciding whether the accused has benefited from conduct, and

(b) deciding his benefit from the conduct.

(2) The court must take account of—

(a) conduct occurring up to the time it makes its decision;

(b) property obtained up to that time.

(3) Subsection (4) applies if—

(a) the conduct concerned is general criminal conduct,

(b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the accused, and

(c) his benefit for the purposes of that order was benefit from his general criminal conduct.

(4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—

(a) the amount ordered to be paid under each confiscation order previously made against the accused;

(b) the amount ordered to be paid under each confiscation order previously made against him under—

(i) the Drug Trafficking Offences Act 1986 (c. 32);

(ii) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);

(iii) Part 6 of the Criminal Justice Act 1988 (c. 33);

(iv) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I.17));

(v) Part 1 of the Drug Trafficking Act 1994 (c. 37);

(vi) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);

(vii) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/ 1299 (N.I.9)); or

(viii) Part 2 or 4 of this Act.

(6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(7) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (5)(b) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

Commencement Information

I86 S. 94 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

95 Available amount

(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—

(a) the total of the values (at the time the confiscation order is made) of all the free property then held by the accused minus the total amount payable in pursuance of obligations which then have priority, and

(b) the total of the values (at that time) of all tainted gifts.

(2) An obligation has priority if—

(a) it is an obligation of the accused to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction for an offence and at any time before the confiscation order is made, or

(b) it is an obligation of the accused to pay a sum which would be—

(i) a preferred debt if the accused's estate were sequestrated on the date of the confiscation order, or

(ii) a preferential debt if his winding up were ordered on that date.

(3) In subsection (2)—

"preferred debt" has the meaning given by section **[**[F353]129(2) of the Bankruptcy (Scotland) Act 2016**]**;

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

"preferential debt" has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

Textual Amendments

F353 Words in s. 95(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(3)**

Commencement Information

I87 S. 95 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

96 Assumptions to be made in case of criminal lifestyle

(1) Where the court decides under section 92 that the accused has a criminal lifestyle it must make the following four assumptions for the purpose of—
  (a) deciding whether he has benefited from his general criminal conduct, and
  (b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the accused at any time after the relevant day was obtained by him—
  (a) as a result of his general criminal conduct, and
  (b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the accused at any time after the date of conviction was obtained by him—
  (a) as a result of his general criminal conduct, and
  (b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the accused at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the accused, he obtained it free of any other interests in it.

(6) But the court must not make any of those assumptions in relation to particular property or expenditure if—
  (a) the assumption is shown to be incorrect, or
  (b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of those assumptions it must state its reasons.

(8) The relevant day is the first day of the period of six years ending with—
  (a) the day when proceedings for the offence concerned were instituted against the accused, or
  (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(9) But if a confiscation order mentioned in section 94(3)(c) has been made against the accused at any time during the period mentioned in subsection (8)—

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(a) the relevant day is the day when the accused's benefit was calculated for the purposes of the last such confiscation order;
(b) the second assumption does not apply to any property which was held by him on or before the relevant day.

(10) 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 are on different dates, the date of the latest.

Commencement Information
I88 S. 96 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

97 Effect of order on court's other powers

(1) If the court decides to make a confiscation order it must act as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.

(2) The court must take account of the confiscation order before—
(a) it imposes a fine on the accused, or
(b) it makes an order falling within subsection (3).

(3) These orders fall within this subsection—
(a) an order involving payment by the accused, other than a compensation order under section 249 of the Procedure Act (compensation orders) **[**[F354], a restitution order or a victim surcharge under section 253F(2) of the Procedure Act**]**;
(b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
(c) an order under Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture orders);
(d) an order under section 23 **[**[F355]or 23A**]** of the Terrorism Act 2000 (c. 11) (forfeiture orders).

(4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the accused.

(5) Subsection (6) applies if—
(a) a court makes both a confiscation order and a compensation order under section 249 of the Procedure Act against the same person in the same proceedings, and
(b) the court believes he will not have sufficient means to satisfy both the orders in full.

(6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F354 Words in s. 97(3)(a) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), **ss. 15(1)**, 88(2)(a); S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(a)

F355 Words in s. 97(3)(d) inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), s. 100(5), **Sch. 3 para. 7(4)** (with s. 101(2)); S.I. 2009/1256, art. 2(c)

Commencement Information

I89 S. 97 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

[F356 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—

(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.]

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F356 S. 97A inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), **ss. 15(2)**, 88(2)(a); S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(a)

[F357 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.

Textual Amendments

F357 Ss. 97B-97D inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 16**, 88(2)(a) (with s. 86(3)); S.S.I. 2016/11, reg. 2(a)

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,

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(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.

(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.

Textual Amendments

F357 Ss. 97B-97D inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 16**, 88(2)(a) (with s. 86(3)); S.S.I. 2016/11, reg. 2(a)

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.**]**

Textual Amendments

F357 Ss. 97B-97D inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 16**, 88(2)(a) (with s. 86(3)); S.S.I. 2016/11, reg. 2(a)

98 Disposal of family home

(1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person's interest in his family home has been acquired as a benefit from his criminal conduct.

(2) Where this section applies, then, before the administrator disposes of any right or interest in the person's family home he shall—

(a) obtain the relevant consent; or

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(b) where he is unable to do so, apply to the court for authority to carry out the disposal.

(3) On an application being made to it under subsection (2)(b), the court, after having regard to all the circumstances of the case including—

(a) the needs and financial resources of the spouse or former spouse of the person concerned;

(b) the needs and financial resources of any child of the family;

(c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b),

may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.

(4) Subsection (3) shall apply—

(a) to an action for division and sale of the family home of the person concerned; or

(b) to an action for the purpose of obtaining vacant possession of that home,

brought by the administrator as it applies to an application under subsection (2)(b) and, for the purposes of this subsection, any reference in subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action.

(5) In this section—

"family home", in relation to any person (in this subsection referred to as "the relevant person") means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person's spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family;

"child of the family" includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and

"relevant consent" means in relation to the disposal of any right or interest in a family home—

(a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person;

(b) where paragraph (a) does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.

Commencement Information

I90 S. 98 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
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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;
- (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;
- **[**[F358](d) made a restitution order;
- (e) ordered the accused under section 253F(2) of the Procedure Act to pay a victim surcharge.**]**

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F358 S. 99(11)(d)(e) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 36**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Modifications etc. (not altering text)

C34 S. 99 applied (with modifications) (temp.) (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), s. 59(1), **sch. para. 24(2)** (and which affecting provision expires (3.7.2023) by virtue of The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early Expiry of Provisions) Regulations 2023 (S.S.I. 2023/172), reg. 2(3) (with **regs. 3**, 4))

Commencement Information

I91 S. 99 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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),[F359]...

(c) make an order for the payment of compensation under section 249 of the Procedure Act.

[[F360](d) make a restitution order, or

(e) order the accused under section 253F(2) of the Procedure Act to pay a victim surcharge.**]**

(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), [F361]...

(c) making an order for the payment of compensation under section 249 of the Procedure Act.

[[F362](d) making a restitution order, or

(e) ordering the accused under section 253F(2) of the Procedure Act to pay a victim surcharge.**]**

(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.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(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.

Textual Amendments

F359 Word in s. 100(3)(b) omitted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by virtue of Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 37(2)(a)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F360 S. 100(3)(d)(e) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 37(2)(b)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F361 Word in s. 100(4)(b) omitted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by virtue of Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 37(3)(a)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F362 S. 100(4)(d)(e) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 37(3)(b)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Commencement Information

I92 S. 100 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(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—
  (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.

Commencement Information
I93 S. 101 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(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.

Commencement Information

I94 S. 102 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(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.

Commencement Information
I95 S. 103 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Reconsideration

104 No order made: reconsideration of case

(1) This section applies if—
- (a) the first condition in section 92 is satisfied but no court has proceeded under that section,
- (b) the prosecutor has evidence which was not available to him on the relevant date,
- (c) before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and
- (d) after considering the evidence the court thinks it is appropriate for it to proceed under section 92.

(2) The court must proceed under section 92, and when it does so subsections (3) to (8) below apply.

(3) If the court has already sentenced the accused for the offence (or any of the offences) concerned section 92(4) does not apply.

(4) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—
- (a) conduct occurring before the relevant date;
- (b) property obtained before that date;
- (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) In relation to the assumptions that the court must make under section 96—
- (a) the first and second assumptions do not apply with regard to property first held by the accused on or after the relevant date;
- (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
- (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(6) The recoverable amount for the purposes of section 92 is such amount as—
- (a) the court believes is just, but
- (b) does not exceed the amount found under section 93.

(7) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 93;

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) any fine imposed on the accused in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;

(d) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.

[[F363](e) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;

(f) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.**]**

(8) If an order for payment of compensation under section 249 of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97(5) and (6) do not apply.

[[F364](8A) If a restitution order or an order under section 253F(2) of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97A(2) and (4) does not apply.**]**

(9) The relevant date is—

(a) if the court made a decision not to proceed under section 92, the date of the decision;

(b) if the court did not make such a decision, the date of the conviction.

(10) 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.

(11) In this section references to the court are to the court which had jurisdiction in respect of the offence or offences concerned to make a confiscation order.

Textual Amendments

F363 S. 104(7)(e)(f) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 38(2)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F364 S. 104(8A) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 38(3)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Commencement Information

I96 S. 104 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

105 No order made: reconsideration of benefit

(1) This section applies if the following two conditions are satisfied.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) The first condition is that in proceeding under section 92 the court has decided that—
- (a) the accused has a criminal lifestyle but has not benefited from his general criminal conduct, or
- (b) the accused does not have a criminal lifestyle and has not benefited from his particular criminal conduct.

(3) The second condition is that—
- (a) the prosecutor has evidence which was not available to him when the court decided that the accused had not benefited from his general or particular criminal conduct,
- (b) before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and
- (c) after considering the evidence the court concludes that it would have decided that the accused had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.

(4) If this section applies the court—
- (a) must make a fresh decision under section 92(5)(b) or (c) as to whether the accused has benefited from his general or particular criminal conduct (as the case may be);
- (b) may make a confiscation order under that section.

(5) Subsections (6) to (11) below apply if the court proceeds under section 92 in pursuance of this section.

(6) If the court has already sentenced the accused for the offence (or any of the offences) concerned section 92(4) does not apply.

(7) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—
- (a) conduct occurring before the date of the original decision that the accused had not benefited from his general or particular criminal conduct;
- (b) property obtained before that date;
- (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(8) In relation to the assumptions that the court must make under section 96—
- (a) the first and second assumptions do not apply with regard to property first held by the accused on or after the date of the original decision that the accused had not benefited from his general or particular criminal conduct;
- (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
- (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(9) The recoverable amount for the purposes of section 92 is such amount as—
- (a) the court believes is just, but
- (b) does not exceed the amount found under section 93.

(10) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 93;

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) any fine imposed on the accused in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;

(d) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.

[[F365](e) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;

(f) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.**]**

(11) If an order for the payment of compensation under section 249 of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97(5) and (6) do not apply.

[[F366](11A) If a restitution order or an order under section 253F(2) of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97A(2) and (4) does not apply.**]**

(12) The date of conviction is the date found by applying section 104(10).

(13) In this section references to the court are to the court which had jurisdiction in respect of the offence or offences concerned to make a confiscation order.

Textual Amendments

F365 S. 105(10)(e)(f) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 39(2)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F366 S. 105(11A) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 39(3)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Commencement Information

I97 S. 105 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

106 Order made: reconsideration of benefit

(1) This section applies if—

(a) a court has made a confiscation order,

(b) there is evidence which was not available to the prosecutor at the relevant time,

(c) 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,

(d) before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and

Status: *Point in time view as at 05/01/2023.*
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(e) after considering the evidence the court thinks it is appropriate for it to proceed under this section.

(2) The court must make a new calculation of the accused's benefit from the conduct concerned, and when it does so subsections (3) to (5) below apply.

(3) Section 94(2) does not apply, and the rules applying instead are that the court must take account of—

(a) conduct occurring up to the time it decided the accused's benefit for the purposes of the confiscation order;

(b) property obtained up to that time;

(c) property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(4) In applying section 94(3) the confiscation order must be ignored.

(5) In relation to the assumptions that the court must make under section 96—

(a) the first and second assumptions do not apply with regard to property first held by the accused after the time the court decided his benefit for the purposes of the confiscation order;

(b) the third assumption does not apply with regard to expenditure incurred by him after that time;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.

(6) If the amount found under the new calculation of the accused's benefit exceeds the relevant amount the court—

(a) must make a new calculation of the recoverable amount for the purposes of section 92, and

(b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes just.

(7) In applying subsection (6)(a) the court must—

(a) take the new calculation of the accused's benefit;

(b) apply section 95 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(8) In applying subsection (6)(b) the court must have regard in particular to—

(a) any fine imposed on the accused for the offence (or any of the offences) concerned;

(b) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.

[[F367](d) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;

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(e) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.**]**

(9) But in applying subsection (6)(b) **[**[F368]the court—

(a) must not**]** have regard to an order falling within subsection (8)(c) if a court has made a direction under section 97(6);

[[F369](b) must not have regard to an order falling within subsection (8)(d) or (e) if a court has made a direction under section 97A(2) or (4).**]**

(10) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(11) The relevant time is—

(a) when the court calculated the accused's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) when the court last calculated the accused's benefit in pursuance of this section, if this section has applied previously.

(12) The relevant amount is—

(a) the amount found as the accused's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the accused's benefit in pursuance of this section, if this section has applied previously.

(13) The date of conviction is the date found by applying section 104(10).

Textual Amendments

F367 S. 106(8)(d)(e) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 40(2)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F368 Words in s. 106(9) substituted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 40(3)(a)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F369 S. 106(9)(b) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 40(3)(b)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Commencement Information

I98 S. 106 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

107 Order made: reconsideration of available amount

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the amount required to be paid was the amount found under section 93(2), and

(c) the prosecutor applies to the court to make a new calculation of the available amount.

(2) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 95 as if references to the time the confiscation order is

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made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(3) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—

(a) it thinks is just, but

(b) does not exceed the amount found as the accused's benefit from the conduct concerned.

(4) In arriving at the just amount the court must have regard in particular to—

(a) any fine imposed on the accused for the offence (or any of the offences) concerned;

(b) any order which falls within section 97(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 95;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.

[[F370](d) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;

(e) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.**]**

(5) But in deciding what is just **[**[F371]the court—

(a) must not**]** have regard to an order falling within subsection (4)(c) if a court has made a direction under section 97(6);

[[F372](b) must not have regard to an order falling within subsection (4)(d) or (e) if a court has made a direction under section 97A(2) or (4).**]**

(6) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(7) The relevant amount is—

(a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.

(8) The amount found as the accused's benefit from the conduct concerned is—

(a) the amount so found when the confiscation order was made, or

(b) if one or more new calculations of the accused's benefit have been made under section 106 the amount found on the occasion of the last such calculation.

Textual Amendments

F370 S. 107(4)(d)(e) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 41(2)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F371 Words in s. 107(5) substituted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 41(3)(a)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F372 S. 107(5)(b) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 41(3)(b)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Commencement Information

I99 S. 107 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

108 Inadequacy of available amount: variation of order

(1) This section applies if—

(a) a court has made a confiscation order, and

(b) the accused or the prosecutor applies to the court to vary the order under this section.

(2) In such a case the court must calculate the available amount and in doing so it must apply section 95 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.

(4) If a person's estate has been sequestrated or he has been **[**[F373]made**]** bankrupt, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by him or by the company may be distributed among creditors.

(5) The court may disregard any inadequacy which it thinks is attributable (wholly or partly) to anything done by the accused for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

(6) In subsection (4) "company" means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

Textual Amendments

F373 Word in s. 108(4) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

Commencement Information

I100 S. 108 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

109 Inadequacy of available amount: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the prosecutor applies to the court to discharge the order under this section, and

(c) the amount remaining to be paid under the order is less than £1,000.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 95 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court—

(a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and

(b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,

it may discharge the confiscation order.

(4) The specified reasons are—

(a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;

(b) any reason specified by the Scottish Ministers.

(5) The Scottish Ministers may by order vary the amount for the time being specified in subsection (1)(c).

[[F374](6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 106(1)(d) or 107(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 106(6) or (as the case may be) 107(3), the court may provide that its discharge under this section is revoked.**]**

Textual Amendments

F374 S. 109(6)(7) inserted (S.) (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 32(4)**, 58(2)(6) (with s. 32(7)); S.S.I. 2017/456, reg. 2(c); S.I. 2018/78, reg. 3(o)

Commencement Information

I101 S. 109 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

110 Information

(1) This section applies if—

(a) the court proceeds under section 92 in pursuance of section 104 or 105, or

(b) the prosecutor applies under section 106.

(2) In such a case—

(a) the prosecutor must give the court a statement of information within such period as the court may specify;

(b) section 101 applies accordingly (with appropriate modifications where the prosecutor applies under section 106);

(c) sections 102 and 103 apply accordingly.

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I102 S. 110 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Accused unlawfully at large

111 Conviction or other disposal of accused

(1) This section applies if an accused is unlawfully at large **[**[F375]and, either before or after he became unlawfully at large**]** —

(a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or

(b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.

(2) If this section applies the court may, on the application of the prosecutor and if it believes it is appropriate for it to do so, proceed under section 92 in the same way as it must proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3).

(3) If the court proceeds under section 92 as applied by this section, this Part has effect with these modifications—

(a) any person the court believes is likely to be affected by an order under section 92 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 92 unless the prosecutor has taken reasonable steps to contact the accused;

(c) section 92(12) applies as if the reference to subsection (2) were to subsection (1) of this section;

(d) sections 96, 101(3), 102 and 103 do not apply;

(e) sections 104, 105 and 106 do not apply while the accused is still unlawfully at large.

[[F376](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.";

(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

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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).**]**

Textual Amendments

F375 Words in s. 111(1) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 18(1)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

F376 S. 111(4) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 18(2)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

Commencement Information

I103 S. 111 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with arts. 3(2), 7)

112 Accused neither convicted nor acquitted

(1) This section applies if—

(a) proceedings for an offence or offences are instituted against an accused but are not concluded,

(b) he is unlawfully at large, and

(c) the period of **[**[F377]three months**]** (starting with the day the court believes he first became unlawfully at large) has ended.

(2) If this section applies the court may, on an application by the prosecutor and if it believes it is appropriate for it to do so, proceed under section 92 in the same way as it must proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3).

(3) If the court proceeds under section 92 as applied by this section, this Part has effect with these modifications—

(a) any person the court believes is likely to be affected by an order under section 92 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 92 unless the prosecutor has taken reasonable steps to contact the accused;

(c) section 92(12) applies as if the reference to subsection (2) were to subsection (1) of this section;

Status: *Point in time view as at 05/01/2023.*
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(d) sections 96, 101(3), 102, 103, 104 and 105 do not apply;

(e) section 106 does not apply while the accused is still unlawfully at large.

[[F378](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).**]**

(5) If—

(a) the court makes an order under section 92 as applied by this section, and

(b) the accused is later convicted of the offence (or any of the offences) concerned,

section 92 does not apply so far as that conviction is concerned.

Textual Amendments

F377 Words in s. 112(1)(c) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 18(3)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

F378 S. 112(4) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 18(4)**, 88(2)(a); S.S.I. 2016/11, reg. 2(c)

Commencement Information

I104 S. 112 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with arts. 3(3), 7)

113 Variation of order

(1) This section applies if—

(a) the court makes a confiscation order under section 92 as applied by section 112,

(b) the accused ceases to be unlawfully at large,

(c) he is convicted of an offence (or any of the offences) mentioned in section 112(1)(a),

(d) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and

(e) before the end of the relevant period he applies to the court to consider the evidence on which his belief is based.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) If (after considering the evidence) the court concludes that the accused's belief is well founded—
  (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and
  (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with—
  (a) the date on which the accused was convicted of the offence mentioned in section 112(1)(a), or
  (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(4) But in a case where section 112(1)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the accused has not been convicted.

Commencement Information
I105 S. 113 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

114 Discharge of order

(1) Subsection (2) applies if—
  (a) the court makes a confiscation order under section 92 as applied by section 112,
  (b) the accused is later tried for the offence or offences concerned and acquitted of the offence or offences, and
  (c) he applies to the court to discharge the order.

(2) In such a case the court must discharge the order.

(3) Subsection (4) applies if—
  (a) the court makes a confiscation order under section 92 as applied by section 112,
  (b) the accused ceases to be unlawfully at large,
  (c) subsection (1)(b) does not apply, and
  (d) he applies to the court to discharge the order.

(4) In such a case the court may discharge the order if it finds that—
  (a) there has been undue delay in continuing the proceedings mentioned in section 112(1), or
  (b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it thinks is appropriate.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information
I106 S. 114 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Appeals

115 Appeal by prosecutor

(1) Section 108 of the Procedure Act (Lord Advocate's right of appeal in solemn proceedings) is amended as provided in subsections (2) to (4).

(2) In subsection (1), after paragraph (c) insert—

"(ca) a decision under section 92 of the Proceeds of Crime Act 2002 not to make a confiscation order;."

(3) In subsection (2)(b)(ii), for the words "or (c)" substitute " , (c) or (ca) ".

(4) After subsection (2) insert—

"(3) For the purposes of subsection (2)(b)(i) above in its application to a confiscation order by virtue of section 92(11) of the Proceeds of Crime Act 2002, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low."

(5) Section 175 of the Procedure Act (right of appeal in summary proceedings) is amended as provided in subsections (6) to (8).

(6) In subsection (4), after paragraph (c) insert—

"(ca) a decision under section 92 of the Proceeds of Crime Act 2002 not to make a confiscation order;."

(7) In subsection (4A)(b)(ii), for the words "or (c)" substitute " , (c) or (ca) ".

(8) After subsection (4A) insert—

"(4B) For the purposes of subsection (4A)(b)(i) above in its application to a confiscation order by virtue of section 92(11) of the Proceeds of Crime Act 2002, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low."

Commencement Information
I107 S. 115 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Payment and enforcement

116 Time for payment

(1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section.

Status: *Point in time view as at 05/01/2023.*
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(2) If the accused shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.

(3) The specified period—
  (a) must start with the day on which the confiscation order is made, and
  (b) must not exceed six months.

(4) If within the specified period the accused applies to the sheriff court for the period to be extended and the court, after giving the prosecutor an opportunity of being heard, believes there are exceptional circumstances, it may make an order extending the period.

(5) The extended period—
  (a) must start with the day on which the confiscation order is made, and
  (b) must not exceed 12 months.

(6) An order under subsection (4)—
  (a) may be made after the end of the specified period, but
  (b) must not be made after the end of the period of twelve months starting with the day on which the confiscation order is made.

(7) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.

Commencement Information
I108 S. 116 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

[F379]116A Further time for payment due to coronavirus

. . . . . .

Textual Amendments
F379 S. 116A inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 2 para. 9(3)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), **s. 9(1)**)

117 Interest on unpaid sums

(1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether when the order is made or within a period specified under section 116), he must pay interest on the amount for the period for which it remains unpaid.

(2) The rate of interest is the rate payable under a decree of the Court of Session.

(3) 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 116(4),

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(b) the application has not been determined by the court, and

(c) the period of 12 months starting with the day on which the confiscation order was made has not ended.

(4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

Modifications etc. (not altering text)

C35 S. 117 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 1 para. 11(6)**

Commencement Information

I109 S. 117 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

118 Application of provisions about fine enforcement

(1) The provisions of the Procedure Act specified in subsection (2) apply, with the qualifications mentioned in that subsection, in relation to a confiscation order as if the amount ordered to be paid were a fine imposed on the accused by the court making the confiscation order.

(2) Those provisions are—

(a) section 211(3) to (6);

(b) section 214(4) to (6), but as if the references in subsection (4) to payment by instalments were omitted;

(c) section 216, but as if subsection (1)—

(i) gave the prosecutor an opportunity to be heard at any enquiry under that subsection; and

(ii) applied whether the offender was in prison or not;

(d) section 217;

(e) section 218(2) and (3);

(f) section 219, provided that—

(i) where a court imposes a period of imprisonment in respect of both a fine and a confiscation order the amounts in respect of which the period is imposed must, for the purposes of subsection (2), be aggregated;

(ii) before imposing a period of imprisonment by virtue of that section the court must require a report from any administrator appointed in relation to the confiscation order as to whether and how he is likely to exercise his powers and duties under this Part and must take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition; and

(iii) where an administrator has not been appointed in relation to the confiscation order, or where the accused does not ask under section 116 for time for payment of any confiscation order imposed by the court, the prosecutor may apply to the court to postpone the imposition of any period of imprisonment for a period not exceeding 3 months to enable the prosecutor to apply to the court for the appointment of an administrator;

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(g) section 220, but as if the reference in subsection (1) to payment of a sum by the person included a reference to payment of the sum in respect of the person by an administrator appointed in relation to the confiscation order;

(h) section 221 **[**[F380](other than subsection (3) and as if the words "Subject to subsection (3) below," were omitted); but that section does not apply**]** where an administrator is appointed in relation to the confiscation order;

(i) section 222, except that for the purposes of that section "confiscation order" in subsection (1) above must be construed as including such an order within the meaning of the Drug Trafficking Act 1994 (c. 37), the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) or of Part 2 or 4 of this Act;

(j) section 223;

[F381](k) . . . . . .

[[F382](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—

Amount to be Paid under Compensation Order	***Maximum Period of Imprisonment***
£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 "**[**[F383]129 of the Sentencing Code**]**" 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,";

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(b) in relation to a transfer of fine order under section 35 of that Act, for "**[**[F384]129 of the Sentencing Code**]**" there were substituted " 185(2A) of the Proceeds of Crime Act 2002 ".**]**

(3) Where a court, by virtue of subsection (1), orders the amount ordered to be paid under a confiscation order to be recovered by civil diligence under section 221 of the Procedure Act, any arrestment executed by a prosecutor under subsection (3) of section 124 of this Act is to be treated as having been executed by the court as if that subsection authorised such execution.

(4) Subsection (5) applies where—

(a) a warrant for apprehension of the accused is issued for a default in payment of the amount ordered to be paid under a confiscation order in respect of an offence or offences, and

(b) at the time the warrant is issued the accused is liable to serve a period of imprisonment or detention (other than one of life imprisonment or detention for life) in respect of the offence (or any of the offences).

(5) In such a case any period of imprisonment or detention to which the accused is liable by virtue of section 219 of the Procedure Act runs from the expiry of the period of imprisonment or detention mentioned in subsection (4)(b).

Textual Amendments

F380 Words in s. 118(2)(h) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 19(1)(a)**, 88(2)(a); S.S.I. 2016/11, reg. 2(d) (with reg. 3)

F381 S. 118(2)(k) omitted (1.3.2016) by virtue of Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 42**; S.S.I. 2016/11, reg. 2(j) (with reg. 3)

F382 S. 118(2A)-(2D) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 19(1)(b)**, 88(2)(a); S.S.I. 2016/11, reg. 2(d) (with reg. 3)

F383 Words in s. 118(2C) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 197** (with Sch. 27); S.I. 2020/1236, reg. 2

F384 Words in s. 118(2D)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 197** (with Sch. 27); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

C36 S. 118 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 1 para. 11(6)**

Commencement Information

I110 S. 118 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Restraint orders etc

119 Conditions for exercise of powers

(1) The court may exercise the powers conferred by section 120 if any of the following conditions is satisfied.

(2) The first condition is that—

(a) a criminal investigation has been instituted in Scotland with regard to an offence, and

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(b) there **[**[F385]are reasonable grounds to suspect**]** that the alleged offender has benefited from his criminal conduct.

(3) The second condition is that—

(a) proceedings for an offence have been instituted in Scotland and not concluded, and

(b) there is reasonable cause to believe that the accused has benefited from his criminal conduct.

(4) The third condition is that—

(a) an application by the prosecutor has been made under section 104, 105, 111 or 112 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the accused has benefited from his criminal conduct.

(5) The fourth condition is that—

(a) an application by the prosecutor has been made under section 106 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused's benefit exceeds the relevant amount (as defined in that section).

(6) The fifth condition is that—

(a) an application by the prosecutor has been made under section 107 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(7) The second condition is not satisfied if the court believes that—

(a) there has been undue delay in continuing the proceedings, or

(b) the prosecutor does not intend to proceed.

(8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—

(a) there has been undue delay in continuing the application, or

(b) the prosecutor does not intend to proceed.

(9) If the first condition is satisfied—

(a) references in this Part to the accused are to the alleged offender;

(b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;

(c) section 144(8) has effect as if proceedings for the offence had been instituted against the accused when the investigation was instituted.

(10) In this section, sections 120 to 140 and Schedule 3 "the court" means—

(a) the Court of Session, where a trial diet or a diet fixed for the purposes of section 76 of the Procedure Act in proceedings for the offence or offences concerned is to be, is being or has been held in the High Court of Justiciary;

(b) the sheriff exercising his civil jurisdiction, where a diet referred to in paragraph (a) is to be, is being or has been held in the sheriff court.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F385 Words in s. 119(2)(b) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 20(1)**, 88(2)(a); S.S.I. 2016/11, reg. 2(e)

Commencement Information

I111 S. 119 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with arts. 4, 7)

120 Restraint orders etc

(1) If any condition set out in section 119 is satisfied the court may make an order (a restraint order) interdicting any specified person from dealing with any realisable property held by him.

(2) A restraint order may provide that it applies—

(a) to all realisable property held by the specified person whether or not the property is described in the order;

(b) to realisable property transferred to the specified person after the order is made.

(3) A restraint order may be made subject to exceptions, and an exception may in particular—

(a) make provision for reasonable living expenses and reasonable legal expenses;

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

(c) be made subject to conditions.

(4) But an exception to a restraint order may not make provision for any legal expenses which—

(a) relate to an offence which falls within subsection (5), and

(b) are incurred by a person against whom proceedings for the offence have been instituted or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

(a) the offence mentioned in section 119(2) or (3), if the first or second condition (as the case may be) is satisfied;

(b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

(6) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

[F386(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

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(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)).**]**

(7) A restraint order does not affect property subject to a charge under—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32),

(b) Part 6 of the Criminal Justice Act 1988 (c. 33),

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)),

(d) section 27 of the Drug Trafficking Act 1994 (c. 37), or

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(8) Dealing with property includes removing the property from Scotland.

Textual Amendments

F386 S. 120(6A)-(6C) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 20(2)**, 88(2)(a); S.S.I. 2016/11, reg. 2(e)

Commencement Information

I112 S. 120 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with arts. 4, 7)

[F387 120A Restraint orders: power to retain seized property etc.

(1) A restraint order may include provision authorising the detention of any property to which it applies if the property—

(a) is seized by an appropriate officer under a relevant seizure power, or

(b) is produced to an appropriate officer in compliance with a production order under section 380.

(2) Provision under subsection (1) may, in particular—

(a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;

(b) relate to property that has already been seized or produced or to property that may be seized or produced in future.

(3) "Appropriate officer" means—

(a) a constable;

(b) an officer of Revenue and Customs;

[F388 (ba) an immigration officer;**]**

[F389 (c) a National Crime Agency officer;**]**

Status: *Point in time view as at 05/01/2023.*
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(4) "Relevant seizure power" means a power to seize property conferred by or by virtue of—

(a) section 127C or 387,

(b) a warrant granted under any other enactment or any rule of law, or

(c) any other enactment, or any rule of law, under which the authority of a warrant is not required.**]**

Textual Amendments

F387 S. 120A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 53(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F388 S. 120A(3)(ba) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), Sch. 21 para. 20 (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F389 S. 120A(3)(c) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), Sch. 8 para. 115; S.I. 2013/1682, art. 3(v)

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 **[**[F390](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).

[[F391](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

(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

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(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.**]**

[[F392](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

F390 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)

F391 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)

F392 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)

Commencement Information

I113 S. 121 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

122 Appeals

(1) If on an application for a restraint order the court decides not to make one, the prosecutor may reclaim or appeal to the Court of Session against the decision.

(2) The prosecutor and any person affected by the order may reclaim or appeal to the Court of Session against the decision of the court on an application under section 121(5).

Commencement Information

I114 S. 122 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[F393 122A Detention of property pending appeal

(1) This section applies where—

(a) a restraint order includes provision under section 120A authorising the detention of property, and

(b) the restraint order is recalled under section 121(7).

(2) This section also applies where—

(a) a restraint order includes provision under section 120A authorising the detention of property, and

(b) the restraint order is varied under section 121(7) so as to omit any such provision.

(3) The property may be detained until there is no further possibility of an appeal against (or review of)—

(a) the decision to recall or vary the restraint order, or

(b) any decision made on an appeal against (or review of) that decision.]

Textual Amendments

F393 S. 122A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 53(3)**, 116(1); S.I. 2015/983, art. 2(2)(a)

123 Inhibition of property affected by order

(1) On the application of the [F394 prosecutor, the court] may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a restraint order.

(2) That property is the heritable realisable property to which the restraint order applies (whether generally or such of it as is specified in the application).

(3) The warrant for inhibition—

(a) has effect as if granted on the dependence of an action for debt by the [F395 prosecutor] against the person and may be executed, recalled, loosed or restricted accordingly, and

[F396 (b) must forthwith be registered by the prosecutor in the Register of Inhibitions]

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) F397....

(5) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property.

(6) An inhibition executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the [F398 prosecutor] must—

(a) apply for the recall or, as the case may be, the restriction of the inhibition, and

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(b) ensure that the recall or restriction is reflected in the Register of Inhibitions and Adjudications.

Textual Amendments

F394 Words in s. 123(1) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 29(a)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

F395 Word in s. 123(3)(a) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 29(b)(i)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

F396 S. 123(3)(b) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 29(b)(ii)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

F397 Words in s. 123(4) repealed (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 6 Pt. 1** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 2 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

F398 Word in s. 123(7) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 29(c)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

Modifications etc. (not altering text)

C37 S. 123 applied (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, **12(1)**

Commencement Information

I115 S. 123 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

124 Arrestment of property affected by order

(1) On the application of the prosecutor the court may, in relation to moveable realisable property to which a restraint order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.

(2) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(3) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.

(4) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property.

(5) An arrestment executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the prosecutor must apply to the court for an order recalling, or as the case may be, restricting the arrestment.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C38 S. 124 applied (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, **12(2)**

Commencement Information

I116 S. 124 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

125 Management administrators

(1) If the court makes a restraint order it may at any time, on the application of the prosecutor—

(a) appoint an administrator to take possession of any realisable property to which the order applies and (in accordance with the court's directions) to manage or otherwise deal with the property;

(b) order a person who has possession of property in respect of which an administrator is appointed to give him possession of it.

(2) An appointment of an administrator may be made subject to conditions or exceptions.

(3) Where the court makes an order under subsection (1)(b), the clerk of court must notify the accused and any person subject to the order of the making of the order.

(4) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment.

(5) The court—

(a) may order a person holding an interest in realisable property to which the restraint order applies to make to the administrator such payment as the court specifies in respect of a beneficial interest held by the accused or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(6) The court must not—

(a) confer the power mentioned in subsection (1) to manage or otherwise deal with the property, or

(b) exercise the power conferred on it by subsection (5),

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(7) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(8) Managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

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(9) Subsections (1)(b) and (5) do not apply to property for the time being subject to a charge under—
- (a) section (9) of the Drug Trafficking Offences Act 1986 (c. 32);
- (b) section 78 of the Criminal Justice Act 1988 (c. 33);
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
- (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

Commencement Information
I117 S. 125 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

[F399]126 Seizure

. . . . . .

Textual Amendments
F399 S. 126 repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), ss. 56(3), 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(a)(f) (with art. 4(3)(4))

Commencement Information
I118 S. 126 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

127 Restraint orders: restriction on proceedings and remedies

(1) While a restraint order has effect, the court may sist any action, execution or any legal process in respect of the property to which the order applies.

(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 a restraint order has been made or applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by subsection (2), the court must give an opportunity to be heard to—
- (a) the applicant for the restraint order;
- (b) any administrator appointed under section 125.

Commencement Information
I119 S. 127 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[F400 Search and seizure powers

Textual Amendments

F400 Ss. 127A-127R and cross-heading inserted (22.11.2014 for the insertion of ss. 127A, 127G, 127R for specified purposes, 1.6.2015 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 56(2)**, 116(1); S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(a)

127A Sections 127B to 127R: meaning of "appropriate officer"

In sections 127B to 127R "appropriate officer" means—

(a) an officer of Revenue and Customs, or

F401 **[** (aa) an immigration officer, or**]**

(b) a constable.

Textual Amendments

F401 Words in s. 127A inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), **ss. 55(4)(b)**, 61(2) (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(b)

127B Conditions for exercise of powers

(1) An appropriate officer may exercise the power conferred by section 127C if satisfied that any of the following conditions is met.

(2) The first condition is that—

(a) a criminal investigation has been started in Scotland with regard to an indictable offence,

(b) a person has been arrested for the offence,

(c) proceedings for the offence have not yet been started against the person in Scotland,

(d) there **[**F402 are reasonable grounds to suspect**]** that the person has benefited from conduct constituting the offence, and

(e) a restraint order is not in force in respect of any realisable property.

(3) The second condition is that—

(a) a criminal investigation has been started in Scotland with regard to an indictable offence,

(b) a person has been arrested for the offence,

(c) proceedings for the offence have not yet been started against the person in Scotland, and

(d) a restraint order is in force in respect of any realisable property.

(4) The third condition is that—

(a) proceedings for an indictable offence have been started in Scotland and have not been concluded,

(b) there is reasonable cause to believe that the accused has benefited from conduct constituting the offence, and

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(c) a restraint order is not in force in respect of any realisable property.

(5) The fourth condition is that—

(a) proceedings for an indictable offence have been started in Scotland and have not been concluded, and

(b) a restraint order is in force in respect of any realisable property.

(6) The fifth condition is that—

(a) an application by the prosecutor has been made under section 104, 105, 111 or 112 and not concluded, or the officer believes that such an application is to be made, and

(b) there is reasonable cause to believe that the accused has benefited from criminal conduct.

(7) The sixth condition is that—

(a) an application by the prosecutor has been made under section 106 and not concluded, or the officer believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused's benefit exceeds the relevant amount (as defined in that section).

(8) The seventh condition is that—

(a) an application by the prosecutor has been made under section 107 and not concluded, or the officer believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(9) The third or fourth condition is not met if the officer believes that—

(a) there has been undue delay in continuing the proceedings, or

(b) the prosecutor does not intend to proceed.

(10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—

(a) there has been undue delay in continuing the application, or

(b) the prosecutor does not intend to proceed.

(11) In relation to the first or second condition references in sections 127C to 127R to the accused are to the person mentioned in that condition.

(12) In relation to the first or second condition section 144(8) has effect as if proceedings for the offence had been started against the accused when the investigation was started.

Textual Amendments

F402 Words in s. 127B(2)(d) substituted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 22(1)**, 88(2)(a); S.S.I. 2016/11, reg. 2(g)

127C Power to seize property

(1) On being satisfied as mentioned in section 127B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—

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(a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused, or

(b) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.

(2) But the officer may not seize—

(a) cash, or

(b) exempt property.

(3) "Cash" has the same meaning as in section 289.

(4) "Exempt property" means—

(a) such tools, books, vehicles and other items of equipment as are necessary to the accused for use personally in the accused's employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the accused and the accused's family.

(5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the accused are to be read as references to the recipient of that gift.

Section 127B(11) is subject to this subsection.

(6) The power conferred by this section—

(a) may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and

[where applicable, in accordance with subsection (6A) or (6B).**]**

[F403](aa)

[[F404](6A) The power conferred by this section is exercisable**]** by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).

[The power conferred by this section is exercisable by an immigration officer only if

[F405](6B) the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

(a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

(b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.**]**

(7) "Relevant offence" means—

(a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 127B is met, the offence mentioned in that condition,

(b) in a case where the officer is satisfied that any of the other conditions in section 127B is met, the offence (or any of the offences) concerned.

[Relevant nationality enactment" means any enactment in—

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F406(8) (a) the British Nationality Act 1981,
(b) the Hong Kong Act 1985,
(c) the Hong Kong (War Wives and Widows) Act 1996,
(d) the British Nationality (Hong Kong) Act 1997,
(e) the British Overseas Territories Act 2002, or
(f) an instrument made under any of those Acts.**]**

Textual Amendments

F403 S. 127C(6)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 21(2)(a)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F404 S. 127C(6A) substituted (22.11.2014) for words by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 21(2)(b)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F405 S. 127C(6B) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 21(3)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F406 S. 127C(8) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 21(4)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

127D Search power: premises

(1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—
(a) the officer has reasonable grounds for suspecting may be found there, and
(b) if found there, the officer intends to seize under section 127C.

(2) The power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) "Premises" has the meaning given by section 23 of the Police and Criminal Evidence Act 1984.

127E Search power: people

(1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 127C.

(2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
(a) to permit a search of any article with the person,
(b) to permit a search of the person.

(3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.

(4) A power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(5) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

Status: *Point in time view as at 05/01/2023.*
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127F Search power: vehicles

(1) The powers specified in subsection (4) are exercisable if—

(a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 127C, and

(b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.

(2) The powers are exercisable only if the vehicle is—

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—

(a) that the person does not reside in the dwelling, and

(b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.

(4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 127C, require the person to—

(a) permit entry to the vehicle,

(b) permit a search of the vehicle.

(5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.

(6) A power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

127G "Appropriate approval"

(1) This section has effect for the purposes of sections 127C, 127D, 127E and 127F.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of the sheriff or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means—

(a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

[F407] **[** (aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,**]**

[F408] **[** (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

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Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,**]**

(b) in relation to the exercise of a power by a constable, a senior police officer.

(4) A senior police officer means a police officer of at least the rank of inspector.

Textual Amendments

F407 S. 127G(3)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 22** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F408 S. 127G(3)(ab) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 22(2)**, 88(2)(a); S.S.I. 2016/11, reg. 2(g)

127H Exercise of powers without judicial approval

(1) An appropriate officer must give a written report to the appointed person in any case where—

(a) the officer seizes property under section 127C without the approval of the sheriff, and

(b) any of the property seized is not detained for more than 48 hours.

(2) An appropriate officer must also give a written report to the appointed person in any case where—

(a) the officer exercises any of the powers conferred by sections 127D, 127E and 127F without the approval of the sheriff, and

(b) no property is seized under section 127C.

(3) A report under this section must give particulars of the circumstances which led the officer to believe that—

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of the sheriff.

(4) The appointed person means a person appointed for the purposes of this subsection by the Scottish Ministers.

(5) The appointed person must not be a person employed under or for the purposes of the Scottish Administration; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Scottish Ministers.

(6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).

(7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland, or

(e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the power is exercised.

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127I Report by appointed person on exercise of powers

(1) As soon as possible after the end of each financial year, the person appointed under section 127H(4) must prepare a report for that year.

(2) "Financial year" means—
- (a) the period beginning with the day on which section 56 of the Policing and Crime Act 2009 comes into force and ending with the next 31 March (which is the first financial year), and
- (b) each subsequent period of twelve months beginning with 1 April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 127C, 127D, 127E and 127F are being exercised in cases where the officer who exercised them is required to give a report under section 127H.

(4) The report may make any recommendations the appointed person considers appropriate.

(5) The appointed person must send a copy of the report to the Scottish Ministers.

(6) The Scottish Ministers must—
- (a) publish any report received under subsection (5), and
- (b) lay a copy before the Scottish Parliament.

(7) Before acting under subsection (6) the Scottish Ministers must exclude from the report any matter which the Scottish Ministers think is likely to prejudice any criminal investigation or criminal proceedings.

(8) If the Scottish Ministers exclude any matter from the report they must comply with subsection (6) in relation to the whole of the report as soon as they think that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

127J Initial detention of seized property

(1) This section applies if an appropriate officer seizes property under section 127C.

(2) The property may be detained initially for a period of 48 hours.

(3) The period of 48 hours is to be calculated in accordance with section 127H(7).

127K Further detention pending making of restraint order

(1) This section applies if—
- (a) property is detained under section 127J, and
- (b) no restraint order is in force in respect of the property.

(2) If within the period mentioned in section 127J an application is made for a restraint order which includes provision under section 120A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

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(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—
  (a) the decision to refuse the application, or
  (b) any decision made on an appeal against (or review of) that decision.

(4) In subsection (2) the reference to the period mentioned in section 127J includes that period as extended by any order under section 127M.

127L Further detention pending variation of restraint order

(1) This section applies if—
  (a) property is detained under section 127J,
  (b) a restraint order is in force in respect of the property, and
  (c) the order does not include provision under section 120A authorising the detention of the property.

(2) If within the period mentioned in section 127J an application is made for the order to be varied so as to include provision under section 120A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—
  (a) the decision to refuse the application, or
  (b) any decision made on an appeal against (or review of) that decision.

127M Further detention in other cases

(1) This section applies if—
  (a) property is detained under section 127J,
  (b) no restraint order is in force in respect of the property, and
  (c) no application has been made for a restraint order which includes provision under section 120A authorising detention of the property.

(2) The sheriff may by order extend the period for which the property or any part of it may be detained under section 127J if satisfied that—
  (a) any of the conditions in section 127B is met (reading references in that section to the officer as references to the sheriff),
  (b) the property or part is realisable property other than exempt property (within the meaning of section 127C(4)), and
  (c) there are reasonable grounds for suspecting that—
    (i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused, or
    (ii) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.

(3) An application for an order may be made by—
  (a) the Commissioners for Her Majesty's Revenue and Customs,

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[F409(aa) an immigration officer;**]**

(b) a constable, or

(c) the prosecutor.

(4) If the property was seized in reliance on the first or second condition in section 127B, "the prosecutor" means a person who is to have conduct of any proceedings for the offence.

(5) An order under this section must provide for notice to be given to persons affected by it.

(6) In this section "part" includes portion.

Textual Amendments

F409 S. 127M(3)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 23** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

127N Discharge, variation and lapse of detention order

(1) An order under section 127M may be discharged or varied.

(2) An application for variation or discharge of the order may be made by—

(a) a person mentioned in section 127M(3), or

(b) any person affected by the order.

(3) On an application under this section the sheriff must discharge the order if—

(a) the order was made on the ground that the first or second condition in section 127B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,

(b) the order was made on the ground that the third or fourth condition in section 127B was met but proceedings for the offence mentioned in that condition have now been concluded,

(c) the order was made on the ground that the fifth, sixth or seventh condition in section 127B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.

(4) An order made under section 127M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 120A).

127O Appeals

(1) If on an application for an order under section 127M the sheriff decides not to make an order, a person mentioned in subsection (3) of that section may appeal to the Court of Session against the decision.

(2) If an application is made under section 127N in relation to an order the following persons may appeal to the Court of Session in respect of the sheriff's decision on the application—

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(a) a person mentioned in section 127M(3), or
(b) any person affected by the order.

(3) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the order was made.

(4) On an appeal under this section the Court of Session may—
(a) make or (as the case may be) discharge the order, or
(b) vary the order.

127P Detention of property pending section 127O appeal

(1) This section applies where—
(a) an application for an order under section 127M is made within the period mentioned in section 127J, and
(b) the application is refused.

(2) This section also applies where—
(a) an order is made under section 127M extending the period for which property may be detained under section 127J, and
(b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.

(3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

127Q Release of property

(1) This section applies in relation to property which—
(a) has been seized by an appropriate officer under section 127C, and
(b) is detained under or by virtue of any of sections 127J to 127M and 127P.

(2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.

(3) The detention condition is met for so long as—
(a) any of the conditions in section 127B is met, and
(b) there are reasonable grounds for the suspicion mentioned in section 127C(1).

(4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 127J to 127M and 127P.

(5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Guidance about search and seizure and detention of property

127R Guidance by Lord Advocate

(1) The Lord Advocate may issue guidance in connection with—

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(a) the carrying out by appropriate officers of the functions conferred by sections 127C to 127H,
(b) the carrying out by senior officers of their functions under section 127G, and
(c) the detention of property under or by virtue of sections 120A, 122A and 127J to 127P.

(2) The Lord Advocate must publish any guidance issued under this section.**]**

Realisation of property: general

128 Enforcement administrators

(1) This section applies if—
(a) a confiscation order is made,
(b) it is not satisfied, and
(c) it is not subject to appeal.

(2) In such a case the court may on the application of the prosecutor exercise the powers conferred on it by this section.

(3) The court may appoint an administrator in respect of realisable property.

(4) An appointment of an administrator may be made subject to conditions or exceptions.

(5) The court may confer the powers mentioned in subsection (6) on an administrator appointed under subsection (3) above.

(6) Those powers are—
(a) power to take possession of any realisable property;
(b) power to manage or otherwise deal with the property;
(c) power to realise any realisable property, in such manner as the court may specify.

(7) The court may order any person who has possession of realisable property to give possession of it to an administrator referred to in subsection (5).

(8) The clerk of court must notify the accused and any person subject to an order under subsection (7) of the making of the order.

(9) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment.

(10) The court—
(a) may order a person holding an interest in realisable property to make to the administrator such payment as the court specifies in respect of a beneficial interest held by the accused or the recipient of a tainted gift;
(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(11) The court must not—
(a) confer the power mentioned in subsection (6)(b) or (c) in respect of property, or
(b) exercise the power conferred on it by subsection (10) in respect of property,

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unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(12) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
- (c) incurring capital expenditure in respect of the property.

(13) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(14) Subsection (6) does not apply to property for the time being subject to a charge under—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
- (b) section 78 of the Criminal Justice Act 1988 (c. 33);
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 199/2588 (N.I. 17));
- (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

Commencement Information
I120 S. 128 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

129 Management administrators: discharge

(1) This section applies if—
- (a) an administrator stands appointed under section 125 in respect of realisable property (the management administrator), and
- (b) the court appoints an administrator under section 128.

(2) The court must order the management administrator to transfer to the other administrator all property held by him by virtue of the powers conferred on him by section 125.

(3) If the management administrator complies with an order under subsection (2) he is discharged—
- (a) from his appointment under that section,
- (b) from any obligation under this Act arising from his appointment.

Commencement Information
I121 S. 129 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

130 Application of sums by enforcement administrator

(1) This section applies to sums which—
- (a) are in the hands of an administrator appointed under section 128(3), and
- (b) fall within subsection (2).

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(2) These sums fall within this subsection—
- (a) the proceeds of the realisation of property under section 128(6)(c);
- (b) any sums (other than those mentioned in paragraph (a)) in which the accused holds an interest.

(3) The sums must be applied as follows—
- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
- (b) second, they must be applied in making any payments as directed by the court;
- (c) third, they must be applied on the accused's behalf towards satisfaction of the confiscation order.

(4) If the amount payable under any confiscation order has been fully paid and any sums remain in the administrator's hands he must distribute them—
- (a) among such persons who held (or hold) interests in the property concerned as the court directs, and
- (b) in such proportions as it directs.

(5) Before making a direction under subsection (4) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(6) For the purposes of subsections (4) and (5) the property concerned is—
- (a) the property represented by the proceeds mentioned in subsection (2)(a);
- (b) the sums mentioned in subsection (2)(b).

(7) The administrator applies sums as mentioned in subsection (3)(c) by paying them to the appropriate clerk of court on account of the amount payable under the order.

(8) The appropriate clerk of court is the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1) of this Act.

Commencement Information
I122 S. 130 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

131 Sums received by clerk of court

(1) This section applies if a clerk of court receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 130 or otherwise).

(2) The clerk of court's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
- (a) are payable under this subsection by virtue of section 432, but
- (b) are not already paid under section 130(3)(a) **[**[F410] or 131D(2)(a)**]** .

Status: *Point in time view as at 05/01/2023.*
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(4) If the Lord Advocate has reimbursed the administrator in respect of remuneration or expenses under section 133 the clerk of court must next apply the sums in reimbursing the Lord Advocate.

(5) If the clerk of court received the sums under section 130 **[**[F411] or 131D**]** he must next apply them in payment of the administrator's remuneration and expenses.

[[F412](5A) If the clerk of court received the sums from an appropriate officer under section 130 or 131D, the clerk of court must next apply them in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 131B.**]**

(6) If a direction was made under section 97(6) **[**[F413]or 97A(4)**]** for an amount of compensation to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount.

[[F414](6A) If a direction was made under section 97A(2) or (4) for an amount payable under a restitution order or a victim surcharge under section 253F(2) of the Procedure Act to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount.**]**

(7) If any amount remains after the clerk of court makes any payments required by the preceding provisions of this section, the amount must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section 118(1) of this Act.

Textual Amendments

F410 Words in s. 131(3)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 59(3)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F411 Words in s. 131(5) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 59(3)(b)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F412 S. 131(5A) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 59(3)(c)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F413 Words in s. 131(6) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 44(a)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

F414 S. 131(6A) inserted (25.11.2019 for specified purposes, 10.2.2021 in so far as not already in force) by Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 44(b)**; S.S.I. 2019/281, reg. 2; S.S.I. 2020/407, reg. 2(1)(c)

Commencement Information

I123 S. 131 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

[[F415]*Seized money*

Textual Amendments

F415 S. 131ZA and cross-heading inserted (S.) (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 28**, 58(2)(6); S.S.I. 2017/456, reg. 2(a)

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131ZA Seized money

(1) This section applies to money which—
- (a) is held by a person, and
- (b) is held in an account maintained by the person with a bank or building society.

(2) This section also applies to money which is held by a person and which—
- (a) has been seized under a relevant seizure power by a constable or another person lawfully exercising the power, and
- (b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.

(3) But this section applies to money only so far as the money is free property.

(4) Subsection (5) applies if—
- (a) a confiscation order is made against a person holding money to which this section applies, and
- (b) an administrator has not been appointed under section 128 in relation to the money.

(5) The relevant court may order the appropriate person to pay, within such period as the court may specify, the money or a portion of it specified by the court to the appropriate clerk of court on account of the amount payable under the confiscation order.

(6) An order under subsection (5) may be made—
- (a) on the application of the prosecutor, or
- (b) by the relevant court of its own accord.

(7) The Scottish Ministers may by regulations amend this section so that it applies by virtue of subsection (1) not only to money held in an account maintained with a bank or building society but also to—
- (a) money held in an account maintained with a financial institution of a specified kind, or
- (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(8) Regulations under subsection (7) may amend this section so that it makes provision about realising an instrument or product within subsection (7)(b) or otherwise obtaining money from it.

(9) In this section—

"appropriate clerk of court", in relation to a confiscation order, means the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1);

"appropriate person" means—
- (a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;
- (b) in any other case, the person on whose authority the money is detained;

"bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;

"building society" has the same meaning as in the Building Societies Act 1986;

"relevant court", in relation to a confiscation order, means—

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(a) the court which makes the confiscation order, or
(b) the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1);

"relevant seizure power" means a power to seize money conferred by or by virtue of—
(a) a warrant granted under any enactment or rule of law, or
(b) any enactment, or rule of law, under which the authority of a warrant is not required.

(10) In the definition of "bank" in subsection (9), "authorised deposit-taker" means—
(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;
(b) a person who—
(i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and
(ii) accepts deposits;
[F416](c) . . . . . .

(11) A reference in subsection (10) to a person [F417]... with permission to accept deposits does not include a person [F417]... with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.**]**

Textual Amendments
F416 S. 131ZA(10)(c) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
F417 Words in s. 131ZA(11) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F418]Seized personal property

Textual Amendments
F418 Ss. 131A-131D and cross-heading inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 59(2)**, 116(1); S.I. 2015/983, art. 2(2)(a)

131A Seized personal property

(1) This section applies to moveable property which is held by a person and which—
(a) has been seized by an appropriate officer under a relevant seizure power, or
(b) has been produced to an appropriate officer in compliance with a production order under section 380.

(2) This section applies if the following conditions are satisfied—
(a) a confiscation order is made against the person by whom the property is held;
(b) an administrator has not been appointed under section 128 in relation to the property;

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(c) any period allowed under section 116 for payment of the amount ordered to be paid under the confiscation order has ended.

(3) In such a case the sheriff may by order authorise an appropriate officer to realise the property.

(4) In this section "appropriate officer" and "relevant seizure power" have the same meaning as in section 120A.

131B Costs of storage and realisation

(1) This section applies if the sheriff makes an order under section 131A.

(2) The sheriff may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
(a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
(b) realising the property.

(3) If the sheriff makes a determination under this section the appropriate officer is entitled to payment of the amount under section 131(5A).

(4) A determination under this section may be made on the same occasion as the section 131A order or on any later occasion; and more than one determination may be made in relation to any case.

(5) In this section "appropriate officer" has the same meaning as in section 120A.

131C Sections 131A and 131B: appeals

(1) If a sheriff decides not to make an order under section 131A, an appropriate officer may appeal to the Court of Session.

(2) If a sheriff makes an order under section 131A, a person affected by the order may appeal to the Court of Session.

(3) But the person mentioned in section 131A(2)(a) may not appeal.

(4) An appropriate officer may appeal to the Court of Session against—
(a) a determination made by a sheriff under section 131B;
(b) a decision by a sheriff not to make a determination under that section.

(5) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the decision or (as the case may be) the order was made.

(6) On an appeal under this section the Court of Session may—
(a) confirm, quash or vary the decision or (as the case may be) the order, or
(b) make such order as Court of Session believes is appropriate.

(7) In this section "appropriate officer" has the same meaning as in section 120A.

131D Proceeds of realisation

(1) This section applies to sums which—
(a) are in the hands of an appropriate officer, and

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(b) are the proceeds of the realisation of property under section 131A.

(2) The sums must be applied as follows—

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;

(b) second, they must be applied in making any payments directed by the sheriff;

(c) third, they must be paid to the appropriate clerk of court on account of the amount payable under the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—

(a) among such persons who held (or hold) interests in the property represented by the proceeds as the sheriff directs, and

(b) in such proportions as the sheriff directs.

(4) Before making a direction under subsection (3) the sheriff must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to the sheriff.

(5) In this section—

(a) "appropriate officer" has the same meaning as in section 120A;

(b) "appropriate clerk of court" means the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1).**]**

Exercise of powers

132 Powers of court and administrator [[F419]etc]

(1) This section applies to—

(a) the powers conferred on a court by sections 119 to **[**[F420]131D**]** , 134 to 136 and Schedule 3;

(b) the powers of an administrator appointed under section 125 or 128(3).

[[F421](c) the powers conferred on appropriate officers by sections 127C to 127L;

(d) the powers conferred on senior officers by section 127G.**]**

(2) The powers—

(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the accused;

(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property or of the proceeds of realisation;

(c) must be exercised without taking account of any obligation of the accused or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the accused;

(d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—

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(a) the powers must be exercised with a view to allowing a person other than the accused or a recipient of a tainted gift to retain or recover the value of any interest held by him;

(b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;

(c) in a case where a confiscation order has not been made against the accused, property must not be realised if the court so orders under subsection (4).

(4) If on an application by the accused or by the recipient of a tainted gift the court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.

Textual Amendments

F419 Word in s. 132 heading inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 56(4)(b)**, 116(1); S.I. 2015/983, art. 2(2)(a)

F420 Word in s. 132(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 71**; S.I. 2015/983, arts. 2(2)(e), 3(n)

F421 S. 132(1)(c)(d) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 56(4)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a)

Modifications etc. (not altering text)

C39 Pt. 3 applied by 2000 c. 11, Sch. 8 para. 34(3A) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 39(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7))

Commencement Information

I124 S. 132 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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—

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(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.

Commencement Information

I125 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

I126 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

I127 S. 135 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

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.

(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
I128 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
I129 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.

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(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.

(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
I130 S. 138 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Compensation

139 Serious default

(1) If the following three conditions are satisfied the court may order the payment of such compensation as it thinks is just.

(2) The first condition is satisfied if a criminal investigation has been instituted with regard to an offence and proceedings are not instituted for the offence.

(3) The first condition is also satisfied if proceedings for an offence are instituted against a person and—
  (a) they do not result in his conviction for the offence, or
  (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.

(4) If subsection (2) applies the second condition is that—
  (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
  (b) the investigation would not have continued if the default had not occurred.

(5) If subsection (3) applies the second condition is that—
  (a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person mentioned in subsection (9), and
  (b) the proceedings would not have been instituted or continued if the default had not occurred.

(6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.

(7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is instituted.

(8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are instituted.

Status: *Point in time view as at 05/01/2023.*
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(9) Compensation under this section is payable to the applicant and—

(a) if the person in default was a constable of a police force (within the meaning of the Police (Scotland) Act 1967 (c. 77)), the compensation is payable by the **[**[F422]Scottish Police Authority**]**;

[[F423](aa) if the person in default was a constable of the Police Service of Scotland, the compensation is payable by the Scottish Police Authority,**]**

(b) if the person in default was a constable not falling within paragraph (a), the compensation is payable by the body under whose authority he acts;

(c) if the person in default was a procurator fiscal or was acting on behalf of the Lord Advocate, the compensation is payable by the Lord Advocate;

[[F424](ca) if the person in default was a **[**[F425]National Crime Agency officer**]**, the compensation is payable by **[**[F426]the National Crime Agency**]**;**]**

(d) if the person in default was a customs officer, the compensation is payable by the Commissioners of Customs and Excise;

(e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.

(10) Nothing in this section affects any delictual liability in relation to a serious default.

Textual Amendments

F422 Words in s. 139(9)(a) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 19(2)(a)**

F423 S. 139(9)(aa) inserted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 19(2)(b)**

F424 S. 139(9)(ca) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 61(3)**, 116(1); S.I. 2009/3096, art. 3(g)

F425 Words in s. 139(9)(ca) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 116(a)**; S.I. 2013/1682, art. 3(v)

F426 Words in s. 139(9)(ca) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 116(b)**; S.I. 2013/1682, art. 3(v)

Commencement Information

I131 S. 139 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

140 Confiscation order varied or discharged

(1) This section applies if—

(a) the court varies a confiscation order under section 113 or discharges one under section 114, and

(b) an application is made to the court by a person who held realisable property and has suffered loss as a result of the making of the order.

(2) The court may order the payment to the applicant of such compensation as it believes is just.

(3) Compensation payable under this section is payable by the Lord Advocate.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information
I132 S. 140 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Enforcement abroad

141 Enforcement abroad

(1) This section applies if—
- (a) any of the conditions in section 119 are satisfied,
- (b) the prosecutor believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
- (c) the prosecutor sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—
- (a) any person is prohibited from dealing with realisable property,
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of the realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is sufficient evidence of the facts it states if it states—
- (a) that the property has been realised in pursuance of a request under subsection (3),
- (b) the date of realisation, and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Commencement Information
I133 S. 141 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
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Interpretation

142 Criminal lifestyle

(1) An accused has a criminal lifestyle if (and only if) the offence (or any of the offences) concerned satisfies any of these tests—

(a) it is specified in Schedule 4;

(b) it constitutes conduct forming part of a course of criminal activity;

(c) it is an offence committed over a period of at least six months and the accused has benefited from the conduct which constitutes the offence.

(2) Conduct forms part of a course of criminal activity if the accused has benefited from the conduct and—

(a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or

(b) in the period of six years ending with the day when those proceedings were instituted (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.

(3) But an offence does not satisfy the test in subsection (1)(b) or (c) unless the accused obtains relevant benefit of not less than **[**[F427]£1000**]**.

(4) Relevant benefit for the purposes of subsection (1)(b) is—

(a) benefit from conduct which constitutes the offence;

(b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the accused has been convicted.

(5) Relevant benefit for the purposes of subsection (1)(c) is benefit from conduct which constitutes the offence.

(6) The Scottish Ministers may by order amend Schedule 4.

(7) The Scottish Ministers may by order vary the amount for the time being specified in subsection (3).

Textual Amendments

F427 Sum in s. 142(3) substituted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **3**

Commencement Information

I134 S. 142 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with art. 5)

143 Conduct and benefit

(1) Criminal conduct is conduct which—

(a) constitutes an offence in Scotland, or

(b) would constitute such an offence if it had occurred in Scotland.

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(2) General criminal conduct of the accused is all his criminal conduct, and it is immaterial—
  (a) whether conduct occurred before or after the passing of this Act;
  (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

(3) Particular criminal conduct of the accused is all his criminal conduct which falls within the following paragraphs—
  (a) conduct which constitutes the offence or offences concerned;
  (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned.

(4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and in some other.

(7) If a person benefits from conduct his benefit is the value of the property obtained.

Commencement Information
I135 S. 143 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)** (with art. 6)

144 Tainted gifts and their recipients

(1) Subsections (2) and (3) apply if—
  (a) no court has made a decision as to whether the accused has a criminal lifestyle, or
  (b) a court has decided that the accused has a criminal lifestyle.

(2) A gift is tainted if it was made by the accused at any time after the relevant day.

(3) A gift is also tainted if it was made by the accused at any time and was of property—
  (a) which was obtained by the accused as a result of or in connection with his general criminal conduct, or
  (b) which (in whole or part and whether directly or indirectly) represented in the accused's hands property obtained by him as a result of or in connection with his general criminal conduct.

(4) Subsection (5) applies if a court has decided that an accused does not have a criminal lifestyle.

(5) A gift is tainted if it was made by the accused at any time after—
  (a) the date on which the offence concerned was committed, or

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(b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the earliest of those dates.

(6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.

(7) A gift may be a tainted gift whether it was made before or after the passing of this Act.

(8) The relevant day is the first day of the period of six years ending with—
(a) the day when proceedings for the offence concerned were instituted against the accused, or
(b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(9) If the accused transfers property to another person (whether directly or indirectly) for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.

(10) If subsection (9) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
(a) whose numerator is the difference between the two values mentioned in subsection (9), and
(b) whose denominator is the value of the property at the time of the transfer.

(11) References to a recipient of a tainted gift are to a person to whom the accused has (whether directly or indirectly) made the gift.

Commencement Information
I136 S. 144 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

145 Value: the basic rule

(1) This section applies for the purpose of deciding the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time ignoring any charging order under a provision listed in subsection (4).

(4) The provisions are—
(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
(b) section 78 of the Criminal Justice Act 1988 (c. 33);
(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 199/2588 (N.I. 17));
(d) section 27 of the Drug Trafficking Act 1994 (c. 37);
(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(5) This section has effect subject to sections 146 and 147.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information
I137 S. 145 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

146 Value of property obtained from conduct

(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.

(2) The value of the property at the material time is the greater of the following—
- (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
- (b) the value (at the material time) of the property found under subsection (3).

(3) The property found under this subsection is—
- (a) if the person holds the property obtained, that property;
- (b) if he holds no part of the property obtained, any property which directly or indirectly represents it in his hands;
- (c) if he holds part of the property obtained, that part and any property which directly or indirectly represents the other part in his hands.

(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 145.

Commencement Information
I138 S. 146 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

147 Value of tainted gifts

(1) The value at any time (the material time) of a tainted gift is the greater of the following—
- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
- (b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is—
- (a) if the recipient holds the property given, that property;
- (b) if the recipient holds no part of the property given, any property which directly or indirectly represents it in his hands;
- (c) if the recipient holds part of the property given, that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 145.

Commencement Information
I139 S. 147 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
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148 Free property

[[F428](1) Property is free unless it falls within subsection (2) or (3).**]**

[[F429](2)**]** **[**[F430]Property falls within this subsection if**]** an order is in force in respect of it under—

(a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders),

(b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15) (deprivation orders),

(c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime),

(d) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) **[**[F431]or Chapter 4 of Part 7 of the Sentencing Code**]** (deprivation orders),

(e) section 23 **[**[F432], 23A**]** or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders), [F433]...

[[F434](ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001, or**]**

(f) section **[**[F435] 245A,**]** 246, **[**[F436]255A, 256,**]** 266, 295(2) **[**[F437], 298(2), 303L(1), 303O(3), 303R(3), 303Z3 or 303Z14(4)**]** of this Act.

[[F438](3) Property falls within this subsection if—

(a) it has been forfeited in pursuance of a forfeiture notice under section 297A **[**[F439]or an account forfeiture notice under section 303Z9**]**;

(b) it is detained under section 297C **[**[F440]297D **[**[F441], 298(4) or 303O(9)**]]**.**]**

[[F442](c) it is the forfeitable property in relation to an order under section 303Q(1).**]**

[[F443](d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

(e) it is detained under paragraph 5B, 5C, 9A or 10G(7) of that Schedule;

(f) it is the forfeitable property in relation to an order under paragraph 10I(1) of that Schedule.**]**

Textual Amendments

F428 S. 148(1) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 103(2)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F429 S. 148(2): s. 148 renumbered as s. 148(2) (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 103(3)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F430 Words in s. 148(2) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 103(4)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F431 Words in s. 148(2)(d) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 198** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F432 Word in s. 148(e) inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), s. 100(5), **Sch. 3 para. 7(5)** (with s. 101(2)); S.I. 2009/1256, art. 2(c)

F433 Word in s. 148(2)(e) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), ss. 34(3)(a)(i), 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)

F434 S. 148(2)(ea) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(3)(a)(ii)**, 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)

F435 Word in s. 148(f) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(7)(b), **Sch. 6 para. 6(a)**; S.I. 2005/3136, art. 2(b)

F436 Words in s. 148(f) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(7)(b), **Sch. 6 para. 6(b)**; S.I. 2005/3136, art. 2(b)

F437 Words in s. 148(2)(f) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 24(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F438 S. 148(3) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 103(5)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F439 Words in s. 148(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 24(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F440 Words in s. 148(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(3)(b)**, 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)

F441 Words in s. 148(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 24(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F442 S. 148(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 24(3)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F443 S. 148(3)(d)-(f) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(3)(c)**, 58(2)(6); S.S.I. 2017/456, reg. 2(d); S.I. 2018/78, reg. 3(r)

Commencement Information

I140 S. 148 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

149 Realisable property

Realisable property is—

(a) any free property held by the accused;

(b) any free property held by the recipient of a tainted gift.

Commencement Information

I141 S. 149 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

150 Property: general provisions

(1) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property whether heritable or moveable and whether corporeal or incorporeal.

(2) The following rules apply in relation to property—

(a) property is held by a person if he holds an interest in it;

(b) property is obtained by a person if he obtains an interest in it;

(c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;

(d) references to property held by a person include references to his property vested in his [F444]... trustee in bankruptcy or liquidator[[F445]or in the trustee

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or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016), of his estate**]**;

(e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;

(f) references to an interest, in relation to land in England, Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

Textual Amendments

F444 Words in s. 150(2)(d) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(4)(a)**

F445 Words in s. 150(2)(d) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(4)(b)**

Modifications etc. (not altering text)

C40 S. 150(2)(a)(c)-(g) applied (1.1.2006) by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181), arts. 1, **87(2)**

C41 S. 150(2)(c)-(g) applied (1.1.2006) by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181), arts. 1, **87(2)**

Commencement Information

I142 S. 150 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

151 Proceedings

(1) Proceedings for an offence are instituted against a person—

(a) on his arrest without warrant;

(b) when he is charged with the offence without being arrested;

(c) when a warrant to arrest him is granted;

(d) when a warrant to cite him is granted;

(e) when he first appears on petition or when an indictment or complaint is served on him.

(2) If more than one time is found under subsection (1) in relation to proceedings they are instituted at the earliest of those times.

(3) Proceedings for an offence are concluded when—

(a) the trial diet is deserted simpliciter,

(b) the accused is acquitted or, under section 65 or 147 of the Procedure Act, discharged or liberated,

(c) the court sentences the accused without making a confiscation order and without postponing a decision as regards making such an order,

(d) the court decides, after such a postponement, not to make a confiscation order,

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(e) the accused's conviction is quashed, or

(f) the accused is pardoned.

(4) If a confiscation order is made against the accused in proceedings for an offence, the proceedings are concluded—

(a) when the order is satisfied or discharged, or

(b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

(5) If—

(a) the accused is convicted in proceedings for an offence but the court decides not to make a confiscation order against him, and

(b) on appeal under section 108(1)(ca) or 175(4)(ca) of the Procedure Act, the High Court of Justiciary refuses the appeal,

the proceedings are concluded on the determination of the appeal.

Commencement Information

I143 S. 151 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

152 Applications

(1) An application under section 104, 105, 111 or 112 is concluded—

(a) in a case where the court decides not to make a confiscation order against the accused, when it makes the decision;

(b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the prosecutor notifies the withdrawal to the court to which the application was made.

(2) An application under section 106 or 107 is concluded—

(a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;

(b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the prosecutor notifies the withdrawal to the court to which the application was made.

Commencement Information

I144 S. 152 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

153 Satisfaction of confiscation orders

(1) A confiscation order is satisfied—

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(a) when no amount is due under it;

[F446](b) . . . . . .

(2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed[F447]....

Textual Amendments

F446 S. 153(1)(b) omitted (1.3.2016) by virtue of Serious Crime Act 2015 (c. 9), s. 88(2)(c), **Sch. 4 para. 45**; S.S.I. 2016/11, reg. 2(j) (with reg. 3)

F447 Words in s. 153(2) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), Sch. 7 para. 72, **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(e)(f), 3(n)

Commencement Information

I145 S. 153 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

[[F448]153A No further possibility of appeal

(1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—

(a) an appeal against (or review of) a decision of a court, or

(b) an appeal on which an order of a court could be varied or quashed.

(2) Any power—

(a) to allow an appeal (or review) out of time, or

(b) to extend the time for applying for leave to appeal,

must be ignored.]

Textual Amendments

F448 S. 153A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 73**; S.I. 2015/983, arts. 2(2)(e), 3(n)

154 Other interpretative provisions

(1) In this Part—

"accused" means a person against whom proceedings for an offence have been instituted (whether or not he has been convicted);

"clerk of court" includes the sheriff clerk;

"confiscation order" means an order under section 92;

"conviction", in relation to an offence, includes a finding that the offence has been committed;

"court" must be construed in accordance with sections 92(13) and 119(10);

"criminal investigation" means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence;

"the Procedure Act" means the Criminal Procedure (Scotland) Act 1995 (c. 46);

"restraint order" means an order under section 120.

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(2) A reference to the offence (or offences) concerned must be construed in accordance with section 92(12).

(3) A reference to sentencing the accused for an offence includes a reference to dealing with him otherwise in respect of the offence.

Commencement Information

I146 S. 154 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

General

155 Rules of court

(1) Provision may be made by act of sederunt as to—

(a) giving notice or serving any document for the purposes of this Part;

(b) the accountant of court's functions under Schedule 3;

(c) the accounts to be kept by the administrator in relation to the exercise of his functions.

(2) Subsection (1) is without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) or section 5 of the Court of Session Act 1988 (c. 36).

Commencement Information

I147 S. 155 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

PART 4

CONFISCATION: NORTHERN IRELAND

Modifications etc. (not altering text)

C42 Pt. 4 functions of receiver 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)**

C43 Pt. 4 applied by S.I. 1989/1341 (N.I. 12), **arts. 57(5B)**, 59(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), Supreme Court s. 458(1), Sch. 11 para. 19(2)(3); S.I. 2003/333, art. 2, **Sch.**)

C44 Pt. 4: power to amend conferred (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 97(3)**, 178(8); S.I. 2005/1521, art. 3(1)(a)

C45 Pt. 4 applied (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 2 para. 11(5)**

C46 Pt. 4 applied (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 2 para. 6(5)**

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Confiscation orders

156 Making of order

(1) The Crown Court must proceed under this section if the following two conditions are satisfied.

(2) The first condition is that a defendant falls within either of the following paragraphs—

(a) he is convicted of an offence or offences in proceedings before the Crown Court;

(b) he is committed to the Crown Court in respect of an offence or offences under section 218 below (committal with a view to a confiscation order being considered).

(3) The second condition is that—

(a) the prosecutor [F449]... asks the court to proceed under this section, or

(b) the court believes it is appropriate for it to do so.

(4) The court must proceed as follows—

(a) it must decide whether the defendant has a criminal lifestyle;

(b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;

(c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

(a) decide the recoverable amount, and

(b) make an order (a confiscation order) requiring him to pay that amount.

[[F450]Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.**]**

(6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) The first condition is not satisfied if the defendant absconds (but section 177 may apply).

(9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

Textual Amendments

F449 Words in s. 156(3)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 36, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F450 Words in s. 156(5) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 46**; S.R. 2015/190, reg. 3(2)(b)

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Modifications etc. (not altering text)

C47 Pt. 4 applied by S.I. 1989/1341 (N.I. 12), art. 59(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 19(3)**; S.I. 2003/333, art. 2, Sch.)

Commencement Information

I148 S. 156 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 4(1), 8, 10-13) (as amended (6.3.2003) by S.I. 2003/531, art. 3)

157 Recoverable amount

(1) The recoverable amount for the purposes of section 156 is an amount equal to the defendant's benefit from the conduct concerned.

(2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is—

(a) the available amount, or

(b) a nominal amount, if the available amount is nil.

(3) But if section 156(6) applies the recoverable amount is such amount as—

(a) the court believes is just, but

(b) does not exceed the amount found under subsection (1) or (2) (as the case may be).

(4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), **[**[F451]the following must be ignored—

(a) any property in respect of which a recovery order is in force under section 266,

(b) any property which has been forfeited in pursuance of a forfeiture notice under section 297A **[**[F452]or an account forfeiture notice under section 303Z9**]**, [F453]...

(c) any property in respect of which a forfeiture order is in force under section 298(2)**][**[F454], 303O(3), 303R(3) or 303Z14(4)**]**.**[**[F455], and

(d) any property which is the forfeitable property in relation to an order under section 303Q(1).**]**

(5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

Textual Amendments

F451 Words in s. 157(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 104**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F452 Words in s. 157(4)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 25(a)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

F453 Word in s. 157(4)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 25(b)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

F454 Words in s. 157(4)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 25(c)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

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F455 S. 157(4)(d) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 25(d)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

Commencement Information

I149 S. 157 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

158 Defendant's benefit

(1) If the court is proceeding under section 156 this section applies for the purpose of—
- (a) deciding whether the defendant has benefited from conduct, and
- (b) deciding his benefit from the conduct.

(2) The court must—
- (a) take account of conduct occurring up to the time it makes its decision;
- (b) take account of property obtained up to that time.

(3) Subsection (4) applies if—
- (a) the conduct concerned is general criminal conduct,
- (b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the defendant, and
- (c) his benefit for the purposes of that order was benefit from his general criminal conduct.

(4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.

(5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
- (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
- (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (7).

(6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(7) These are the provisions—
- (a) the Drug Trafficking Offences Act 1986 (c. 32);
- (b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
- (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
- (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
- (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
- (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
- (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
- (h) Part 2 or 3 of this Act.

(8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) is a reference to conduct in respect

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of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

Commencement Information
I150 S. 158 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

159 Available amount

(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
  (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and
  (b) the total of the values (at that time) of all tainted gifts.

(2) An obligation has priority if it is an obligation of the defendant—
  (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
  (b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.

(3) "Preferential debts" has the meaning given by Article 346 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

Commencement Information
I151 S. 159 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

160 Assumptions to be made in case of criminal lifestyle

(1) If the court decides under section 156 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—
  (a) deciding whether he has benefited from his general criminal conduct, and
  (b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—
  (a) as a result of his general criminal conduct, and
  (b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—
  (a) as a result of his general criminal conduct, and
  (b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

(6) But the court must not make a required assumption in relation to particular property or expenditure if—
  (a) the assumption is shown to be incorrect, or
  (b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of the required assumptions it must state its reasons.

(8) The relevant day is the first day of the period of six years ending with—
  (a) the day when proceedings for the offence concerned were started against the defendant, or
  (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(9) But if a confiscation order mentioned in section 158(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8)—
  (a) the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order;
  (b) the second assumption does not apply to any property which was held by him on or before the relevant day.

(10) The date of conviction is—
  (a) the date on which the defendant 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.

Commencement Information
I152 S. 160 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F456 160A Determination of extent of defendant's interest in property

(1) Where it appears to a court making a confiscation order that—
  (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
  (b) a person other than the defendant holds, or may hold, an interest in the property,

  the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.

(2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—

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(a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or

(b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3)—

(a) is subject to section 199(8B), and

(b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.

(5) In this Part, the "extent" of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.**]**

Textual Amendments

F456 S. 160A inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 24**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

[[F457]161 Time for payment

(1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.

(2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid—

(a) in a specified period, or

(b) in specified periods each of which relates to a specified amount.

(3) A specified period—

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

(b) must not exceed three months.

(4) If—

(a) within any specified period the defendant applies to the Crown Court for that period to be extended, and

(b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,

the court may make an order extending the period (for all or any part or parts of the amount in question).

(5) An extended period—

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

(b) must not exceed six months.

(6) An order under subsection (4)—

(a) may be made after the end of the specified period to which it relates, but

(b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.

Status: *Point in time view as at 05/01/2023.*
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(7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able—

(a) to pay the amount remaining to be paid, or

(b) to pay an amount towards what remains to be paid,

that amount is required to be paid no later than that day.

(8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.**]**

Textual Amendments

F457 S. 161 substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 28(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(b)

Commencement Information

I153 S. 161 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

162 Interest on unpaid sums

(1) If **[**[F458]any amount required to be paid**]** by a person under a confiscation order is not paid when it is required to be paid, he **[**[F459]must pay interest on that amount**]** for the period for which it remains unpaid.

(2) The rate of interest is the same rate as that for the time being applying to a money judgment of the High Court.

[[F460](3) If—

(a) an application has been made under section 161(4) for a specified period to be extended,

(b) the application has not been determined by the court, and

(c) the period of six months starting with the day on which the confiscation order was made has not ended,

the amount on which interest is payable under this section does not include the amount to which the specified period relates.**]**

(4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

Textual Amendments

F458 Words in s. 162(1) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 47(a)**; S.R. 2015/190, reg. 3(2)(b)

F459 Words in s. 162(1) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 47(b)**; S.R. 2015/190, reg. 3(2)(b)

F460 S. 162(3) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 28(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(b)

Modifications etc. (not altering text)

C48 S. 162 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 2 para. 11(6)**

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I154 S. 162 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

163 Effect of order on court's other powers

(1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.

(2) The court must take account of the confiscation order before—

(a) it imposes a fine on the defendant, or

(b) it makes an order falling within subsection (3).

(3) These orders fall within this subsection—

(a) an order involving payment by the defendant, other than an order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders);

(b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);

(c) an order under Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);

(d) an order under section 23 **[**[F461]or 23A**]** or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders).

(4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

(5) Subsection (6) applies if—

(a) a court makes **[**[F462]a confiscation order and one or both of**]** an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15) **[**[F463]and a slavery and trafficking reparation order under Schedule 2 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015,**]**) against the same person in the same proceedings, and

(b) the court believes he will not have sufficient means to satisfy **[**[F464]all the orders**]** in full.

(6) In such a case the court must direct that so much **[**[F465]as it specifies of the amount (or amounts) payable under the other order (or orders) mentioned in subsection (5)(a)**]** is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Textual Amendments

F461 Words in s. 163(3)(d) inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), s. 100(5), **Sch. 3 para. 7(6)** (with s. 101(2)); S.I. 2009/1256, art. 2(c)

F462 Words in s. 163(5)(a) substituted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 13(3)(a)**

F463 Words in s. 163(5)(a) inserted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 13(3)(a)**

F464 Words in s. 163(5)(b) substituted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 13(3)(b)**

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F465 Words in s. 163(6) substituted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 13(4)**

Commencement Information

I155 S. 163 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F466 163A 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 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 defendant'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) any person affected by the order.

Textual Amendments

F466 S. 163A, 163B inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 29**, 88(3)(a) (with s. 86(4)); S.R. 2015/190, reg. 3(1)(c)

163B Appeals against orders under section 163A

(1) If on an application under section 163A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.

(2) The following persons may appeal to the Court of Appeal in respect of the Crown Court's decision to make, discharge or vary a compliance order—

(a) the prosecutor;

(b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes is appropriate.

(4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).

(5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(6) On an appeal under subsection (4) the Supreme Court may—

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(a) confirm the decision of the Court of Appeal, or
(b) make such order as it believes is appropriate.

(7) In this section "compliance order" means an order made under section 163A.**]**

Textual Amendments

F466 S. 163A, 163B inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 29**, 88(3)(a) (with s. 86(4)); S.R. 2015/190, reg. 3(1)(c)

Procedural matters

164 Postponement

(1) The court may—
(a) proceed under section 161 before it sentences the defendant for the offence (or any of the offences) concerned, or
(b) postpone proceedings under section 161 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.

(5) The permitted period is the period of two years starting with the date of conviction.

(6) But if—
(a) the defendant 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 defendant;
(b) on application by the prosecutor [F467]...;
(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 defendant 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.

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(10) References to appealing include references to applying under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (statement of case).

(11) 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.

(12) But subsection (11) does not apply if before it made the confiscation order the court—
- (a) imposed a fine on the defendant;
- (b) made an order falling within section 163(3);
- (c) made an order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).

Textual Amendments

F467 Words in s. 164(7)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 38, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I156 S. 164 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

165 Effect of postponement

(1) If the court postpones proceedings under section 156 it may proceed to sentence the defendant for the offence (or any of the offences) concerned.

(2) In sentencing the defendant 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 163(3), or
- (c) make an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)).

(3) If the court sentences the defendant 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 163(3), or
- (c) making an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994.

(4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.

(5) For the purposes of—
- (a) section 16(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (time limit for notice of appeal or of application for leave to appeal), and
- (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (c. 33) (time limit for notice of application for leave to refer a case under section 36 of that Act),

the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3).

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(6) If the court proceeds to sentence the defendant under subsection (1), section 156 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) The postponement period is the period for which proceedings under section 156 are postponed.

Commencement Information
I157 S. 165 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

166 Statement of information

(1) If the court is proceeding under section 156 in a case where section 156(3)(a) applies, the prosecutor [F468]... must give the court a statement of information within the period the court orders.

(2) If the court is proceeding under section 156 in a case where section 156(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders.

(3) If the prosecutor [F469]... believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor [F470]... believes are relevant in connection with deciding these issues—
- (a) whether the defendant has a criminal lifestyle;
- (b) whether he has benefited from his general criminal conduct;
- (c) his benefit from the conduct.

(4) A statement under subsection (3) must include information the prosecutor [F471]... believes is relevant—
- (a) in connection with the making by the court of a required assumption under section 160;
- (b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.

(5) If the prosecutor [F472]... does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor [F473]... believes are relevant in connection with deciding these issues—
- (a) whether the defendant has benefited from his particular criminal conduct;
- (b) his benefit from the conduct.

(6) If the prosecutor [F474]... gives the court a statement of information—
- (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.

[[F475](6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide—
- (a) whether to make a determination under section 160A, or
- (b) what determination to make (if the court decides to make one).

Status: *Point in time view as at 05/01/2023.*
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(6B) If the court has decided to make a determination under section 160A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.**]**

(7) If the court makes an order under this section it may at any time vary it by making another one.

Textual Amendments

F468 Words in s. 166(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F469 Words in s. 166(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F470 Words in s. 166(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F471 Words in s. 166(4) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F472 Words in s. 166(5) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(5)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F473 Words in s. 166(5) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(5)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F474 Words in s. 166(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 39(6), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F475 S. 166(6A)(6B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 25(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

Commencement Information

I158 S. 166 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

167 Defendant's response to statement of information

(1) If the prosecutor [F476]... gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—

(a) to indicate (within the period it orders) 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.

(2) If the defendant 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 166(3) or (5) (as the case may be).

(3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) 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.

(4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.

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(5) If the court makes an order under this section it may at any time vary it by making another one.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

Textual Amendments

F476 Words in s. 167(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 40, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I159 S. 167 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

168 Provision of information by defendant

(1) This section applies if—

(a) the court is proceeding under section 156 in a case where section 156(3)(a) applies, or

(b) it is proceeding under section 156 in a case where section 156(3)(b) applies or it is considering whether to proceed.

(2) For the purpose of obtaining information to help it in carrying out its functions **[**[F477] (including functions under section 160A)**]** the court may at any time order the defendant to give it information specified in the order.

(3) 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.

(4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) Subsection (4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.

(6) If the prosecutor [F478]... accepts to any extent an allegation made by the defendant—

(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 **[**[F479]deciding—

(i) the available amount under section 159, or

(ii) whether to make a determination under section 160A, or what determination to make (if the court decides to make one),**]**

the court may treat the acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(8) If the court makes an order under this section it may at any time vary it by making another one.

(9) No information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F477 Words in s. 168(2) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 25(2)(a)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

F478 Words in s. 168(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 41, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F479 Words in s. 168(6)(b) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 25(2)(b)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

Commencement Information

I160 S. 168 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F480 168A Provision of information as to defendant's interest in property

(1) This section applies if the court—

(a) is considering whether to make a determination under section 160A of the extent of the defendant's interest in any property, or

(b) is deciding what determination to make (if the court has decided to make a determination under that section).

In this section "interested person" means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.

(2) For the purpose of obtaining information to help it in carrying out its functions under section 160A the court may at any time order an interested person to give it information specified in the order.

(3) 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.

(4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.

(6) If the prosecutor accepts to any extent an allegation made by an interested person—

(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 a determination under section 160A,

the court may treat the acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(8) If the court makes an order under this section it may at any time vary it by making another one.

(9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F480 S. 168A inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 25(3)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

Reconsideration

169 No order made: reconsideration of case

(1) This section applies if—

(a) the first condition in section 156 is satisfied but no court has proceeded under that section,

(b) there is evidence which was not available to the prosecutor on the relevant date,

(c) before the end of the period of six years starting with the date of conviction the prosecutor [F481]... applies to the Crown Court to consider the evidence, and

(d) after considering the evidence the court believes it is appropriate for it to proceed under section 156.

(2) If this section applies the court must proceed under section 156, and when it does so subsections (3) to (8) below apply.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 156 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Section 158(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) In section 160—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(6) The recoverable amount for the purposes of section 156 is such amount as—

(a) the court believes is just, but

(b) does not exceed the amount found under section 157.

(7) In arriving at the just amount the court must have regard in particular to—

(a) the amount found under section 157;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

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(c) any order which falls within section 163(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 159;

(d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).

(8) If an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 has been made against the defendant in respect of the offence or offences concerned, section 163(5) and (6) above do not apply.

(9) The relevant date is—

(a) if the court made a decision not to proceed under section 156, the date of the decision;

(b) if the court did not make such a decision, the date of conviction.

(10) The date of conviction is—

(a) the date on which the defendant 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.

Textual Amendments

F481 Words in s. 169(1)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 42, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I161 S. 169 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

170 No order made: reconsideration of benefit

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that in proceeding under section 156 the court has decided that—

(a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or

(b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct.

[F482](3) . . . . . .

(4) [F483]... the second condition is that—

(a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct,

(b) before the end of the period of six years starting with the date of conviction the prosecutor [F484]... applies to the Crown Court to consider the evidence, and

(c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) If this section applies the court—
- (a) must make a fresh decision under section 156(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);
- (b) may make a confiscation order under that section.

(6) Subsections (7) to (12) below apply if the court proceeds under section 156 in pursuance of this section.

(7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 156 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(8) Section 158(2) does not apply, and the rules applying instead are that the court must—
- (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
- (b) take account of property obtained before that date;
- (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) In section 160—
- (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
- (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
- (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(10) The recoverable amount for the purposes of section 156 is such amount as—
- (a) the court believes is just, but
- (b) does not exceed the amount found under section 157.

(11) In arriving at the just amount the court must have regard in particular to—
- (a) the amount found under section 157;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- (c) any order which falls within section 163(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 159;
- (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).

(12) If an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 has been made against the defendant in respect of the offence or offences concerned, section 163(5) and (6) above do not apply.

(13) The date of conviction is the date found by applying section 169(10).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F482 S. 170(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 43(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F483 Words in s. 170(4) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 43(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F484 Words in s. 170(4)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 43(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I162 S. 170 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

171 Order made: reconsideration of benefit

(1) This section applies if—

(a) a court has made a confiscation order,

(b) there is evidence which was not available to the prosecutor [F485]... at the relevant time,

(c) the prosecutor [F486]... believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount,

(d) before the end of the period of six years starting with the date of conviction the prosecutor [F487]... applies to the Crown Court to consider the evidence, and

(e) after considering the evidence the court believes it is appropriate for it to proceed under this section.

(2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply.

(3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 156 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Section 158(2) does not apply, and the rules applying instead are that the court must—

(a) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;

(b) take account of property obtained up to that time;

(c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(5) In applying section 158(5) the confiscation order must be ignored.

(6) In section 160—

(a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order;

(b) the third assumption does not apply with regard to expenditure incurred by him after that time;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court—

(a) must make a new calculation of the recoverable amount for the purposes of section 156, and

(b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(8) In applying subsection (7)(a) the court must—

(a) take the new calculation of the defendant's benefit;

(b) apply section 159 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(9) In applying subsection (7)(b) the court must have regard in particular to—

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 163(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 159;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).

(10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) if a court has made a direction under section 163(6).

(11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(12) The relevant time is—

(a) when the court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) when the court last calculated the defendant's benefit in pursuance of this section, if this section has applied previously.

(13) The relevant amount is—

(a) the amount found as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the defendant's benefit in pursuance of this section, if this section has applied previously.

(14) The date of conviction is the date found by applying section 169(10).

Textual Amendments

F485 Words in s. 171(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 44, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F486 Words in s. 171(1)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 44, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F487 Words in s. 171(1)(d) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 44, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I163 S. 171 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

172 Order made: reconsideration of available amount

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the amount required to be paid was the amount found under section 157(2), and

(c) an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.

(2) These applicants fall within this subsection—

(a) the prosecutor;

F488(b) . . . . . .

(c) a receiver appointed under section 198 F489....

(3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 159 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(4) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as—

(a) it believes is just, but

(b) does not exceed the amount found as the defendant's benefit from the conduct concerned.

(5) In deciding what is just the court must have regard in particular to—

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 163(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 159;

(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).

(6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) if a court has made a direction under section 163(6).

(7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

(8) The relevant amount is—

(a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.

(9) The amount found as the defendant's benefit from the conduct concerned is—

(a) the amount so found when the confiscation order was made, or

(b) if one or more new calculations of the defendant's benefit have been made under section 171 the amount found on the occasion of the last such calculation.

Textual Amendments

F488 S. 172(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 45(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F489 Words in s. 172(2)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 45(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I164 S. 172 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

173 Inadequacy of available amount: variation of order

(1) This section applies if—

(a) a court has made a confiscation order, and

(b) the defendant **[**[F490] or the prosecutor**]**, or a receiver appointed under section 198 [F491]..., applies to the Crown Court to vary the order under this section.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 159 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.

(4) If a person has been **[**[F492]made**]** bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

(6) In subsection (4) "company" means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) or the Insolvency Act 1986 (c. 45).

Textual Amendments

F490 Words in s. 173(1)(b) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 30(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(d)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F491 Words in s. 173(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 46, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F492 Word in s. 173(4) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

Commencement Information

I165 S. 173 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

174 Inadequacy of available amount: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the prosecutor applies to the Crown Court for the discharge of the order, and

(c) the amount remaining to be paid under the order is less than £1,000.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 159 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court—

(a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and

(b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,

it may discharge the confiscation order.

(4) The specified reasons are—

(a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;

(b) any reason specified by the **[**[F493]Department of Justice in Northern Ireland**]** by order.

(5) The **[**[F494]Department of Justice in Northern Ireland**]** may by order vary the amount for the time being specified in subsection (1)(c).

[[F495](6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 171(1)(d) or 172(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 171(7) or (as the case may be) 172(4), the court may provide that its discharge under this section is revoked.**]**

Textual Amendments

F493 Words in s. 174(4)(b) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 48(a)** (with arts. 28-31)

F494 Words in s. 174(5) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 48(b)** (with arts. 28-31)

F495 S. 174(6)(7) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 32(5)**, 58(3)(6) (with s. 32(7)); S.R. 2021/167, reg. 2(c)

Commencement Information

I166 S. 174 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

175 Small amount outstanding: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) a chief clerk applies to the Crown Court for the discharge of the order, and

(c) the amount remaining to be paid under the order is £50 or less.

(2) In such a case the court may discharge the order.

(3) The **[**[F496]Department of Justice in Northern Ireland**]** may by order vary the amount for the time being specified in subsection (1)(c).

[[F497](4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 171(1)(d) or 172(1)(c).

(5) Where on such an application the court determines that the order should be varied under section 171(7) or (as the case may be) 172(4), the court may provide that its discharge under this section is revoked.**]**

Textual Amendments

F496 Words in s. 175(3) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 49** (with arts. 28-31)

F497 S. 175(4)(5) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 32(6)**, 58(3)(6) (with s. 32(7)); S.R. 2021/167, reg. 2(c)

Commencement Information

I167 S. 175 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F498]175A Recovery from estate of deceased defendant impractical: discharge of order

(1) This section applies if—

(a) a court has made a confiscation order,

(b) the defendant dies while the order is not satisfied, and

(c) the prosecutor applies to the Crown Court for the discharge of the order.

(2) The court may discharge the order if it appears to the court that—

(a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or

(b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F498 S. 175A inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 30(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(d)

176 Information

(1) This section applies if—

(a) the court proceeds under section 156 in pursuance of section 169 or 170, or

(b) the prosecutor [F499]... applies under section 171.

(2) In such a case—

(a) the prosecutor [F500]... must give the court a statement of information within the period the court orders;

(b) section 166 applies accordingly (with appropriate modifications where the prosecutor [F501]... applies under section 171);

(c) section 167 applies accordingly;

(d) section 168 applies as it applies in the circumstances mentioned in section 168(1).

Textual Amendments

F499 Words in s. 176(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 47(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F500 Words in s. 176(2)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 47(3)(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F501 Words in s. 176(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 47(3)(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I168 S. 176 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Defendant absconds

177 Defendant convicted or committed

(1) This section applies if the following two conditions are satisfied.

[[F502](2) The first condition is that a defendant falls within either of the following paragraphs—

(a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;

(b) he absconds after being committed to the Crown Court in respect of an offence or offences under section 218 below (committal with a view to a confiscation order being considered).**]**

(3) The second condition is that—

(a) the prosecutor [F503]... applies to the Crown Court to proceed under this section, and

(b) the court believes it is appropriate for it to do so.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) If this section applies the court must proceed under section 156 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 156 as applied by this section, this Part has effect with these modifications—

(a) any person the court believes is likely to be affected by an order under section 156 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 156 unless the prosecutor [F504]... has taken reasonable steps to contact the defendant;

(c) section 156(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

(d) sections 160, 166(4), 167 and 168 must be ignored;

(e) sections 169, 170 and 171 must be ignored while the defendant is still an absconder.

[[F505](6) Once the defendant ceases to be an absconder—

(a) section 169 has effect as if subsection (1) read—

"(1) This section applies if—

(a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156,

(b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 156, and

(c) the court believes it is appropriate for it to do so.";

(b) section 170 has effect as if subsection (4) read—

"(4) The second condition is that—

(a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and

(b) the court believes it is appropriate for it to do so.";

(c) section 171 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 defendant'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 defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and

(d) the court believes it is appropriate for it to do so.";

(d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 169, 170 or 171 (as applied by this subsection).**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F502 S. 177(2) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 31(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(e)

F503 Words in s. 177(3)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 48(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F504 Words in s. 177(5)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 48(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F505 S. 177(6) substituted for s. 177(6)(7) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 31(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(e)

Commencement Information

I169 S. 177 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 4(2), 10-13)

178 Defendant neither convicted nor acquitted

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that—

(a) proceedings for an offence or offences are started against a defendant but are not concluded,

(b) he absconds, and

(c) the period of **[**[F506]three months**]** (starting with the day the court believes he absconded) has ended.

(3) The second condition is that—

(a) the prosecutor [F507]... applies to the Crown Court to proceed under this section, and

(b) the court believes it is appropriate for it to do so.

(4) If this section applies the court must proceed under section 156 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 156 as applied by this section, this Part has effect with these modifications—

(a) any person the court believes is likely to be affected by an order under section 156 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 156 unless the prosecutor [F508]... has taken reasonable steps to contact the defendant;

(c) section 156(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

(d) sections 160, 166(4) and 167 to 170 must be ignored;

(e) section 171 must be ignored while the defendant is still an absconder.

[[F509](6) Once the defendant has ceased to be an absconder—

(a) section 171 has effect as if subsection (1) read—

"(1) This section applies if—

(a) a court has made a confiscation order,

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) the prosecutor believes that if the court were to find the amount of the defendant'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 defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and

(d) the court believes it is appropriate for it to do so.";

(b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 171 (as applied by this subsection).**]**

(7) If—

(a) the court makes an order under section 156 as applied by this section, and

(b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,

section 156 does not apply so far as that conviction is concerned.

Textual Amendments

F506 Words in s. 178(2)(c) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 31(3)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(e)

F507 Words in s. 178(3)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 49(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F508 Words in s. 178(5)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 49(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F509 S. 178(6) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 31(4)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(e)

Commencement Information

I170 S. 178 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 4(3), 10-13)

179 Variation of order

(1) This section applies if—

(a) the court makes a confiscation order under section 156 as applied by section 178,

(b) the defendant ceases to be an absconder,

(c) he is convicted of an offence (or any of the offences) mentioned in section 178(2)(a),

(d) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and

(e) before the end of the relevant period he applies to the Crown Court to consider the evidence on which his belief is based.

(2) If (after considering the evidence) the court concludes that the defendant's belief is well founded—

(a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with—

(a) the date on which the defendant was convicted of the offence mentioned in section 178(2)(a), or

(b) if there are two or more offences and the the convictions were on different dates, the date of the latest.

(4) But in a case where section 178(2)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

Commencement Information

I171 S. 179 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

180 Discharge of order

(1) Subsection (2) applies if—

(a) the court makes a confiscation order under section 156 as applied by section 178,

(b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and

(c) he applies to the Crown Court to discharge the order.

(2) In such a case the court must discharge the order.

(3) Subsection (4) applies if—

(a) the court makes a confiscation order under section 156 as applied by section 178,

(b) the defendant ceases to be an absconder,

(c) subsection (1)(b) does not apply, and

(d) he applies to the Crown Court to discharge the order.

(4) In such a case the court may discharge the order if it finds that—

(a) there has been undue delay in continuing the proceedings mentioned in section 178(2), or

(b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

Commencement Information

I172 S. 180 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Appeals

181 Appeal by prosecutor [F510etc]F511...

(1) If the Crown Court makes a confiscation order the prosecutor F512... may appeal to the Court of Appeal in respect of the order.

(2) If the Crown Court decides not to make a confiscation order the prosecutor F513... may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section **[**F514 160A,**]** 169, 170, 177 or 178.

[F515(4) An appeal lies to the Court of Appeal against a determination, under section 160A, of the extent of the defendant's interest in property.

(5) An appeal under subsection (4) lies at the instance of—
- (a) the prosecutor;
- (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies.

(6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.

(7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.

(8) An appeal does not lie under subsection (4) where—
- (a) the Court of Appeal believes that an application under section 198 is to be made by the prosecutor for the appointment of a receiver,
- (b) such an application has been made but has not yet been determined, or
- (c) a receiver has been appointed under section 198.**]**

Textual Amendments

F510 Word in s. 181 heading inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 48(2)**; S.R. 2015/190, reg. 3(2)(b)

F511 Words in s. 181 heading repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 50(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F512 Words in s. 181(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 50(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F513 Words in s. 181(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 50(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F514 Word in s. 181(3) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 48(3)**; S.R. 2015/190, reg. 3(2)(b)

F515 S. 181(4)-(8) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 26(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

Commencement Information

I173 S. 181 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

182 Court's powers on appeal

(1) On an appeal under section 181(1) the Court of Appeal may confirm, quash or vary the confiscation order.

(2) On an appeal under section 181(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—
  (a) itself proceed under section 156 (ignoring subsections (1) to (3)), or
  (b) direct the Crown Court to proceed afresh under section 156.

[[F516](2A) On an appeal under section 181(4) the Court of Appeal may—
  (a) confirm the determination, or
  (b) make such order as it believes is appropriate.**]**

(3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.

(4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must—
  (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
  (b) have regard to any order which falls within section 163(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 159.

(5) If the Court of Appeal proceeds under section 156 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply.

(6) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 156 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders)—
  (a) the court must have regard to it, and
  (b) section 163(5) and (6) above do not apply **[**[F517]so far as they relate to such orders**]** .

(8) Section 158(2) does not apply, and the rules applying instead are that the court must—
  (a) take account of conduct occurring before the relevant date;
  (b) take account of property obtained before that date;
  (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) In section 160—
  (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;
  (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(10) Section 176 applies as it applies in the circumstances mentioned in subsection (1) of that section.

(11) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

Textual Amendments

F516 S. 182(2A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 26(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

F517 Words in s. 182(7)(b) inserted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 14**

Commencement Information

I174 S. 182 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

183 Appeal to [F518Supreme Court]

(1) An appeal lies to the **[**F519Supreme Court **]** from a decision of the Court of Appeal on an appeal under section 181.

[F520(2) An appeal under this section lies at the instance of—

(a) the defendant or the prosecutor (except where paragraph (b) applies);

(b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 181(4), any person who was a party to those proceedings.**]**

(3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the **[**F521Supreme Court**]** may confirm, quash or vary the order.

[F522(3A) On an appeal under this section from a decision under section 182(2A) the Supreme Court may—

(a) confirm the decision of the Court of Appeal, or

(b) make such order as it believes is appropriate.**]**

(4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the **[**F521Supreme Court**]** may—

(a) confirm the decision, or

(b) direct the Crown Court to proceed afresh under section 156 if it believes the decision was wrong.

(5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the **[**F521Supreme Court**]** may make.

(6) If a court varies a confiscation order under this section or makes a confiscation order in pursuance of a direction under this section it must—

(a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(b) have regard to any order which falls within section 163(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 159.

(7) If the Crown Court proceeds afresh under section 156 in pursuance of a direction under this section subsections (8) to (12) apply.

(8) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 156 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(9) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders)—

(a) the Crown Court must have regard to it, and

(b) section 163(5) and (6) above do not apply **[**[F523]so far as they relate to such orders**]** .

(10) Section 158(2) does not apply, and the rules applying instead are that the Crown Court must—

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(11) In section 160—

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(12) Section 176 applies as it applies in the circumstances mentioned in subsection (1) of that section.

(13) The relevant date is—

(a) in a case where the Crown Court made a confiscation order which was quashed by the Court of Appeal, the date on which the Crown Court made the order;

(b) in any other case, the date on which the Crown Court decided not to make a confiscation order.

Textual Amendments

F518 Words in s. 183 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(6)**; S.I. 2009/1604, art. 2(d)

F519 Words in s. 183(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(6)**; S.I. 2009/1604, art. 2(d)

F520 S. 183(2) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 26(3)(a)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

F521 Words in s. 183(3)-(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(6)**; S.I. 2009/1604, art. 2(d)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F522 S. 183(3A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 26(3)(b)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

F523 Words in s. 183(9)(b) inserted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 15**

Commencement Information

I175 S. 183 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement authority

[F524]184 Enforcement authority

. . . . . .

Textual Amendments

F524 S. 184 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 52, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Enforcement as fines etc

185 Enforcement as fines etc

(1) This section applies if a court makes a confiscation order.

(2) Section 35(1)(c), [F525]... (4) and (5) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) (functions of court as to fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the Crown Court.

[[F526](2A) Where a court is fixing a term of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

TABLE

Amount	*Maximum term*
£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 Department of Justice in Northern Ireland may by order—

(a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) 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 the power in paragraph (a) of this subsection) or to add any entry.**]**

(3) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of Article 35 of the Criminal Justice **[**[F527] (Children)**]** (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (parent or guardian to pay fine etc. instead of child).

Textual Amendments

F525 Word in s. 185(2) omitted (1.6.2015) by virtue of Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 49(a)**; S.R. 2015/190, reg. 3(2)(b)

F526 S. 185(2A)(2B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 32(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(f)

F527 Word in s. 185(3) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 49(b)**; S.R. 2015/190, reg. 3(2)(b)

Modifications etc. (not altering text)

C49 S. 185 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 2 para. 11(6)**

Commencement Information

I176 S. 185 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F528]186 Director's application for enforcement

. . . . . .

Textual Amendments

F528 S. 186 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 53, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

187 Provisions about imprisonment or detention

(1) Subsection (2) applies if—

(a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and

(b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).

(2) In such a case the term of imprisonment or of detention to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above.

(3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention under section 5 of the Treatment of Offenders Act

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(Northern Ireland) 1968 (c. 29 (N.I.)), which he is liable to serve in respect of the offence (or any of the offences).

(4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—

(a) any sentence of imprisonment or order for detention suspended under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 which has not taken effect at the time the warrant is issued;

(b) any term of imprisonment or detention fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued at that time.

(5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned.

Modifications etc. (not altering text)

C50 S. 187 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 2 para. 11(6)**

Commencement Information

I177 S. 187 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

188 Reconsideration etc: variation of prison term

(1) Subsection (2) applies if—

(a) a court varies a confiscation order under section 171, 172, 173, 179, 182 or 183,

(b) the effect of the variation is to vary the maximum period applicable in relation to the order under section 35(2) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)), and

(c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of that Act.

(2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under section 35(1)(c) of that Act in place of the term previously fixed.

(3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.

(4) In such a case the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under section 35(1)(c) of that Act.

(5) If the effect of section 162 is to increase the maximum period applicable in relation to a confiscation order under section 35(2) of that Act, on the application of the **[**[F529]prosecutor**]** the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of that Act.

[F530](6) . . . . . .

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F529 Word in s. 188(5) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 54(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F530 S. 188(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 54(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Modifications etc. (not altering text)

C51 S. 188 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), reg. 1(b), **Sch. 2 para. 11(6)**

Commencement Information

I178 S. 188 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Restraint orders

189 Conditions for exercise of powers

(1) The High Court may exercise the powers conferred by section 190 if any of the following conditions is satisfied.

(2) The first condition is that—

(a) a criminal investigation has been started in Northern Ireland with regard to an offence, and

(b) there **[**[F531]are reasonable grounds to suspect**]** that the alleged offender has benefited from his criminal conduct.

(3) The second condition is that—

(a) proceedings for an offence have been started in Northern Ireland and not concluded,

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(4) The third condition is that—

(a) an application by the prosecutor [F532]... has been made under section 169, 170, 177 or 178 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(5) The fourth condition is that—

(a) an application by the prosecutor [F533]... has been made under section 171 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).

(6) The fifth condition is that—

(a) an application by the prosecutor [F534]... has been made under section 172 and not concluded, or the court believes that such an application is to be made, and

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(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(7) The second condition is not satisfied if the court believes that—
(a) there has been undue delay in continuing the proceedings, or
(b) the prosecutor does not intend to proceed.

(8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—
(a) there has been undue delay in continuing the application, or
(b) the prosecutor [F535]... does not intend to proceed.

(9) If the first condition is satisfied—
(a) references in this Part to the defendant are to the alleged offender;
(b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;
(c) section 225(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

Textual Amendments

F531 Words in s. 189(2)(b) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 33(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(g)

F532 Words in s. 189(4)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 55(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F533 Words in s. 189(5)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 55(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F534 Words in s. 189(6)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 55(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F535 Words in s. 189(8)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 55(5), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I179 S. 189 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

190 Restraint orders

(1) If any condition set out in section 189 is satisfied the High Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.

(2) A restraint order may provide that it applies—
(a) to all realisable property held by the specified person whether or not the property is described in the order;
(b) to realisable property transferred to the specified person after the order is made.

(3) A restraint order may be made subject to exceptions, and an exception may in particular—
(a) make provision for reasonable living expenses and reasonable legal expenses;

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(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

(c) be made subject to conditions.

(4) But an exception to a restraint order may not make provision for any legal expenses which—

(a) relate to an offence which falls within subsection (5), and

(b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

(a) the offence mentioned in section 189(2) or (3), if the first or second condition (as the case may be) is satisfied;

(b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

(6) Subsection (7) applies if—

(a) the court makes a restraint order, and

(b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).

(7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

[[F536](7A) Subsections (7B) and (7C) apply where the High Court makes a restraint order (by virtue of the first condition in section 189) as a result of a criminal investigation having been started in Northern Ireland with regard to an offence.

(7B) 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 discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 191(3)).

(7C) The duty under subsection (7B)(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 191(3)).**]**

[[F537](7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.**]**

(8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

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(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
(d) section 27 of the Drug Trafficking Act 1994 (c. 37);
(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(9) Dealing with property includes removing it from Northern Ireland.

Textual Amendments

F536 S. 190(7A)-(7C) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 33(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(g)

F537 S. 190(7D) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 50**; S.R. 2015/190, reg. 3(2)(b)

Commencement Information

I180 S. 190 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 6, 10-13)

[F538 190A Restraint orders: power to retain seized property

(1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
(a) is seized by an appropriate officer under a relevant seizure power, or
(b) is produced to an appropriate officer in compliance with a production order under section 345.

(2) Provision under subsection (1) may, in particular—
(a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
(b) relate to property that has already been seized or produced or to property that may be seized or produced in future.

(3) "Appropriate officer" means—
(a) an accredited financial investigator;
(b) a constable;
(c) an officer of Revenue and Customs;
[F539 (ca) an immigration officer;]
[F540 (d) a National Crime Agency officer;]
(e) a member of staff of the relevant director (within the meaning of section 352(5A)).

(4) "Relevant seizure power" means a power to seize property conferred by or by virtue of—
(a) section 195C,
(b) section 352, or
(c) Part 3 or 4 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (including as applied by order under Article 85(1) of that Order).

(5) The Secretary of State may by order amend the definition of "relevant seizure power".]

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F538 S. 190A inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 54(2)**, 116(1); S.I. 2016/147, art. 3(a) (with art. 4)

F539 S. 190A(3)(ca) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), Sch. 21 para. 24 (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F540 S. 190A(3)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), Sch. 8 para. 117; S.I. 2013/1682, art. 3(v)

191 Application, discharge and variation

(1) A restraint order—

(a) may be made only on an application by an applicant falling within subsection (2);

(b) may be made on an ex parte application to a judge in chambers.

(2) These applicants fall within this subsection—

(a) the prosecutor;

[F541](b) . . . . . .

(c) an accredited financial investigator.

(3) An application to discharge or vary a restraint order or an order under section 190(7) may be made to the High Court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(4) Subsections (5) to **[**[F542](8)**]** apply to an application under subsection (3).

(5) The court—

(a) may discharge the order;

(b) may vary the order.

(6) If the condition in section 189 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).

[[F543](6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—

(a) the proceedings are concluded by reason of a defendant's conviction for an offence being quashed,

(b) the order is in force at the time when the conviction is quashed, and

(c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.

(6B) But the court must discharge the restraint order—

(a) if the Court of Appeal declines to make an order for the defendant to be retried,

(b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or

(c) otherwise, on the conclusion of proceedings for the retrial of the defendant.**]**

[[F544](7) If the condition in section 189 which was satisfied was that an investigation was started—

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

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

(8) If the condition in section 189 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 discharge the order on the conclusion of the application.**]**

Textual Amendments

F541 S. 191(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 56, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F542 Word in s. 191(4) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 51(2)**; S.R. 2015/190, reg. 3(2)(b)

F543 S. 191(6A)(6B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 34**, 88(3)(a); S.R. 2015/190, reg. 3(1)(h)

F544 S. 191(7)(8) substituted for s. 191(7) (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(3)(b), **Sch. 4 para. 51(3)**; S.R. 2015/190, reg. 3(2)(b)

Commencement Information

I181 S. 191 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

192 Appeal to Court of Appeal

(1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If an application is made under section 191(3) in relation to a restraint order or an order under section 190(7) the following persons may appeal to the Court of Appeal in respect of the High Court's decision on the application—

(a) the person who applied for the order;

(b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes is appropriate.

Commencement Information

I182 S. 192 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

193 Appeal to [F545Supreme Court]

(1) An appeal lies to the **[**F546Supreme Court**]** from a decision of the Court of Appeal on an appeal under section 192.

Status: *Point in time view as at 05/01/2023.*
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(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(3) On an appeal under this section the **[**[F547]Supreme Court**]** may—

(a) confirm the decision of the Court of Appeal, or

(b) make such order as it believes is appropriate.

Textual Amendments

F545 Words in s. 193 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 9 para. 77(7); S.I. 2009/1604, art. 2(d)

F546 Words in s. 193(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(7)**; S.I. 2009/1604, art. 2(d)

F547 Words in s. 193(3) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(7)**; S.I. 2009/1604, art. 2(d)

Commencement Information

I183 S. 193 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F548]193A Detention of property pending appeal

(1) This section applies where—

(a) a restraint order includes provision under section 190A authorising the detention of property, and

(b) the restraint order is discharged under section 191(5) or 192(3)(b).

(2) This section also applies where—

(a) a restraint order includes provision under section 190A authorising the detention of property, and

(b) the restraint order is varied under section 191(5) or 192(3)(b) so as to omit any such provision.

(3) The property may be detained until there is no further possibility of an appeal against—

(a) the decision to discharge or vary the restraint order, or

(b) any decision made on an appeal against that decision.**]**

Textual Amendments

F548 S. 193A inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 54(3)**, 116(1); S.I. 2016/147, art. 3(a) (with art. 4)

[F549]194 Seizure

. . . . . .

Textual Amendments

F549 S. 194 repealed (1.3.2016) by Policing and Crime Act 2009 (c. 26), ss. 57(3), 116(1), **Sch. 8 Pt. 4**; S.I. 2016/147, art. 3(b)(k) (with art. 4)

Status: *Point in time view as at 05/01/2023.*
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195 Supplementary

(1) The person applying for a restraint order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which—

(a) the application relates, or

(b) a restraint order made in pursuance of the application relates.

(2) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for a restraint order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under subsection (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(4) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order discharging the restraint order may require that the entry be vacated.

(5) In this section—

"Registrar" and "entry" have the same meanings as in the Land Registration Act (Northern Ireland) 1970; and

"Registration of Deeds Acts" has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Modifications etc. (not altering text)

C52 S. 195 applied (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, **17(1)**

Commencement Information

I184 S. 195 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F550 Search and seizure powers

Textual Amendments

F550 Ss. 195A-195T and cross-headings inserted (22.11.2014 for the insertion of ss. 195S(1)-(5), 195T(1)-(7) for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 57(2)**, 116(1) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(m) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

195A Sections 195B to 195S: meaning of "appropriate officer"

(1) In sections 195B to 195S "appropriate officer" means—

(a) an officer of Revenue and Customs,

[an immigration officer, or**]**

Status: *Point in time view as at 05/01/2023.*
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[F551](aa)

(b) a constable, [F552]...

[an SFO officer, or**]**

[F553](ba)

(c) an accredited financial investigator.

(2) In subsection (1)(c) the reference to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State under section 453.

Textual Amendments

F551 S. 195A(1)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), **ss. 55(4)(c)**, 61(2) (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(b)

F552 Word in s. 195A(1)(b) omitted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 7(a)**; S.I. 2021/724, reg. 3(b)

F553 S. 195A(1)(ba) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 7(b)**; S.I. 2021/724, reg. 3(b)

195B Conditions for exercise of powers

(1) An appropriate officer may exercise the power conferred by section 195C if satisfied that any of the following conditions is met.

(2) The first condition is that—

(a) a criminal investigation has been started in Northern Ireland with regard to an indictable offence,

(b) a person has been arrested for the offence,

(c) proceedings for the offence have not yet been started against the person in Northern Ireland,

(d) there **[**[F554]are reasonable grounds to suspect**]** that the person has benefited from conduct constituting the offence, and

(e) a restraint order is not in force in respect of any realisable property.

(3) The second condition is that—

(a) a criminal investigation has been started in Northern Ireland with regard to an indictable offence,

(b) a person has been arrested for the offence,

(c) proceedings for the offence have not yet been started against the person in Northern Ireland, and

(d) a restraint order is in force in respect of any realisable property.

(4) The third condition is that—

(a) proceedings for an indictable offence have been started in Northern Ireland and have not been concluded,

(b) there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence, and

(c) a restraint order is not in force in respect of any realisable property.

Status: *Point in time view as at 05/01/2023.*
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(5) The fourth condition is that—
- (a) proceedings for an indictable offence have been started in Northern Ireland and have not been concluded, and
- (b) a restraint order is in force in respect of any realisable property.

(6) The fifth condition is that—
- (a) an application by the prosecutor has been made under section 169, 170, 177 or 178 and not concluded, or the officer believes that such an application is to be made, and
- (b) there is reasonable cause to believe that the defendant has benefited from criminal conduct.

(7) The sixth condition is that—
- (a) an application by the prosecutor has been made under section 171 and not concluded, or the officer believes that such an application is to be made, and
- (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).

(8) The seventh condition is that—
- (a) an application by the prosecutor has been made under section 172 and not concluded, or the officer believes that such an application is to be made, and
- (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(9) The third or fourth condition is not met if the officer believes that—
- (a) there has been undue delay in continuing the proceedings, or
- (b) the prosecutor does not intend to proceed.

(10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—
- (a) there has been undue delay in continuing the application, or
- (b) the prosecutor does not intend to proceed.

(11) In relation to the first or second condition references in sections 195C to 195S to the defendant are to the person mentioned in that condition.

(12) In relation to the first or second condition section 225(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

Textual Amendments

F554 Words in s. 195B(2)(d) substituted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 35(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(i)

195C Power to seize property

(1) On being satisfied as mentioned in section 195B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—

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(a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or

(b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.

(2) But the officer may not seize—

(a) cash, or

(b) exempt property.

(3) "Cash" has the same meaning as in section 289.

(4) "Exempt property" means—

(a) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in the defendant's employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family.

(5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the defendant are to be read as references to the recipient of that gift.

Section 195B(11) is subject to this subsection.

(6) The power conferred by this section—

(a) may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and

[F555(aa) **[** where applicable, in accordance with subsection (6A) or (6B).**]**

[[F556](6A) The power conferred by this section is exercisable**]** by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).

[F557](6B) **[** The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

(a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

(b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.**]**

(7) "Relevant offence" means—

(a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 195B is met, the offence mentioned in that condition,

(b) in a case where the officer is satisfied that any of the other conditions in section 195B is met, the offence (or any of the offences) concerned.

[[F558](8) Relevant nationality enactment" means any enactment in—

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(a) the British Nationality Act 1981,
(b) the Hong Kong Act 1985,
(c) the Hong Kong (War Wives and Widows) Act 1996,
(d) the British Nationality (Hong Kong) Act 1997,
(e) the British Overseas Territories Act 2002, or
(f) an instrument made under any of those Acts.**]**

Textual Amendments

F555 S. 195C(6)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 25(2)(a)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F556 S. 195C(6A) substituted (22.11.2014) for words by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 25(2)(b)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F557 S. 195C(6B) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 25(3)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F558 S. 195C(8) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 25(4)** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

195D Search power: premises

(1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—
(a) the officer has reasonable grounds for suspecting may be found there, and
(b) if found there, the officer intends to seize under section 195C.

(2) The power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) "Premises" has the meaning given by Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

195E Search power: people

(1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 195C.

(2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
(a) to permit a search of any article with the person,
(b) to permit a search of the person.

(3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.

(4) A power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(5) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

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195F Search power: vehicles

(1) The powers specified in subsection (4) are exercisable if—

(a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 195C, and

(b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.

(2) The powers are exercisable only if the vehicle is—

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—

(a) that the person does not reside in the dwelling, and

(b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.

(4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 195C, require the person to—

(a) permit entry to the vehicle,

(b) permit a search of the vehicle.

(5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.

(6) A power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

195G "Appropriate approval"

(1) This section has effect for the purposes of sections 195C, 195D, 195E and 195F.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a lay magistrate or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means—

(a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

[F559] **[** (aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,**]**

[F560] **[** (ba) in relation to the exercise of a power by an accredited financial investigator who is a member of staff of the Police Service of Northern Ireland, a senior police officer,**]**

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[[F561](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,**]**

[[F562](ac) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office,**]**

(b) in relation to the exercise of a power by a constable, a senior police officer,

(c) in relation to the exercise of a power by an accredited financial investigator **[**[F563]who does not fall within any of the preceding paragraphs**]**, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under section 453.

(4) A senior police officer means a police officer of at least the rank of inspector.

Textual Amendments

F559 S. 195G(3)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 26** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F560 S. 195G(3)(ba) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 31(3)**, 58(3)(6); S.R. 2021/167, reg. 2(b)

F561 S. 195G(3)(ab) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 35(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(i)

F562 S. 195G(3)(ac) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 8**; S.I. 2021/724, reg. 3(b)

F563 Words in s. 195G(3)(c) inserted (27.4.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 26**; S.I. 2021/724, reg. 4(f)

195H Exercise of powers without judicial approval

(1) An appropriate officer must give a written report to the appointed person in any case where—

(a) the officer seizes property under section 195C without the approval of a lay magistrate, and

(b) any of the property seized is not detained for more than 48 hours.

(2) An appropriate officer must also give a written report to the appointed person in any case where—

(a) the officer exercises any of the powers conferred by sections 195D, 195E and 195F without the approval of a lay magistrate, and

(b) no property is seized under section 195C.

(3) A report under this section must give particulars of the circumstances which led the officer to believe that—

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of a lay magistrate.

(4) The appointed person means a person appointed for the purposes of this subsection by the **[**[F564]Department of Justice**]** .

(5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any

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remuneration or expenses to be paid, are to be determined by the **[**[F565]Department of Justice**]** .

["Government department" includes a Northern Ireland department.**]**
[F566](5A)

(6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).

(7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—
   (a) any Saturday or Sunday,
   (b) Christmas Day,
   (c) Good Friday, or
   (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

Textual Amendments

F564 Words in s. 195H(4) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(a) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F565 Words in s. 195H(5) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(b) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F566 S. 195H(5A) inserted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(c) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

195I Report by appointed person on exercise of powers

(1) As soon as possible after the end of each financial year, the person appointed under section 195H(4) must prepare a report for that year.

(2) "Financial year" means—
   (a) the period beginning with the day on which section 57 of the Policing and Crime Act 2009 comes into force and ending with the next 31 March (which is the first financial year), and
   (b) each subsequent period of twelve months beginning with 1 April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 195C, 195D, 195E and 195F are being exercised in cases where the officer who exercised them is required to give a report under section 195H.

(4) The report may make any recommendations the appointed person considers appropriate.

(5) The appointed person must send a copy of the report to the **[**[F567]Department of Justice**]** .

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(6) The **[**[F568]Department of Justice**]** must—

(a) publish any report received under subsection (5), and

(b) lay a copy before **[**[F569]the Northern Ireland Assembly**]** .

[F570](6A) **[** Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6)(b) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.**]**

(7) Before acting under subsection (6) the **[**[F571]Department of Justice**]** must exclude from the report any matter which the **[**[F571]Department of Justice**]** thinks is likely to prejudice any criminal investigation or criminal proceedings.

(8) If the **[**[F571]Department of Justice**]** excludes any matter from the report the **[**[F571]Department of Justice**]** must comply with subsection (6) in relation to the whole of the report as soon as the **[**[F571]Department of Justice**]** thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

Textual Amendments

F567 Words in s. 195I(5) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(d) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F568 Words in s. 195I(6) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(e) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F569 Words in s. 195I(6)(b) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(f) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F570 S. 195I(6A) inserted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(g) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F571 Words in s. 195I(7)(8) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(h) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

195J Initial detention of seized property

(1) This section applies if an appropriate officer seizes property under section 195C.

(2) The property may be detained initially for a period of 48 hours.

(3) The period of 48 hours is to be calculated in accordance with section 195H(7).

195K Further detention pending making of restraint order

(1) This section applies if—

(a) property is detained under section 195J, and

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(b) no restraint order is in force in respect of the property.

(2) If within the period mentioned in section 195J an application is made for a restraint order which includes provision under section 190A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
(a) the decision to refuse the application, or
(b) any decision made on an appeal against that decision.

(4) In subsection (2) the reference to the period mentioned in section 195J includes that period as extended by any order under section 195M.

195L Further detention pending variation of restraint order

(1) This section applies if—
(a) property is detained under section 195J,
(b) a restraint order is in force in respect of the property, and
(c) the order does not include provision under section 190A authorising the detention of the property.

(2) If within the period mentioned in section 195J an application is made for the order to be varied so as to include provision under section 190A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
(a) the decision to refuse the application, or
(b) any decision made on an appeal against that decision.

195M Further detention in other cases

(1) This section applies if—
(a) property is detained under section 195J,
(b) no restraint order is in force in respect of the property, and
(c) no application has been made for a restraint order which includes provision under section 190A authorising detention of the property.

(2) A magistrates' court may by order extend the period for which the property or any part of it may be detained under section 195J if satisfied that—
(a) any of the conditions in section 195B is met (reading references in that section to the officer as references to the court),
(b) the property or part is realisable property other than exempt property (within the meaning of section 195C(4)), and
(c) there are reasonable grounds for suspecting that—
(i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or

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(ii) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.

(3) An application for an order may be made by—

(a) the Commissioners for Her Majesty's Revenue and Customs,

[F572] (aa) **[** an immigration officer;**]**

(b) a constable,

[F573] (ba) **[** an SFO officer,**]**

(c) an accredited financial investigator, or

(d) the prosecutor.

(4) If the property was seized in reliance on the first or second condition in section 195B, "the prosecutor" means a person who is to have conduct of any proceedings for the offence.

(5) An order under this section must provide for notice to be given to persons affected by it.

(6) In this section "part" includes portion.

Textual Amendments

F572 S. 195M(3)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 27** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F573 S. 195M(3)(ba) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 9**; S.I. 2021/724, reg. 3(b)

195N Discharge, variation and lapse of detention order

(1) An order under section **[**[F574] 195M**]** may be discharged or varied.

(2) An application for variation or discharge of the order may be made by—

(a) a person mentioned in section 195M(3), or

(b) any person affected by the order.

(3) On an application under this section the court must discharge the order if—

(a) the order was made on the ground that the first or second condition in section 195B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,

(b) the order was made on the ground that the third or fourth condition in section 195B was met but proceedings for the offence mentioned in that condition have now been concluded,

(c) the order was made on the ground that the fifth, sixth or seventh condition in section 195B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.

(4) An order made under section 195M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 190A).

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Textual Amendments

F574 Word in s. 195N(1) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24 (N.I.)), s. 111(1), Sch. 7 para. 11

195O Appeals

(1) If on an application for an order under section 195M the court decides not to make one, a person mentioned in subsection (3) of that section may appeal to the county court against the decision.

(2) If an application is made under section 195N in relation to an order the following persons may appeal to the county court in respect of the magistrates' court's decision on the application—

(a) a person mentioned in section 195M(3), or

(b) any person affected by the order.

195P Detention of property pending section 195O appeal

(1) This section applies where—

(a) an application for an order under section 195M is made within the period mentioned in section 195J, and

(b) the application is refused.

(2) This section also applies where—

(a) an order is made under section 195M extending the period for which property may be detained under section 195J, and

(b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.

(3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

195Q Hearsay evidence in detention order proceedings

(1) Evidence must not be excluded in detention order proceedings on the ground that it is hearsay (of whatever degree).

(2) Articles 4 and 5 of the Civil Evidence (Northern Ireland) Order 1997 apply in relation to detention order proceedings as those articles apply in relation to civil proceedings.

(3) Detention order proceedings are proceedings—

(a) for an order under section 195M;

(b) for the discharge or variation of such an order;

(c) on an appeal under section 195O.

(4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

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195R Release of property

(1) This section applies in relation to property which—
- (a) has been seized by an appropriate officer under section 195C, and
- (b) is detained under or by virtue of any of sections 195J to 195M and 195P.

(2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.

(3) The detention condition is met for so long as—
- (a) any of the conditions in section 195B is met, and
- (b) there are reasonable grounds for the suspicion mentioned in section 195C(1).

(4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 195J to 195M and 195P.

(5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Code of practice about search and seizure and detention of property: Secretary of State

195S Codes of practice [F575: Secretary of State]

(1) The Secretary of State must make a code of practice in connection with—
- (a) the carrying out by [F576officers of Revenue and Customs][F577, immigration officers and SFO officers] of the functions conferred by section 195C to 195H,
- (b) the carrying out by senior officers of their functions under section 195G, and
- F578(c) the detention of property [F579by officers of Revenue and Customs [F580, immigration officers][F578, SFO officers] and members of staff of SOCA][by officers of Revenue and Customs and [F581NCA officers]] under or by virtue of sections 190A, 193A and 195J to 195P.

[F582(1A) In subsection (1) senior officers means—
- (a) officers of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
- (b) immigration officers of a rank designated by the Secretary of State as equivalent to that of a senior police officer.
- [F583(c) the Director of the Serious Fraud Office.]

(1B) A senior police officer means a police officer of at least the rank of inspector.]

(2) Where the Secretary of State proposes to issue a code of practice the Secretary of State must—
- (a) publish a draft,
- (b) consider any representations made about the draft,
- (c) if the Secretary of State thinks appropriate, modify the draft in the light of any such representations.

F584(2A) [The Secretary of State must also consult the Attorney General about the draft in its application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.]

Status: *Point in time view as at 05/01/2023.*
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(3) The Secretary of State must lay a draft of the code before Parliament.

(4) When the Secretary of State has laid a draft of the code before Parliament the Secretary of State may bring it into operation by order.

(5) The Secretary of State may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Textual Amendments

F575 Words in s. 195S title inserted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(i) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F576 Words in s. 195S(1)(a) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(j) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F577 Words in s. 195S(1)(a) substituted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 10(2)(a)**; S.I. 2021/724, reg. 3(b)

F578 Words in s. 195S(1)(c) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 10(2)(b)**; S.I. 2021/724, reg. 3(b)

F579 Words in s. 195S(1)(c) inserted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, **s. 57(2)** (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(k) (with arts. 24-28); S.I. 2014/3101, **art. 3**; S.I. 2016/147, **art. 3(b)**)

F580 Words in s. 195S(1)(c) inserted (13.2.2015) by The Crime and Courts Act 2013 (Consequential Amendments) Order 2015 (S.I. 2015/230), arts. 1(1), **2(b)**

F581 Words in s. 195S(1)(c) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), Sch. 8 para. 118; S.I. 2013/1682, art. 3(v)

F582 S. 195S(1A)(1B) substituted for s. 195S(1A) (13.2.2015) by The Crime and Courts Act 2013 (Consequential Amendments) Order 2015 (S.I. 2015/230), arts. 1(1), **2(c)**

F583 S. 195S(1A)(c) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 10(3)**; S.I. 2021/724, reg. 3(b)

F584 S. 195S(2A) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 10(4)**; S.I. 2021/724, reg. 3(b)

195T Codes of practice: Department of Justice

(1) The Department of Justice must make a code of practice in connection with—

(a) the carrying out by constables and accredited financial investigators of the functions conferred by sections 195C to 195H,

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(b) the carrying out by senior officers of their functions under section 195G, and
(c) the detention of property by—
(i) constables,
(ii) accredited financial investigators, and
(iii) members of staff of the relevant director (within the meaning of section 352(5A)(b)),
under or by virtue of sections 190A, 193A and 195J to 195P.

(2) In subsection (1)(b) senior officers means—
(a) police officers of at least the rank of inspector,
(b) accredited financial investigators who fall within a description specified in an order made for this purpose by the Secretary of State under section 453.

(3) Where the Department of Justice proposes to issue a code of practice the Department of Justice must—
(a) publish a draft,
(b) consider any representations made about the draft,
(c) if the Department of Justice thinks appropriate, modify the draft in the light of any such representations.

(4) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.

(5) When the Department of Justice has laid a draft of the code before the Assembly the Department of Justice may bring it into operation by order.

(6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

(7) The Department of Justice may revise the whole or any part of the code and issue the code as revised; and subsections (3) to (6) apply to such a revised code as they apply to the original code.

(8) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.

(9) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.**]**

Management receivers

196 Appointment

(1) Subsection (2) applies if—
(a) the High Court makes a restraint order, and
(b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any realisable property to which the restraint order applies.

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I185 S. 196 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

197 Powers

(1) If the court appoints a receiver under section 196 it may act under this section on the application of the person who applied for the restraint order.

(2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to start, carry on or defend any legal proceedings in respect of the property;

(d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The court may by order confer on the receiver power to enter any premises in Northern Ireland and to do any of the following—

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.

(6) The court—

(a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

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(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(8) The court must not—

(a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

[[F585](8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.**]**

(9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Textual Amendments

F585 S. 197(8A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 82(3)**, 94(1); S.I. 2008/755, art. 17(1)(h) (with art. 17(3))

Modifications etc. (not altering text)

C53 S. 197(6) excluded (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, **12(3)**

Commencement Information

I186 S. 197 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement receivers

198 Appointment

(1) This section applies if—

(a) a confiscation order is made,

(b) it is not satisfied, and

(c) it is not subject to appeal.

(2) On the application of the prosecutor the Crown Court may by order appoint a receiver in respect of realisable property.

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I187 S. 198 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

199 Powers

(1) If the court appoints a receiver under section 198 it may act under this section on the application of the prosecutor.

(2) The court may by order confer on the receiver the following powers in relation to the realisable property—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to realise the property, in such manner as the court may specify;

(d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The court may by order confer on the receiver power to enter any premises in Northern Ireland and to do any of the following—

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to give possession of it to the receiver.

(6) The court—

(a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

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(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(8) The court must not—

(a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

[[F586](8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.**]**

[[F587](8B) Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 160A, unless—

(a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or

(b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;

and the determination does not bind the court if paragraph (a) or (b) applies.**]**

(9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Textual Amendments

F586 S. 199(8A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 82(4)**, 94(1); S.I. 2008/755, art. 17(1)(h) (with art. 17(3))

F587 S. 199(8B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 27**, 88(3)(a); S.R. 2015/190, reg. 3(1)(a)

Modifications etc. (not altering text)

C54 S. 199(6) excluded (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, **12(3)**

Commencement Information

I188 S. 199 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
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Director's receivers

[F588]200 Appointment

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Textual Amendments

F588 S. 200 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 57, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

[F589]201 Powers

. . . . . .

Textual Amendments

F589 S. 201 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 57, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Application of sums

202 Enforcement receivers

(1) This section applies to sums which are in the hands of a receiver appointed under section 198 if they are—

(a) the proceeds of the realisation of property under section 199;

(b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.

(2) The sums must be applied as follows—

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;

(b) second, they must be applied in making any payments directed by the Crown Court;

(c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands he must distribute them—

(a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and

(b) in such proportions as it directs.

(4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of subsections (3) and (4) the property concerned is—

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(a) the property represented by the proceeds mentioned in subsection (1)(a);
(b) the sums mentioned in subsection (1)(b).

(6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the appropriate chief clerk on account of the amount payable under the order.

(7) The appropriate chief clerk is the chief clerk of the court at the place where the confiscation order was made.

Commencement Information
I189 S. 202 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

203 Sums received by chief clerk

(1) This section applies if a chief clerk receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 202 or otherwise).

(2) The chief clerk's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
(a) are payable under this subsection by virtue of section 432, but
(b) are not already paid under section 202(2)(a) **[**[F590]or 215D(2)(a)**]** .

(4) If the chief clerk received the sums under section 202 **[**[F591]or 215D**]** he must next apply them—
(a) first, in payment of the remuneration and expenses of a receiver appointed under section 196, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 197(2)(d);
(b) second, in payment of the remuneration and expenses of **[**[F592]any receiver**]** appointed under section 198.
[[F593](c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 215B.**]**

(5) If a direction was made under section 163(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the chief clerk must next apply the sums in payment of that amount.

(6) If any amount remains after the chief clerk makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954 (c. 9 (N.I.)) (application of fines) as if it were a fine.

[[F594](7) Subsection (4) does not apply in relation to the remuneration of a receiver if the receiver is a person falling within subsection (8).

(8) The following fall within this subsection—
(a) a constable,
(b) a member of staff of the Northern Ireland Policing Board,
(c) an accredited financial investigator,

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(d) a member of staff of the Public Prosecution Service for Northern Ireland,

(e) a member of staff of the Serious Fraud Office,

(f) a member of staff of a Northern Ireland department,

(g) a member of staff of the Commissioners for Her Majesty's Revenue and Customs,

[[F595](h) a National Crime Agency officer.**]**

(9) It is immaterial for the purposes of subsection (7) whether a person falls within subsection (8) by virtue of a permanent or temporary appointment or a secondment from elsewhere.

(10) The reference in subsection (8) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.**]**

Textual Amendments

F590 Words in s. 203(3)(b) inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(4)**, 116(1); S.I. 2016/147, art. 3(c)

F591 Words in s. 203(4) inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(5)(a)**, 116(1); S.I. 2016/147, art. 3(c)

F592 Words in s. 203(4)(b) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(5)(b)**, 116(1); S.I. 2016/147, art. 3(c)

F593 S. 203(4)(c) inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(5)(c)**, 116(1); S.I. 2016/147, art. 3(c)

F594 S. 203(7)-(10) substituted for s. 203(7) (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 51(3)**, 116(1); S.I. 2009/3096, art. 3(f)

F595 S. 203(8)(h) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 119**; S.I. 2013/1682, art. 3(v)

Commencement Information

I190 S. 203 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

204 Director's receivers

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[F596]205 Sums received by Director

. . . . . .

Textual Amendments

F596 S. 205 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 58, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
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Restrictions

206 Restraint orders

(1) Subsections (2) and (3) apply if a court makes a restraint order.

(2) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (3) except with the leave of the High Court and subject to any terms the High Court may impose.

(3) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(4) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(5) Before exercising any power conferred by subsection (4), the court must give an opportunity to be heard to—
   (a) the applicant for the restraint order, and
   (b) any receiver appointed in respect of the property under section 196**[**[F597]or 198**]**.

Textual Amendments

F597 Words in s. 206(5)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 59**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I191 S. 206 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

207 Enforcement receivers

(1) Subsections (2) and (3) apply if a court makes an order under section 198 appointing a receiver in respect of any realisable property.

(2) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (3) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(3) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(4) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 198 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(5) Before exercising any power conferred by subsection (4), the court must give an opportunity to be heard to—
   (a) the prosecutor, and
   (b) the receiver (if the order under section 198 has been made).

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I192 S. 207 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F598]208 Director's receivers

. . . . . .

Textual Amendments

F598 S. 208 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 60, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Receivers: further provisions

209 Protection

If a receiver appointed under section 196 **[**[F599] or 198**]** —

(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.

Textual Amendments

F599 Words in s. 209 substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 61**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I193 S. 209 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

210 Further applications

(1) This section applies to a receiver appointed under section 196 **[**[F600]or 198 **]** .

(2) The receiver may apply—

(a) to the High Court if he is appointed under section 196;

(b) to the Crown Court if he is appointed under section 198 [F601]...,

for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the High Court if the receiver is appointed under section 196 or to the Crown Court if the receiver is appointed under section 198 [F602]... —

(a) any person affected by action taken by the receiver;

(b) any person who may be affected by action the receiver proposes to take.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) On an application under this section the court may make such order as it believes is appropriate.

Textual Amendments

F600 Words in s. 210(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 62(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F601 Words in s. 210(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 62(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F602 Words in s. 210(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 62(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I194 S. 210 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

211 Discharge and variation

(1) The following persons may apply to the High Court to vary or discharge an order made under section 196 or 197 or to the Crown Court to vary or discharge an order made under **[**[F603]section 198 or 199**]** —

(a) the receiver;

(b) the person who applied for the order [F604]...;

(c) any person affected by the order.

(2) On an application under this section the court—

(a) may discharge the order;

(b) may vary the order.

(3) But in the case of an order under section 196 or 197—

(a) if the condition in section 189 which was satisfied was that proceedings were started or an application was made, the court must discharge 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 discharge 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).

Textual Amendments

F603 Words in s. 211(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 63(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F604 Words in s. 211(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 63(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I195 S. 211 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

212 Management receivers: discharge

(1) This section applies if—

(a) a receiver stands appointed under section 196 in respect of realisable property (the management receiver), and

(b) the court appoints a receiver under section 198 [F605]....

(2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 197.

[F606](3) . . . . . .

(4) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 197(2)(d).

(5) If the management receiver complies with an order under subsection (2) he is discharged—

(a) from his appointment under section 196;

(b) from any obligation under this Act arising from his appointment.

(6) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

Textual Amendments

F605 Words in s. 212(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 64(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F606 S. 212(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 64(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I196 S. 212 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

213 Appeal to Court of Appeal

(1) If on an application for an order under any of sections 196 to 199 [F607]... the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the court makes an order under any of sections 196 to 199 [F608]..., the following persons may appeal to the Court of Appeal in respect of the court's decision—

(a) the person who applied for the order;

(b) any person affected by the order.

(3) If on an application for an order under section 210 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the court makes an order under section 210, the following persons may appeal to the Court of Appeal in respect of the court's decision—

(a) the person who applied for the order;

(b) any person affected by the order;

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(c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 211—

(a) the person who applied for the order in respect of which the application was made [F609]...;

(b) any person affected by the court's decision;

(c) the receiver.

(6) On an appeal under this section the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes if appropriate.

Textual Amendments

F607 Words in s. 213(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 65(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F608 Words in s. 213(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 65(3), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F609 Words in s. 213(5)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 65(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I197 S. 213 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

214 Appeal to [F610Supreme Court]

(1) An appeal lies to the **[**F611Supreme Court **]**from a decision of the Court of Appeal on an appeal under section 213.

(2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(3) On an appeal under this section the **[**F612Supreme Court**]** may—

(a) confirm the decision of the Court of Appeal, or

(b) make such order as it believes is appropriate.

Textual Amendments

F610 Words in s. 214 sidenote substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(7)**; S.I. 2009/1604, art. 2(d)

F611 S. 214(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(7)**; S.I. 2009/1604, art. 2(d)

F612 Words in s. 214(3) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(7)**; S.I. 2009/1604, art. 2(d)

Commencement Information

I198 S. 214 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
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Seized money [F613and personal property]

Textual Amendments

F613 Words in s. 215 cross-heading inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(3)**, 116(1); S.I. 2016/147, art. 3(c)

215 Seized money

(1) This section applies to money which—

(a) is held by a person, and

(b) is held in an account maintained by him with a bank or a building society.

(2) This section also applies to money which is held by a person and which—

[F614(a) has been seized under a relevant seizure power by a constable or another person lawfully exercising the power, and

(b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.**]**

[F615(2A) But this section applies to money only so far as the money is free property.**]**

F616(3) . . . . . .

[F617(5) If—

(a) a confiscation order is made against a person holding money to which this section applies, and

(b) a receiver has not been appointed under section 198 in relation to the money,

a magistrates' court may order the **[**F618appropriate person**]** to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order.**]**

[F619(5A) **[**F620Where this section applies to money which is held in an account maintained with a bank or building society,**]** a person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.

(5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates' court—

(a) may make an order under subsection (5) only if the extent of the person's interest in the money has been determined under section 160A, and

(b) must have regard to that determination in deciding what is the appropriate order to make.**]**

(6) If a bank or building society fails to comply with an order under subsection (5)—

(a) the magistrates' court may order it to pay an amount not exceeding £5,000, and

(b) for the purposes of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) the sum is to be treated as adjudged to be paid by a conviction of the magistrates' court.

(7) In order to take account of changes in the value of money the **[**F621Department of Justice in Northern Ireland**]** may by order substitute another sum for the sum for the time being specified in subsection (6)(a).

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[[F622](7A) The Department of Justice in Northern Ireland may by order amend this section so that it applies **[**[F623]by virtue of subsection (1)**]** not only to money held in an account maintained with a bank or building society but also to—

(a) money held in an account maintained with a financial institution of a specified kind, or

(b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.**]**

[F624F624F624](...) . . . . . .

[[F624](8) In this section—

"appropriate chief clerk" has the same meaning as in section 202(7);

"appropriate person" means—

(a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;

(b) in any other case, the person on whose authority the money is detained;

"bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;

"building society" has the same meaning as in the Building Societies Act 1986;

"relevant seizure power" means a power to seize money conferred by or by virtue of—

(a) a warrant granted under any enactment or rule of law, or

(b) any enactment, or rule of law, under which the authority of a warrant is not required.**]**

[[F625](9) In the definition of "bank" in subsection (8), "authorised deposit-taker" means—

(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;

(b) a person who—

(i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and

(ii) accepts deposits;

(c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(10) A reference in subsection (9) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.**]**

Textual Amendments

F614 S. 215(2)(a)(b) substituted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(2)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F615 S. 215(2A) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(3)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F616 S. 215(3) omitted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 27(4)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F617 S. 215(5) substituted for s. 215(4)(5) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 36(1)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(j)

F618 Words in s. 215(5) substituted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(5)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F619 S. 215(5A)(5B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 36(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(j)

F620 Words in s. 215(5A) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(6)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F621 Words in s. 215(7) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 50** (with arts. 28-31)

F622 S. 215(7A)(7B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 36(3)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(j)

F623 Words in s. 215(7A) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(7)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F624 S. 215(8) substituted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(8)**, 58(3)(6); S.R. 2021/167, reg. 2(a)

F625 S. 215(9)(10) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 27(9)**, 58(3)(6) (as amended (N.I.) on exit day by S.I. 2019/742, regs. 1, 109(4)); S.R. 2021/167, reg. 2(a)

Commencement Information

I199 S. 215 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F626 215A Seized personal property

(1) This section applies to personal property which is held by a person and which—
  (a) has been seized by an appropriate officer under a relevant seizure power, or
  (b) has been produced to an appropriate officer in compliance with a production order under section 345.

(2) This section applies if the following conditions are satisfied—
  (a) a confiscation order is made against the person by whom the property is held;
  (b) a receiver has not been appointed under section 198 in relation to the property;
  (c) any period allowed under section 161 for payment of the amount ordered to be paid under the confiscation order has ended.

(3) In such a case a magistrates' court may by order authorise an appropriate officer to realise the property.

(4) In this section "appropriate officer" and "relevant seizure power" have the same meaning as in section 190A.

Textual Amendments

F626 Ss. 215A-215D inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(2)**, 116(1); S.I. 2016/147, art. 3(c)

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215B Costs of storage and realisation

(1) This section applies if a magistrates' court makes an order under section 215A.

(2) The court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
  (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
  (b) realising the property.

(3) If the court makes a determination under this section the appropriate officer is entitled to payment of the amount under section 203(4).

(4) A determination under this section may be made on the same occasion as the section 215A order or on any later occasion; and more than one determination may be made in relation to any case.

(5) In this section "appropriate officer" has the same meaning as in section 190A.

Textual Amendments

F626 Ss. 215A-215D inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(2)**, 116(1); S.I. 2016/147, art. 3(c)

215C Sections 215A and 215B: appeals

(1) If a magistrates' court decides not to make an order under section 215A, an appropriate officer may appeal to a county court.

(2) If a magistrates' court makes an order under section 215A, a person affected by the order may appeal to a county court.

(3) But the person mentioned in section 215A(2)(a) may not appeal.

(4) An appropriate officer may appeal to a county court against—
  (a) a determination made by a magistrates' court under section 215B;
  (b) a decision by a magistrates' court not to make a determination under that section.

(5) In this section "appropriate officer" has the same meaning as in section 190A.

Textual Amendments

F626 Ss. 215A-215D inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(2)**, 116(1); S.I. 2016/147, art. 3(c)

215D Proceeds of realisation

(1) This section applies to sums which—
  (a) are in the hands of an appropriate officer, and
  (b) are the proceeds of the realisation of property under section 215A.

(2) The sums must be applied as follows—

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(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;

(b) second, they must be applied in making any payments directed by the magistrates' court or Crown Court;

(c) third, they must be paid to the appropriate chief clerk on account of the amount payable under the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—

(a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or Crown Court directs, and

(b) in such proportions as it directs.

(4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it.

(5) If the magistrates' court has made a direction under subsection (2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.

(6) In this section—

"appropriate officer" has the same meaning as in section 190A, and

"appropriate chief clerk" has the same meaning as in section 202(7).**]**

Textual Amendments

F626 Ss. 215A-215D inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 60(2)**, 116(1); S.I. 2016/147, art. 3(c)

Financial investigators

216 Applications and appeals

(1) This section applies to—

(a) an application under section 190, 191, 196, 197 or 211;

(b) an appeal under section 192, 193, 213 or 214.

(2) An accredited financial investigator must not make such an application or bring such an appeal unless he falls within subsection (3).

(3) An accredited financial investigator falls within this subsection if he is one of the following or is authorised for the purposes of this section by one of the following—

(a) a police officer who is not below the rank of superintendent,

(b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank,

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(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 453.

(4) If such an application is made or appeal brought by an accredited financial investigator any subsequent step in the application or appeal or any further application or appeal relating to the same matter may be taken, made or brought by a different accredited financial investigator who falls within subsection (3).

(5) If—

(a) an application for a restraint order is made by an accredited financial investigator, and

(b) a court is required under section 206(5) to give the applicant for the order an opportunity to be heard,

the court may give the opportunity to a different accredited financial investigator who falls within subsection (3).

Commencement Information

I200 S. 216 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Exercise of powers

217 Powers of court and receiver [F627etc]

(1) This section applies to—

(a) the powers conferred on a court by sections 189 to [F628207] and sections 210 to [F629215D];

(b) the powers of a receiver appointed under section 196 [F630or 198].

[F631(c) the powers conferred on appropriate officers by sections 195C to 195L;

(d) the powers conferred on senior officers by section 195G.]

(2) The powers—

(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;

(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;

(c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;

(d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules—

(a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;

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(b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;

(c) in a case where a confiscation order has not been made against the defendant, property must not be realised if the court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.

Textual Amendments

F627 Word in s. 217 heading inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 57(4)(b)**, 116(1); S.I. 2016/147, art. 3(b) (with art. 4)

F628 Word in s. 217(1)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 67(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F629 Word in s. 217(1)(a) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 74**; S.I. 2016/147, art. 3(i)

F630 Words in s. 217(1)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 67(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F631 S. 217(1)(c)(d) inserted (1.3.2016) by Policing and Crime Act 2009 (c. 26), **ss. 57(4)(a)**, 116(1); S.I. 2016/147, art. 3(b) (with art. 4)

Commencement Information

I201 S. 217 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Committal

218 Committal by magistrates' court

(1) This section applies if—

(a) a defendant is convicted of an offence by a magistrates' court, and

(b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 156.

(2) In such a case the magistrates' court—

(a) must commit the defendant to the Crown Court in respect of the offence, and

(b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if—

(a) the defendant has been convicted of it by the magistrates' court or any other court, and

(b) the magistrates' court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences—

(a) section 156 applies accordingly, and

(b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 219.

(5) A committal under this section may be in custody or on bail.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information
I202 S. 218 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

219 Sentencing by Crown Court

(1) If a defendant is committed to the Crown Court under section 218 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 156).

(2) The Crown Court—
- (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

Commencement Information
I203 S. 219 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Compensation

220 Serious default

(1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.

(2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.

(3) The first condition is also satisfied if proceedings for an offence are started against a person and—
- (a) they do not result in his conviction for the offence, or
- (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it.

(4) If subsection (2) applies the second condition is that—
- (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
- (b) the investigation would not have continued if the default had not occurred.

(5) If subsection (3) applies the second condition is that—
- (a) in any criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and
- (b) the proceedings would not have been started or continued if the default had not occurred.

(6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.

(8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.

(9) Compensation under this section is payable to the applicant and—

(a) if the person in default was or was acting as a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), the compensation is payable by the Chief Constable;

(b) if the person in default was **[**[F632]a member of the Public Prosecution Service for Northern Ireland**]** or was acting on his behalf, the compensation is payable by the Director of Public Prosecutions for Northern Ireland;

[[F633](ba) if the person in default was a **[**[F634]National Crime Agency officer**]**, the compensation is payable by **[**[F635]the National Crime Agency**]**;**]**

(c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;

(d) if the person in default was a customs officer, the compensation is payable by the Commissioners of Customs and Excise;

(e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.

[[F636](f) if the person in default was an accredited financial investigator and none of paragraphs (a) to (e) apply, the compensation is payable in accordance with paragraph (b), (d) or (e) of section 302(7A) (as the case may require).**]**

Textual Amendments

F632 Words in s. 220(9)(b) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 61(5)**, 116(1); S.I. 2009/3096, art. 3(g)

F633 S. 220(9)(ba) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 61(6)**, 116(1); S.I. 2009/3096, art. 3(g)

F634 Words in s. 220(9)(ba) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 120(a)**; S.I. 2013/1682, art. 3(v)

F635 Words in s. 220(9)(ba) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 120(b)**; S.I. 2013/1682, art. 3(v)

F636 S. 220(9)(f) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 61(7)**, 116(1); S.I. 2009/3096, art. 3(g)

Commencement Information

I204 S. 220 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

221 Order varied or discharged

(1) This section applies if—

(a) the court varies a confiscation order under section 179 or discharges one under section 180, and

(b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.

(2) The court may order the payment of such compensation as it believes is just.

Status: *Point in time view as at 05/01/2023.*
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(3) Compensation under this section is payable—
- (a) to the applicant;
- (b) by the Lord Chancellor.

Modifications etc. (not altering text)

C55 S. 221(3)(b): transfer of functions (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 17 para. 18** (with arts. 28-31)

Commencement Information

I205 S. 221 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Enforcement abroad

222 Enforcement abroad

(1) This section applies if—
- (a) any of the conditions in section 189 is satisfied,
- (b) the prosecutor [F637]... believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
- (c) the prosecutor [F638]... sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—
- (a) any person is prohibited from dealing with realisable property;
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—
- (a) that property has been realised in pursuance of a request under subsection (3),
- (b) the date of realisation, and
- (c) the proceeds of realisation.

Status: *Point in time view as at 05/01/2023.*
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(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Textual Amendments

F637 Words in s. 222(1)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 68(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F638 Words in s. 222(1)(c) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 68(b), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I206 S. 222 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 6, 10-13)

Interpretation

223 Criminal lifestyle

(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—

(a) it is specified in Schedule 5;

(b) it constitutes conduct forming part of a course of criminal activity;

(c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

(a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or

(b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.

(4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.

(5) Relevant benefit for the purposes of subsection (2)(b) is—

(a) benefit from conduct which constitutes the offence;

(b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;

(c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).

(6) Relevant benefit for the purposes of subsection (2)(c) is—

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(a) benefit from conduct which constitutes the offence;

(b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).

(7) The **[**[F639]Department of Justice in Northern Ireland**]** may by order amend Schedule 5.

(8) The **[**[F640]Department of Justice in Northern Ireland**]** may by order vary the amount for the time being specified in subsection (4).

Textual Amendments

F639 Words in s. 223(7) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 51(a)** (with arts. 28-31)

F640 Words in s. 223(8) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 51(b)** (with arts. 28-31)

Commencement Information

I207 S. 223 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with art. 8) (as amended (6.3.2003) by S.I. 2003/531, art. 3)

224 Conduct and benefit

(1) Criminal conduct is conduct which—

(a) constitutes an offence in Northern Ireland, or

(b) would constitute such an offence if it occurred in Northern Ireland.

(2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—

(a) whether conduct occurred before or after the passing of this Act;

(b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

(3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs—

(a) conduct which constitutes the offence or offences concerned;

(b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;

(c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.

(4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.

Status: *Point in time view as at 05/01/2023.*
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(7) If a person benefits from conduct his benefit is the value of the property obtained.

Commencement Information
I208 S. 224 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with art. 9)

225 Tainted gifts

(1) Subsections (2) and (3) apply if—
- (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
- (b) a court has decided that the defendant has a criminal lifestyle.

(2) A gift is tainted if it was made by the defendant at any time after the relevant day.

(3) A gift is also tainted if it was made by the defendant at any time and was of property—
- (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
- (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.

(4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.

(5) A gift is tainted if it was made by the defendant at any time after—
- (a) the date on which the offence concerned was committed, or
- (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.

(6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.

(7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(8) A gift may be a tainted gift whether it was made before or after the passing of this Act.

(9) The relevant day is the first day of the period of six years ending with—
- (a) the day when proceedings for the offence concerned were started against the defendant, or
- (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

Commencement Information
I209 S. 225 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

226 Gifts and their recipients

(1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.

(2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction—
  (a) whose numerator is the difference between the two values mentioned in subsection (1), and
  (b) whose denominator is the value of the property at the time of the transfer.

(3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

Commencement Information
I210 S. 226 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

227 Value: the basic rule

(1) This section applies for the purpose of deciding the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).

(4) The provisions are—
  (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
  (b) section 78 of the Criminal Justice Act 1988 (c. 33);
  (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
  (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
  (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(5) This section has effect subject to sections 228 and 229.

Commencement Information
I211 S. 227 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

228 Value of property obtained from conduct

(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.

(2) The value of the property at the material time is the greater of the following—

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(a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;

(b) the value (at the material time) of the property found under subsection (3).

(3) The property found under this subsection is as follows—

(a) if the person holds the property obtained, the property found under this subsection is that property;

(b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;

(c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 227.

Commencement Information

I212 S. 228 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

229 Value of tainted gifts

(1) The value at any time (the material time) of a tainted gift is the greater of the following—

(a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;

(b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is as follows—

(a) if the recipient holds the property given, the property found under this subsection is that property;

(b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;

(c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 227.

Commencement Information

I213 S. 229 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

230 Free property

[[F641](1) Property is free unless it falls within subsection (2) or (3).**]**

Status: *Point in time view as at 05/01/2023.*
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[[F642](2)**]** **[**[F643]Property falls within this subsection if**]** an order is in force in respect of it under any of these provisions—

(a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);

(b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);

(c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);

(d) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) **[**[F644]or Chapter 4 of Part 7 of the Sentencing Code**]** (deprivation orders);

(e) section 23**[**[F645], 23A **]** or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);

[[F646](ea) paragraph 3(2), 6(2), 10D(1), 10G(2), 10J(3), 10S(2) or 10Z2(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001;**]**

(f) section **[**[F647]245A,**]** 246, **[**[F648]255A, 256,**]** 266, 295(2) **[**[F649], 298(2), 303L(1), 303O(3), 303R(3), 303Z3 or 303Z14(4)**]** of this Act.

[[F650](3) Property falls within this subsection if—

(a) it has been forfeited in pursuance of a forfeiture notice under section 297A **[**[F651]or an account forfeiture notice under section 303Z9**]**;

(b) it is detained under section 297C **[**[F652], 297D**][**[F653], 298(4) or 303O(9)**].]**

[[F654](c) it is the forfeitable property in relation to an order under section 303Q(1).**]**

[[F655](d) it has been forfeited in pursuance of a cash forfeiture notice under paragraph 5A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 or an account forfeiture notice under paragraph 10W of that Schedule;

(e) it is detained under paragraph 5B, 5C, 9A or 10G(7) of that Schedule;

(f) it is the forfeitable property in relation to an order under paragraph 10I(1) of that Schedule.**]**

Textual Amendments

F641 S. 230(1) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 105(2)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F642 S. 230 renumbered as s. 230(2) (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 105(3)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F643 Words in s. 230(2) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 105(4)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F644 Words in s. 230(2)(d) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 199** (with Sch. 27); S.I. 2020/1236, reg. 2

F645 Word in s. 230(e) inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), s. 100(5), **Sch. 3 para. 7(7)** (with s. 101(2)); S.I. 2009/1256, art. 2(c)

F646 S. 230(2)(ea) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(4)(a)**, 58(3)(6); S.R. 2021/167, reg. 2(d)

F647 Word in s. 230(f) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 7(a)**; S.I. 2005/3136, art. 3(c)

F648 Words in s. 230(f) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 7(b)**; S.I. 2005/3136, art. 3(c)

F649 Words in s. 230(2)(f) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 27(2)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

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F650 S. 230(3) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 105(5)**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F651 Words in s. 230(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 27(3)(a)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

F652 Words in s. 230(3)(b) substituted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(4)(b)**, 58(3)(6); S.R. 2021/167, reg. 2(d)

F653 Words in s. 230(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 27(3)(b)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

F654 S. 230(3)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 27(3)(c)**; S.I. 2018/78, reg. 5(3)(d)(i)(ii)

F655 S. 230(3)(d)-(f) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(4)(c)**, 58(3)(6); S.R. 2021/167, reg. 2(d)

Commencement Information

I214 S. 230 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

231 Realisable property

Realisable property is—

(a) any free property held by the defendant;

(b) any free property held by the recipient of a tainted gift.

Commencement Information

I215 S. 231 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

232 Property: general provisions

(1) Property is all property wherever situated and includes—

(a) money;

(b) all forms of real or personal property;

(c) things in action and other intangible or incorporeal property.

(2) The following rules apply in relation to property—

(a) property is held by a person if he holds an interest in it;

(b) property is obtained by a person if he obtains an interest in it;

(c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;

(d) references to property held by a person include references to property vested in his trustee in bankruptcy **[**[F656]or liquidator or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016), of his estate;**]**

(e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;

(f) references to an interest, in relation to land in Northern Ireland or England and Wales, are to any legal estate or equitable interest or power;

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

Textual Amendments

F656 Words in s. 232(2)(d) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(5)**

Modifications etc. (not altering text)

C56 S. 232(2)(a)(c)-(g) applied (1.1.2006) by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181), arts. 1, **135(3)**

C57 S. 232(2)(c)-(g) applied (1.1.2006) by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181), arts. 1, **135(3)**

Commencement Information

I216 S. 232 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

233 Proceedings

(1) Proceedings for an offence are started—

(a) when a justice of the peace issues a summons or warrant under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/ 1675 (N.I. 26)) in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when an indictment is preferred under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (c. 15 (N.I.)).

(2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.

(3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.

(4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned.

(5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded—

(a) when the order is satisfied or discharged, or

(b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

(6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply—

Status: *Point in time view as at 05/01/2023.*
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(a) if an application for leave to appeal under section 181(2) is refused, the proceedings are concluded when the decision to refuse is made;

(b) if the time for applying for leave to appeal under section 181(2) expires without an application being made, the proceedings are concluded when the time expires;

(c) if on an appeal under section 181(2) the Court of Appeal confirms the Crown Court's decision and an application for leave to appeal under section 183 is refused, the proceedings are concluded when the decision to refuse is made;

(d) if on appeal under section 181(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under section 183 expires without an application being made, the proceedings are concluded when the time expires;

(e) if on appeal under section 181(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under section 183 the House of Lords confirms the Court of Appeal's decision, the proceedings are concluded when the **[**[F657]Supreme Court**]** confirms the decision;

(f) if on appeal under section 181(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision;

(g) if on appeal under section 183 the **[**[F657]Supreme Court**]** directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision.

[[F658](7) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored for the purposes of subsection (6).**]**

(8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

Textual Amendments

F657 Words in s. 233(6) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(8)**; S.I. 2009/1604, art. 2(d)

F658 S. 233(7) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 75**; S.I. 2015/983, arts. 2(2)(e), 3(n)

Commencement Information

I217 S. 233 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

234 Applications

(1) An application under section 169, 170, 177 or 178 is concluded—

(a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;

(b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

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(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

(2) An application under section 171 or 172 is concluded—

(a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;

(b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

Commencement Information

I218 S. 234 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

235 Confiscation orders

(1) A confiscation order is satisfied when no amount is due under it.

[[F659](1A) The "amount payable" under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.**]**

(2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed[F660]....

Textual Amendments

F659 S. 235(1A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 28(3)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(b)

F660 Words in s. 235(2) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), Sch. 7 para. 76, **Sch. 8 Pt. 4**; S.I. 2015/983, arts. 2(2)(e), 3(n)

Commencement Information

I219 S. 235 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F661]235A No further possibility of appeal

(1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—

(a) an appeal against a decision of a court, or

(b) an appeal on which an order of a court could be varied or quashed.

(2) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F661 S. 235A inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 77**; S.I. 2015/983, arts. 2(2)(e), 3(n)

236 Other interpretative provisions

(1) A reference to the offence (or offences) concerned must be construed in accordance with section 156(9).

(2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

(3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).

(4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence.

(5) The following paragraphs apply to references to orders—

(a) a confiscation order is an order under section 156;

(b) a restraint order is an order under section 190.

(6) Sections 223 to 235 and this section apply for the purposes of this Part.

Commencement Information

I220 S. 236 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

General

237 Procedure on appeal to the Court of Appeal

(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.

(2) In relation to appeals to the Court of Appeal under this Part, the **[**[F662]Department of Justice in Northern Ireland**]** may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).

Textual Amendments

F662 Words in s. 237(2) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 52** (with arts. 28-31)

Commencement Information

I221 S. 237 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

238 Procedure on appeal to the

[F663][(1)] In relation to appeals to the [[F664]Supreme Court] under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (subject to any specified modifications).

[[F665](2) The power under subsection (1) is exercisable by the Department of Justice in Northern Ireland (and not the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]

Textual Amendments

F663 S. 238(1): s. 238 renumbered as s. 238(1) (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 53(2)** (with arts. 28-31)

F664 Words in s. 238 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 77(9)**; S.I. 2009/1604, art. 2(d)

F665 S. 238(2) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 53(3)** (with arts. 28-31)

Commencement Information

I222 S. 238 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

239 Crown Court Rules

In relation to—

(a) proceedings under this Part, or

(b) receivers appointed under this Part,

Crown Court Rules may make provision corresponding to provision in rules of court (within the meaning of section 120(1) of the Judicature (Northern Ireland) Act 1978 (c. 23)).

Commencement Information

I223 S. 239 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

PART 5

CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

CHAPTER 1

INTRODUCTORY

240 General purpose of this Part

(1) This Part has effect for the purposes of—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,

(b) enabling **[**[F666]property**]** which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff **[**[F667]and, in certain circumstances, to be forfeited by the giving of a notice**]**.

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

Textual Amendments

F666 Word in s. 240(1)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 28(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(g)

F667 Words in s. 240(1)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 28(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(g)

241 "Unlawful conduct"

(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.

(2) Conduct which—

(a) occurs in a country **[**[F668]or territory **]** outside the United Kingdom and is unlawful under the criminal law **[**[F669]applying in that country or territory**]**, and

(b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,

is also unlawful conduct.

[[F670](2A) Conduct which—

(a) occurs in a country or territory outside the United Kingdom,

(b) constitutes, or is connected with, the commission of a gross human rights abuse or violation (see section 241A), and

(c) if it occurred in a part of the United Kingdom, would be an offence triable under the criminal law of that part on indictment only or either on indictment or summarily,

is also unlawful conduct.**]**

(3) The court or sheriff must decide on a balance of probabilities whether it is proved—

(a) that any matters alleged to constitute unlawful conduct have occurred, or

(b) that any person intended to use any **[**[F671]cash**][**[F671]property**]** in unlawful conduct.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F668 Words in s. 241(2)(a) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 8(a)**; S.I. 2005/3136, art. 3(c)

F669 Words in s. 241(2)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 8(b)**; S.I. 2005/3136, art. 3(c)

F670 S. 241(2A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 13(2)**, 58(1)(6) (with s. 13(4)); S.I. 2018/78, reg. 3(c); S.I. 2021/724, reg. 2(1)(d)

F671 Word in s. 241(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 29**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(g)

[F672 241A "Gross human rights abuse or violation"

(1) Conduct constitutes the commission of a gross human rights abuse or violation if each of the following three conditions is met.

(2) The first condition is that—

(a) the conduct constitutes the torture of a person who has sought—

(i) to expose illegal activity carried out by a public official or a person acting in an official capacity, or

(ii) to obtain, exercise, defend or promote human rights and fundamental freedoms, or

(b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.

(3) The second condition is that the conduct is carried out in consequence of that person having sought to do anything falling within subsection (2)(a)(i) or (ii).

(4) The third condition is that the conduct is carried out—

(a) by a public official, or a person acting in an official capacity, in the performance or purported performance of his or her official duties, or

(b) by a person not falling within paragraph (a) at the instigation or with the consent or acquiescence—

(i) of a public official, or

(ii) of a person acting in an official capacity,

who in instigating the conduct, or in consenting to or acquiescing in it, is acting in the performance or purported performance of his or her official duties.

(5) Conduct is connected with the commission of a gross human rights abuse or violation if it is conduct by a person that involves—

(a) acting as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation,

(b) directing, or sponsoring, such activities,

(c) profiting from such activities, or

(d) materially assisting such activities.

(6) Conduct that involves the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture for the purposes of subsection (2)(a).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission.

(8) The cases in which a person materially assists activities for the purposes of subsection (5)(d) include those where the person—
  (a) provides goods or services in support of the carrying out of the activities, or
  (b) otherwise provides any financial or technological support in connection with their carrying out.**]**

Textual Amendments

F672 S. 241A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 13(3)**, 58(1)(6) (with s. 13(4)); S.I. 2018/78, reg. 3(c); S.I. 2021/724, reg. 2(1)(d)

242 "Property obtained through unlawful conduct"

(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—
  (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,
  (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

CHAPTER 2

CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

Modifications etc. (not altering text)

C58 Pt. 5 Ch. 2: power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 7**

Proceedings for recovery orders

243 Proceedings for recovery orders in England and Wales or Northern Ireland

(1) Proceedings for a recovery order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property.

(2) The enforcement authority must serve the claim form—
  (a) on the respondent, and
  (b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the claim form it must be described in the form in general terms; and the form must state whether it is alleged to be recoverable property or associated property.

(4) The references above to the claim form include the particulars of claim, where they are served subsequently.

[[F673](5) Nothing in sections 245A to 255 limits any power of the court apart from those sections to grant interim relief in connection with proceedings (including prospective proceedings) under this Chapter.**]**

Textual Amendments

F673 S. 243(5) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 9**; S.I. 2005/3136, art. 3(c)

Commencement Information

I224 S. 243 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

244 Proceedings for recovery orders in Scotland

(1) Proceedings for a recovery order may be taken by the enforcement authority in the Court of Session against any person who the authority thinks holds recoverable property.

(2) The enforcement authority must serve the application—

(a) on the respondent, and

(b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the application it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property.

Commencement Information

I225 S. 244 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

245 "Associated property"

(1) "Associated property" means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

(a) any interest in the recoverable property,

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(b) any other interest in the property in which the recoverable property subsists,

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,

(d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner,

(e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly.

(3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of sections 273 to 275).

Commencement Information

I226 S. 245 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F674 245ZA Notice to local authority: Scotland

(1) This section applies if, in proceedings under this Chapter for a recovery order, the enforcement authority applies under section 266(8ZA) for decree of removing and warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse.

(2) The enforcement authority must give notice of the application to the local authority in whose area the dwellinghouse is situated.

(3) Notice under subsection (2) must be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

(4) In this section—

"dwellinghouse" has the meaning given by section 11(8) of the Homelessness etc. (Scotland) Act 2003;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and "area", in relation to a local authority, means the local government area for which the authority is constituted.]

Textual Amendments

F674 S. 245ZA inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(2)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[F675 Property freezing orders (England and Wales and Northern Ireland)

Textual Amendments

F675 Ss. 245A-245D and cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 98(1)**, 178(8); S.I. 2005/3136, art. 3(a)

245A Application for property freezing order

(1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that—
- (a) specifies or describes the property to which it applies, and
- (b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case—
- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—
- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

245B Variation and setting aside of order

(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

245C Exclusions

(1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—
   (a) power to exclude property from the order, and
   (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—
   (a) to meet his reasonable living expenses, or
   (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
   (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
   (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
   (c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
   (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and
   (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be **[**[F676]made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by**][**[F677]the Department of Justice**]**.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement

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authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Subsection (8) does not apply where the court is acting as required by section 245B(3) or (4).

Textual Amendments

F676 Words in s. 245C(6)(b) substituted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 para. 59**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

F677 Words in s. 245C(6)(b) substituted (N.I.) (1.4.2015) by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), **Sch. 2 para. 4** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

245D Restriction on proceedings and remedies

(1) While a property freezing order has effect—

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distress may be levied**[**[F678], and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.**]**

Textual Amendments

F678 Words in s. 245D(1)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(5)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

[[F679]**245E Receivers in connection with property freezing orders**

(1) Subsection (2) applies if—

(a) the High Court makes a property freezing order on an application by an enforcement authority, and

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(b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the property freezing order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any property to which the property freezing order applies.

(3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this section, the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the enforcement authority.

(6) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

Textual Amendments

F679 Ss. 245E-245G inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

245F Powers of receivers appointed under section 245E

(1) If the High Court appoints a receiver under section 245E on an application by an enforcement authority, the court may act under this section on the application of the authority.

(2) The court may by order authorise or require the receiver—

(a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the receiver is appointed,

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed—

(a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place it in the custody of the receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession

or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place them in the custody of the receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(7) If—

(a) the receiver deals with any property which is not property in respect of which he is appointed under section 245E, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Textual Amendments

F679 Ss. 245E-245G inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

245G Supervision of section 245E receiver and variations

(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under section 245E—

(a) the receiver,

(b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned,

(c) any person affected by any action taken by the receiver,

(d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to—

(a) the receiver,

(b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned,

(c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or set aside the appointment of a receiver under section 245E, any order under section 245F or any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—

(a) the receiver,

(b) the parties to the proceedings for the appointment of the receiver, for the order under section 245F or, as the case may be, for the directions under this section;

(c) the parties to the proceedings for the property freezing order concerned,

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(d) any person who may be affected by the court's decision.**]**

Textual Amendments

F679 Ss. 245E-245G inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

Interim receiving orders (England and Wales and Northern Ireland)

246 Application for interim receiving order

(1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for an interim receiving order (whether before or after starting the proceedings).

(2) An interim receiving order is an order for—
- (a) the detention, custody or preservation of property, and
- (b) the appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a good arguable case—
- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—
- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

(7) In its application for an interim receiving order, the enforcement authority must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the **[**[F680]enforcement authority**]** .

(8) The extent of the power to make an interim receiving order is not limited by sections 247 to 255.

Textual Amendments

F680 Words in s. 246(7) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 86**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I227 S. 246 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

247 Functions of interim receiver

(1) An interim receiving order may authorise or require the interim receiver—

(a) to exercise any of the powers mentioned in Schedule 6,

(b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order must require the interim receiver to take any steps which the court thinks necessary to establish—

(a) whether or not the property to which the order applies is recoverable property or associated property,

(b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If—

(a) the interim receiver deals with any property which is not property to which the order applies, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Commencement Information

I228 S. 247 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F681 Property freezing orders and interim receiving orders: registration]

Textual Amendments

F681 S. 248 cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 10**; S.I. 2005/3136, art. 3(c)

248 Registration

(1) The registration Acts—

(a) apply in relation to **[**F682property freezing orders, and in relation to interim receiving orders,**]** as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgements or recognisances,

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(b) apply in relation to applications for **[**[F683]property freezing orders, and in relation to applications for interim receiving orders, **]** as they apply in relation to other pending land actions.

(2) The registration Acts are—

(a) **[**[F684]the Land Registration Act 1925 (c. 21),**]**

(b) the Land Charges Act 1972 (c. 61), and

(c) the Land Registration Act 2002 (c. 9).

(3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of **[**[F685]a property freezing order or**]**an interim receiving order.

(4) **[**[F686]A person applying for an interim receiving order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—

(a) the application relates, or

(b) an interim receiving order made in pursuance of the application relates.**]**

Textual Amendments

F682 Words in s. 248(1)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 11(2)**; S.I. 2005/3136, art. 3(c)

F683 Words in s. 248(1)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 11(3)**; S.I. 2005/3136, art. 3(c)

F684 S. 248(2)(a) repealed (prosp.) by Proceeds of Crime Act 2002 (c. 29), ss. 457, 458(1), **Sch. 12**

F685 Words in s. 248(3) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 11(4)**; S.I. 2005/3136, art. 3(c)

F686 S. 248(4) repealed (prosp.) by Proceeds of Crime Act 2002 (c. 29), ss. 457, 458(1), **Sch 12**

Commencement Information

I229 S. 248 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

249 Registration (Northern Ireland)

(1) A person applying for**[**[F687]a property freezing order or **]** an interim receiving order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which—

(a) the application relates, or

(b) **[**[F688]a property freezing order, or an interim receiving order,**]** made in pursuance of the application relates.

[[F689](1A) Upon being served with a copy of a property freezing order, the Registrar must, in respect of any registered land to which a property freezing order or an application for a property freezing order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.**]**

(2) Upon being served with a copy of an interim receiving order, the Registrar must, in respect of any registered land to which an interim receiving order or an application for an interim receiving order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

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(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under subsection**[**[F690](1A) or**]** (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(4) Where **[**[F691]a property freezing order or **]**an interim receiving order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order setting aside the**[**[F692]property freezing order or **]** interim receiving order may require that entry to be vacated.

(5) In this section—

"Registrar" and "entry" have the same meanings as in the Land Registration Act (Northern Ireland) 1970, and

"Registration of Deeds Acts" has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Textual Amendments

F687 Words in s. 249(1) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(2)**; S.I. 2005/3136, art. 3(c)

F688 Words in s. 249(1)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(3)**; S.I. 2005/3136, art. 3(c)

F689 S. 249(1A) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(4)**; S.I. 2005/3136, art. 3(c)

F690 Words in s. 249(3) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(5)**; S.I. 2005/3136, art. 3(c)

F691 Words in s. 249(4) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(6)(a)**; S.I. 2005/3136, art. 3(c)

F692 Words in s. 249(4) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(6)(b)**; S.I. 2005/3136, art. 3(c)

Commencement Information

I230 S. 249 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[**[F693]*Interim receiving orders: further provisions]***

Textual Amendments

F693 S. 250 cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 13**; S.I. 2005/3136, art. 3(c)

250 Duties of respondent etc.

(1) An interim receiving order may require any person to whose property the order applies—

(a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so),

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(b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.

(2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or to place them in the custody of the interim receiver.

"Document" means anything in which information of any description is recorded.

Commencement Information

I231 S. 250 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

251 Supervision of interim receiver and variation of order

(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.

(3) The court may at any time vary or set aside an interim receiving order.

(4) Before exercising any power under this Chapter to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court's decision.

Commencement Information

I232 S. 251 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

252 Restrictions on dealing etc. with property

(1) An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

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[[F694](4) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (3).

(4A) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be **[**[F695]made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by**][**[F696]the Department of Justice**].]**

(5) If the excluded property is not specified in the order it must be described in the order in general terms.

(6) The power to make exclusions must **[**[F697], subject to subsection (4A),**]** be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

Textual Amendments

F694 S. 252(4)(4A) substituted for s. 252(4) (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 14(2)**; S.I. 2005/3136, art. 3(c)

F695 Words in s. 252(4A)(b) substituted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 para. 60**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

F696 Words in s. 252(4A)(b) substituted (N.I.) (1.4.2015) by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), **Sch. 2 para. 4** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

F697 Words in s. 252(6) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 14(3)**; S.I. 2005/3136, art. 3(c)

Commencement Information

I233 S. 252 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

253 Restriction on proceedings and remedies

(1) While an interim receiving order has effect—

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,

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(b) no distress may be levied **[**[F698], and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

Textual Amendments

F698 Words in s. 253(1)(b) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 146** (with s. 89); S.I. 2014/768, art. 2(1)(b)

Commencement Information

I234 S. 253 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

254 Exclusion of property which is not recoverable etc.

(1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

Commencement Information

I235 S. 254 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

255 Reporting

(1) An interim receiving order must require the interim receiver to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—

(a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,

(b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,

(c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or

(d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if he thinks that there has been any other material change of circumstances.

(2) An interim receiving order must require the interim receiver—

(a) to report his findings to the court,

(b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Commencement Information

I236 S. 255 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F699 Prohibitory property orders (Scotland)

Textual Amendments

F699 Ss. 255A-255F and cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 98(2)**, 178(7)(a); S.I. 2005/3136, art. 2(a)

255A Application for prohibitory property order

(1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).

(2) A prohibitory property order is an order that—

(a) specifies or describes the property to which it applies, and

(b) subject to any exclusions (see section 255C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make a prohibitory property order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) The first condition is that there is a good arguable case—
  (a) that the property to which the application for the order relates is or includes recoverable property, and
  (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—
  (a) the property to which the application for the order relates includes property alleged to be associated property, and
  (b) the enforcement authority has not established the identity of the person who holds it,

  the authority has taken all reasonable steps to do so.

255B Variation and recall of prohibitory property order

(1) The court may at any time vary or recall a prohibitory property order.

(2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.

(3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.

(4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

255C Exclusions

(1) The power to vary a prohibitory property order includes (in particular) power to make exclusions as follows—
  (a) power to exclude property from the order, and
  (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  (a) to meet his reasonable living expenses, or
  (b) to carry on any trade, business, profession or occupation.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) An exclusion may be made subject to conditions.

(5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

(7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(8) Subsection (7) does not apply where the court is acting as required by section 255B(3) or (4).

255D Restriction on proceedings and remedies

(1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.

(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 a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

255E Arrestment of property affected by prohibitory property order

(1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under subsection (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.

(3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

255F Inhibition of property affected by prohibitory property order

(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a prohibitory property order.

(2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).

(3) The warrant for inhibition—
- (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
- (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(6) If an inhibition ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must—
- (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
- (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.**]**

[F700 255G Receivers in connection with prohibitory property orders

(1) Subsection (2) applies if—
- (a) the Court of Session makes a prohibitory property order on an application by an enforcement authority, and
- (b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the prohibitory property order or at any time afterwards).

(2) The Court of Session may by order appoint a person (a "PPO receiver") in respect of any property to which the prohibitory property order applies.

(3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this section, the enforcement authority must nominate a suitably qualified person for appointment as a PPO receiver.

(5) Such a person may be a member of staff of the enforcement authority.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(6) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a PPO receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the PPO receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the PPO receiver is a person providing services under arrangements made by the enforcement authority).

Textual Amendments

F700 Ss. 255G-255I inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(2)**, 88(1); S.I. 2016/148, reg. 3(b)

255H Powers of receivers appointed under section 255G

(1) If the Court of Session appoints a PPO receiver under section 255G on an application by an enforcement authority, the court may act under this section on the application of the authority.

(2) The court may by order authorise or require the PPO receiver—

(a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the PPO receiver is appointed,

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the PPO receiver is appointed—

(a) to bring the property to a place in Scotland specified by the PPO receiver or to place it in the custody of the PPO receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the PPO receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the PPO receiver is appointed to bring any documents relating to the property which are in his possession or control to a place in Scotland specified by the PPO receiver or to place them in the custody of the PPO receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a prohibitory property order does not prevent a person from complying with any requirements imposed by virtue of this section.

(7) If—

(a) the PPO receiver deals with any property which is not property in respect of which he is appointed under section 255G, and

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(b) at the time he deals with the property the PPO receiver believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the PPO receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Textual Amendments

F700 Ss. 255G-255I inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(2)**, 88(1); S.I. 2016/148, reg. 3(b)

255I Supervision of PPO receiver and variations

(1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a PPO receiver—

(a) the PPO receiver,

(b) any party to the proceedings for the appointment of the PPO receiver or the prohibitory property order concerned,

(c) any person affected by any action taken by the PPO receiver,

(d) any person who may be affected by any action proposed to be taken by the PPO receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to—

(a) the PPO receiver,

(b) the parties to the proceedings for the appointment of the PPO receiver and for the prohibitory property order concerned,

(c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or recall—

(a) an order appointing a PPO receiver,

(b) any order under section 255H, or

(c) any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—

(a) the PPO receiver,

(b) the parties to the proceedings for—

(i) the appointment of the PPO receiver,

(ii) the order under section 255H, or

(iii) (as the case may be) the directions under this section,

(c) the parties to the proceedings for the prohibitory property order concerned,

(d) any person who may be affected by the court's decision.**]**

Textual Amendments

F700 Ss. 255G-255I inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(2)**, 88(1); S.I. 2016/148, reg. 3(b)

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Interim administration orders (Scotland)

256 Application for interim administration order

(1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for an interim administration order (whether before or after starting the proceedings).

(2) An interim administration order is an order for—
- (a) the detention, custody or preservation of property, and
- (b) the appointment of an interim administrator.

(3) An application for an interim administration order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make an interim administration order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a probabilis causa litigandi—
- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—
- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

(7) In its application for an interim administration order, the enforcement authority must nominate a suitably qualified person for appointment as interim administrator, but the nominee may not be a member of the staff of the Scottish Administration.

(8) The extent of the power to make an interim administration order is not limited by sections 257 to 264.

Commencement Information

I237 S. 256 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

257 Functions of interim administrator

(1) An interim administration order may authorise or require the interim administrator—
- (a) to exercise any of the powers mentioned in Schedule 6,
- (b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) An interim administration order must require the interim administrator to take any steps which the court thinks necessary to establish—

(a) whether or not the property to which the order applies is recoverable property or associated property,

(b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If—

(a) the interim administrator deals with any property which is not property to which the order applies, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim administrator is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Commencement Information

I238 S. 257 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

258 Inhibition of property affected by order

(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in an interim administration order.

(2) That property is heritable property situated in Scotland to which the interim administration order applies (whether generally or such of it as is specified in the application).

(3) The warrant for inhibition—

(a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and

(b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.

(6) An inhibition executed under this section ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the enforcement authority must—

(a) apply for the recall or, as the case may be, the restriction of the inhibition, and

(b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

Commencement Information

I239 S. 258 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

259 Duties of respondent etc.

(1) An interim administration order may require any person to whose property the order applies—

(a) to bring the property to a place (in Scotland) specified by the interim administrator or place it in the custody of the interim administrator (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the interim administrator for the preservation of the property.

(2) An interim administration order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in Scotland) specified by the interim administrator or to place them in the custody of the interim administrator.

"Document" means anything in which information of any description is recorded.

Commencement Information

I240 S. 259 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

260 Supervision of interim administrator and variation of order

(1) The interim administrator, any party to the proceedings and any person affected by any action taken by the interim administrator, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim administrator's functions.

(2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be interested in the application.

(3) The court may at any time vary or recall an interim administration order.

(4) Before exercising any power under this Chapter to vary or set aside an interim administration order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be affected by the court's decision.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I241 S. 260 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

261 Restrictions on dealing etc. with property

(1) An interim administration order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim administration order is made or on an application to vary the order.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

(4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(5) If the excluded property is not specified in the order it must be described in the order in general terms.

(6) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

Commencement Information

I242 S. 261 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

262 Restriction on proceedings and remedies

(1) While an interim administration order has effect, the court may sist any action, execution or other legal process in respect of the property to which the order applies.

(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 interim administration order has been applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim administrator (if appointed) and any person who may be affected by the court's decision.

Commencement Information

I243 S. 262 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

263 Exclusion of property which is not recoverable etc.

(1) If the court decides that any property to which an interim administration order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim administration order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim administration order has effect, which the court thinks necessary or expedient.

Commencement Information

I244 S. 263 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

264 Reporting

(1) An interim administration order must require the interim administrator to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—

(a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,

(b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,

(c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or

(d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if he thinks that there has been any other material change of circumstances.

(2) An interim administration order must require the interim administrator—

(a) to report his findings to the court,

(b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I245 S. 264 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

265 Arrestment of property affected by interim administration order

(1) On the application of the enforcement authority or the interim administrator the Court of Session may, in relation to moveable recoverable property to which an interim administration order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.

(2) An application by the enforcement authority under subsection (1) may be made at the same time as the application for the interim administration order or at any time thereafter.

(3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority or, as the case may be, the interim administrator against the person and may be executed, recalled, loosed or restricted accordingly.

(5) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.

(6) An arrestment executed under this section ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(7) If an arrestment ceases to have effect to any extent by virtue of subsection (6) the enforcement authority or, as the case may be, the interim administrator must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

Commencement Information

I246 S. 265 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Vesting and realisation of recoverable property

266 Recovery orders

(1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.

(2) The recovery order must vest the recoverable property in the trustee for civil recovery.

(3) But the court may not make in a recovery order—

(a) any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so, or

(b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).

(4) In relation to a court in England and Wales or Northern Ireland, the conditions referred to in subsection (3)(a) are that—

(a) the respondent obtained the recoverable property in good faith,

(b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,

(c) when he took the steps, he had no notice that the property was recoverable,

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(5) In relation to a court in Scotland, the conditions referred to in subsection (3)(a) are that—

(a) the respondent obtained the recoverable property in good faith,

(b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,

(c) when he took the steps, he had no reasonable grounds for believing that the property was recoverable,

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) or (as the case may be) (5) are met, the court must have regard to—

(a) the degree of detriment that would be suffered by the respondent if the provision were made,

(b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.

(7) A recovery order may sever any property.

(8) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.

[[F701](8ZA) If the recoverable property in respect of which the Court of Session makes a recovery order includes heritable property, the Court of Session must, on the application of the enforcement authority, also grant decree of removing and warrant for ejection, enforceable by the trustee for civil recovery, in relation to any persons occupying the heritable property.**]**

[[F702](8A) A recovery order made by a court in England and Wales or Northern Ireland may provide for payment under section 280 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings under this Part in which the order is made, or

(b) any related proceedings under this Part.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(8B) If regulations under section 286B apply to an item of expenditure, a sum in respect of the item is not payable under section 280 in pursuance of provision under subsection (8A) unless—

(a) the enforcement authority agrees to its payment, or

(b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.**]**

(9) This section is subject to sections 270 to 278.

Textual Amendments

F701 S. 266(8ZA) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(3)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

F702 S. 266(8A)(8B) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 15**; S.I. 2005/3136, art. 3(c)

Commencement Information

I247 S. 266 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

267 Functions of the trustee for civil recovery

(1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.

(2) The enforcement authority must nominate a suitably qualified person for appointment as the trustee.

(3) The functions of the trustee are—

(a) to secure the detention, custody or preservation of any property vested in him by the recovery order,

(b) in the case of property other than money, to realise the value of the property for the benefit of the enforcement authority, and

[[F703](ba) if decree of removing and warrant for ejection is granted by the Court of Session under section 266(8ZA), to enforce the decree and warrant,**]**

(c) to perform any other functions conferred on him by virtue of this Chapter.

(4) In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.

(5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the enforcement authority.

(6) The trustee has the powers mentioned in Schedule 7.

(7) References in this section to a recovery order include an order under section 276 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under section 276.

Textual Amendments

F703 S. 267(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(4)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

Commencement Information

I248 S. 267 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

268 Recording of recovery order (Scotland)

(1) The clerk of the court must immediately after the making of a recovery order which relates to heritable property situated in Scotland send a certified copy of it to the keeper of the register of inhibitions and adjudications for recording in that register.

(2) Recording under subsection (1) is to have the effect, as from the date of the recovery order, of an inhibition at the instance of the trustee for civil recovery against the person in whom the heritable property was vest prior to that date.

Commencement Information

I249 S. 268 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

269 Rights of pre-emption, etc.

(1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(3) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(4) References to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.

(5) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Commencement Information

I250 S. 269 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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[F704 269A Leases and occupancy rights: Scotland

(1) This section applies where, in making a recovery order, the Court of Session also grants decree of removing and warrant for ejection under section 266(8ZA) in relation to any persons occupying the heritable property.

(2) Any lease under which a person has the right to occupy the heritable property (or part of it) for residential or commercial purposes is terminated on the granting of decree of removing and warrant for ejection.

(3) Any other right to occupy the heritable property (or part of it) which subsists immediately before the granting of decree of removing and warrant for ejection is extinguished on the granting of the decree and warrant.

(4) Subsection (3) does not apply in relation to a right under a lease to occupy or use the property other than those mentioned in subsection (2).

(5) Where the heritable property is vested in the trustee for civil recovery under the recovery order, the following enactments do not apply in relation to the heritable property—

(a) sections 34 to 38A of the Sheriff Courts (Scotland) Act 1907 (removings, notice of termination of tenancy and notice of removal);

(b) the Tenancy of Shops (Scotland) Act 1949;

(c) the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

(d) Parts 2 and 3 of the Rent (Scotland) Act 1984 (security of tenure and protection against harassment and unlawful eviction);

(e) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (termination of certain leases);

(f) Part 2 of the Housing (Scotland) Act 1988 (rented accommodation: security of tenure etc.);

(g) Chapter 3 of Part 3 of the Civil Partnership Act 2004 (occupancy rights and tenancies);

(h) Part 5 of the Private Housing (Tenancies) (Scotland) Act 2016 (security of tenure, termination of tenancy and eviction).]

Textual Amendments

F704 S. 269A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(5)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

270 Associated and joint property

(1) Sections 271 and 272 apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).

(2) A case is within this subsection if—

(a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form or (in Scotland) application, and

(b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service.

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(3) A case is within this subsection if—
  (a) the recoverable property belongs to joint tenants, and
  (b) one of the tenants is an excepted joint owner.

(4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

(5) Subsections (3) and (4) do not extend to Scotland.

Commencement Information

I251 S. 270(4)(5) in force (30.12.2002) by S.I. 2002/3015, **art. 2**, Sch.

I252 S. 270(1)(2)(3) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

271 Agreements about associated and joint property

(1) Where—
  (a) this section applies, and
  (b) the enforcement authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment is to be the amount which the enforcement authority and that person agree represents—
  (a) in a case within section 270(2), the value of the recoverable property,
  (b) in a case within section 270(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if—
  (a) **[**[F705]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order applied at any time to the associated property or joint tenancy, and
  (b) the enforcement authority agrees that the person has suffered loss as a result of the **[**[F706]order mentioned in paragraph (a)**]**,

the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an

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excepted joint owner, is to be agreed between both (or all) of them and the enforcement authority.

(6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

Textual Amendments

F705 Words in s. 271(4)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 16(a)**; S.I. 2005/3136, art. 3(c)

F706 Words in s. 271(4)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 16(b)**; S.I. 2005/3136, art. 3(c)

Commencement Information

I253 S. 271 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

272 Associated and joint property: default of agreement

(1) Where this section applies, the court may make the following provision if—

(a) there is no agreement under section 271, and

(b) the court thinks it just and equitable to do so.

(2) The recovery order may provide—

(a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished, or

(b) in the case of an excepted joint owner, for the severance of his interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide—

(a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or

(b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,

or for both.

(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court must have regard to—

(a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),

(b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.

(5) If—

(a) **[**[F707]a property freezing order, an interim receiving order, a prohibitory property order or an **]** interim administration order applied at any time to the associated property or joint tenancy, and

(b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the **[**[F708]order mentioned in paragraph (a) **]**,

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a recovery order making any provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

[[F709](7) In subsection (5) the reference to the enforcement authority is, in the case of an enforcement authority in relation to England and Wales or Northern Ireland, a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned.**]**

Textual Amendments

F707 Words in s. 272(5)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 17(a)**; S.I. 2005/3136, art. 3(c)

F708 Words in s. 272(5)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 17(b)**; S.I. 2005/3136, art. 3(c)

F709 S. 272(7) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 87**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I254 S. 272 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

273 Payments in respect of rights under pension schemes

(1) This section applies to recoverable property consisting of rights under a pension scheme.

(2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme—

(a) to pay to the trustee for civil recovery within a prescribed period the amount determined by the trustees or managers to be equal to the value of the rights, and

(b) to give effect to any other provision made by virtue of this section and the two following sections in respect of the scheme.

This subsection is subject to sections 276 to 278.

(3) A recovery order made by virtue of subsection (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.

(4) A recovery order made by virtue of subsection (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in—

(a) complying with the recovery order, or

(b) providing information, before the order was made, to the enforcement authority, **[**[F710]receiver appointed under section 245E,**][**[F711] PPO receiver, **]** interim receiver or interim administrator.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) None of the following provisions applies to a court making a recovery order by virtue of subsection (2)—

(a) any provision of section 159 of the Pension Schemes Act 1993 (c. 48), section 155 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), section 91 of the Pensions Act 1995 (c. 26) or Article 89 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),

(b) any provision of any enactment (whenever passed or made) corresponding to any of the provisions mentioned in paragraph (a),

(c) any provision of the pension scheme in question corresponding to any of those provisions.

Textual Amendments

F710 Words in s. 273(4)(b) inserted (E.W.N.I.) (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(2)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F711 Words in s. 273(4)(b) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 52**; S.I. 2015/820, reg. 3(q)(iv)

Commencement Information

I255 S. 273 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

274 Consequential adjustment of liabilities under pension schemes

(1) A recovery order made by virtue of section 273(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that subsection.

(2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 273 applies to cease.

(3) So far as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 273 applies to cease, their powers include (in particular) power to reduce the amount of—

(a) any benefit or future benefit to which the respondent is or may be entitled under the scheme,

(b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

Commencement Information

I256 S. 274 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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275 Pension schemes: supplementary

(1) Regulations may make provision as to the exercise by trustees or managers of their powers under sections 273 and 274, including provision about the calculation and verification of the value at any time of rights or liabilities.

(2) The power conferred by subsection (1) includes power to provide for any values to be calculated or verified—

(a) in a manner which, in the particular case, is approved by a prescribed person, or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(3) Regulations means regulations made by the Secretary of State after consultation with the Scottish Ministers **[**[F712]or, in relation to Northern Ireland, regulations made by the Department of Justice**]** ; and prescribed means prescribed by regulations.

(4) A pension scheme means an occupational pension scheme or a personal pension scheme; and those expressions have the same meaning as in the Pension Schemes Act 1993 (c. 48) or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993 (c. 49).

(5) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means—

(a) in the case of a scheme established under a trust, the trustees,

(b) in any other case, the managers.

(6) References to a pension scheme include—

(a) a retirement annuity contract (within the meaning of Part 3 of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland, Part 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999),

(b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme,

(c) an annuity purchased, or entered into, for the purpose of discharging any liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland, Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(7) References to the trustees or managers—

(a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,

(b) in relation to an insurance policy, are to the insurer.

(8) Subsections (3) to (7) have effect for the purposes of this group of sections (that is, sections 273 and 274 and this section).

Textual Amendments

F712 Words in s. 275(3) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 54** (with arts. 28-31)

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I257 S. 275 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

276 Consent orders

(1) The court may make an order staying (in Scotland, sisting) any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying (or sisting) the proceedings on terms—

(a) make provision for any property which may be recoverable property to cease to be recoverable,

(b) make any further provision which the court thinks appropriate.

(3) Section 280 applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under section 271.

Commencement Information

I258 S. 276 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

277 Consent orders: pensions

(1) This section applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.

(2) An order made under section 276—

(a) may not stay (in Scotland, sist) the proceedings on terms that the rights are vested in any other person, but

(b) may include provision imposing the following requirement, if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.

(3) The requirement is that the trustees or managers of the pension scheme—

(a) make a payment in accordance with the agreement, and

(b) give effect to any other provision made by virtue of this section in respect of the scheme.

(4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under section 276 may stay (in Scotland, sist) the proceedings.

(5) The following provisions apply in respect of an order under section 276, so far as it includes the requirement mentioned in subsection (3).

(6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.

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(7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in—

(a) complying with the order, or

(b) providing information, before the order was made, to the enforcement authority, **[**[F713]receiver appointed under section 245E,**][**[F714] PPO receiver, **]** interim receiver or interim administrator.

(8) Sections 273(5) and 274 (read with section 275) apply as if the requirement were included in an order made by virtue of section 273(2).

(9) Section 275(4) to (7) has effect for the purposes of this section.

Textual Amendments

F713 Words in s. 277(7)(b) inserted (E.W.N.I.) (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(2)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F714 Words in s. 277(7)(b) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 53**; S.I. 2015/820, reg. 3(q)(iv)

Commencement Information

I259 S. 277 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

278 Limit on recovery

(1) This section applies if the enforcement authority seeks a recovery order—

(a) in respect of both property which is or represents property obtained through unlawful conduct and related property, or

(b) in respect of property which is or represents property obtained through unlawful conduct where such an order, or an order under section 276, has previously been made in respect of related property.

(2) For the purposes of this section—

(a) the original property means the property obtained through unlawful conduct,

(b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The court is not to make a recovery order if it thinks that the enforcement authority's right to recover the original property has been satisfied by a previous recovery order or order under section 276.

(4) Subject to subsection (3), the court may act under subsection (5) if it thinks that—

(a) a recovery order may be made in respect of two or more related items of recoverable property, but

(b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the enforcement authority's right to recover the original property.

(5) The court may in order to satisfy that right to the extent required make a recovery order in respect of—

(a) only some of the related items of property, or

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(b) only a part of any of the related items of property,

or both.

(6) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

[[F715](6A) If—

(a) recoverable property is forfeited in pursuance of a forfeiture notice under section 297A **[**[F716]or an account forfeiture notice under section 303Z9**]**, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the **[**[F717]notice**]** is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.**]**

(7) If—

(a) an order is made under section 298 **[**[F718], 303O **[**[F719], 303R**]** or 303Z14**]** for the forfeiture of recoverable property, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the order under **[**[F720]that section**]** is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.

[[F721](7A) If—

(a) an order is made under section 303Q instead of an order being made under section 303O for the forfeiture of recoverable property, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the order under section 303Q is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property that was the forfeitable property in relation to the order under section 303Q.**]**

(8) If—

(a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the claimant has obtained property from the defendant (“the judgment property”),

(b) the claim was based on the defendant’s having obtained the judgment property or related property through unlawful conduct, and

(c) the enforcement authority subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the judgment property.

In relation to Scotland, “claimant” and “defendant” are to be read as “pursuer” and “defender”.

(9) If—

(a) property has been taken into account in deciding the amount of a person’s benefit from criminal conduct for the purpose of making a confiscation order, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

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the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property referred to in paragraph (a).

(10) In subsection (9), a confiscation order means—

(a) an order under section 6, 92 or 156, or

(b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

Textual Amendments

F715 S. 278(6A) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 106**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F716 Words in s. 278(6A)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(2)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F717 Words in s. 278(6A) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(2)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F718 Words in s. 278(7)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F719 Word in s. 278(7)(a) inserted (31.1.2018) by The Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018 (S.I. 2018/80), regs. 1, **2**

F720 Words in s. 278(7) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F721 S. 278(7A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

Commencement Information

I260 S. 278 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

279 Section 278: supplementary

(1) Subsections (2) and (3) give examples of the satisfaction of the enforcement authority's right to recover the original property.

(2) If—

(a) there is a disposal, other than a part disposal, of the original property, and

(b) other property (the representative property) is obtained in its place,

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the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If—

(a) there is a part disposal of the original property, and

(b) other property (the representative property) is obtained in place of the property disposed of,

the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section—

(a) a part disposal means a disposal to which section 314(1) applies,

(b) the original property has the same meaning as in section 278.

Commencement Information

I261 S. 279 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

280 Applying realised proceeds

(1) **[**[F722]Subsection (2) applies to sums which are in the hands of the trustee for civil recovery if they are**]**—

(a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order,

(b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.

(2) The trustee is to make out of the sums—

(a) first, any payment required to be made by him by virtue of section 272,

[[F723](aa) next, any payment of legal expenses which, after giving effect to section 266(8B), are payable under this subsection in pursuance of provision under section 266(8A) contained in the recovery order,**]**

(b) **[**[F724]then**]**, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 432(10),

and any sum which remains is to be paid to the enforcement authority.

[[F725](3) The **[**[F726]enforcement authority (unless it is the Scottish Ministers)**]** may apply a sum received by **[**[F727]it**]** under subsection (2) in making payment of the remuneration and expenses of—

(a) the trustee, or

(b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the **[**[F728]enforcement authority concerned **[**[F729](but it

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does apply in relation to such remuneration if the trustee is a person providing services under arrangements made by that enforcement authority)**]**.**]**

Textual Amendments

F722 Words in s. 280(1) substituted (E.W.S.) (retrospectively) by Crime and Courts Act 2013 (c. 22), ss. 48(7), 61(11)(d), **Sch. 18 para. 5** (with s. 48(8), Sch. 25); this amendment extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

F723 S. 280(2)(aa) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 18(a)**; S.I. 2005/3136, art. 3(c)

F724 Word in s. 280(2)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 18(b)**; S.I. 2005/3136, art. 3(c)

F725 S. 280(3)(4) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 99(2)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(b)

F726 Words in s. 280(3) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 88(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F727 Word in s. 280(3) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 88(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F728 Words in s. 280(4) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 88(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F729 Words in s. 280(4) inserted (1.4.2008) by Serious Crime Act 2007 (Amendment of the Proceeds of Crime Act 2002) Order 2008 (S.I. 2008/949), arts. 1, **2**

Commencement Information

I262 S. 280 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Exemptions etc.

281 Victims of theft, etc.

(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that—

(a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct,

(b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and

(c) the property he claims belongs to him.

(4) Property to which a declaration under this section applies is not recoverable property.

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Commencement Information

I263 S. 281 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

282 Other exemptions

(1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person himself or to the property or to any other matter.

In this subsection, prescribed means prescribed by an order made by the Secretary of State after consultation with the Scottish Ministers **[**[F730]or, in relation to Northern Ireland, prescribed by an order made by the Department of Justice**]**.

(2) Proceedings for a recovery order may not be taken in respect of cash found at any place in the United Kingdom unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(3) Proceedings for a recovery order may not be taken against the **[**[F731]Financial Conduct Authority or the Prudential Regulation Authority**]** in respect of any recoverable property held by **[**[F732]it**]**.

(4) Proceedings for a recovery order may not be taken in respect of any property which is subject to any of the following charges—

(a) a collateral security charge, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979),

(b) a market charge, within the meaning of Part 7 of the Companies Act 1989 (c. 40),

(c) a money market charge, within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995 (S.I. 1995/2049),

(d) a system charge, within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469) or the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252).

(5) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as an insolvency practitioner.

Acting as an insolvency practitioner has the same meaning as in section 433.

Textual Amendments

F730 Words in s. 282(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 55** (with arts. 28-31)

F731 Words in s. 282(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F732 Word in s. 282(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I264 S. 282 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F733 Scope of powers

Textual Amendments

F733 S. 282A and cross-heading inserted (retrospectively) by Crime and Courts Act 2013 (c. 22), **ss. 48(2)(7)**, 61(11)(c) (with s. 48(8), Sch. 25); this insertion extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

282A Scope of powers

(1) An order under this Chapter may be made by the High Court [F734]... or the Court of Session—

(a) in respect of property wherever situated, and

(b) in respect of a person wherever domiciled, resident or present,

subject to subsection (2).

(2) Such an order may not be made by the High Court [F735]... or the Court of Session in respect of—

(a) property that is outside the United Kingdom, or

(b) property that is in the United Kingdom but outside the relevant part of the United Kingdom,

unless there is or has been a connection between the case and the relevant part of the United Kingdom.

(3) The circumstances in which there is or has been such a connection include those described in Schedule 7A.

(4) "The relevant part of the United Kingdom" means—

(a) in relation to an order made by the High Court in England and Wales, England and Wales, [F736]...

(b) in relation to an order made by the Court of Session, Scotland.**][**[F737], and

(c) in relation to an order made by the High Court in Northern Ireland, Northern Ireland.**]**

Textual Amendments

F734 Words in s. 282A(1) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(a)**

F735 Words in s. 282A(2) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(b)**

F736 Word in s. 282A(4)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(c)**

F737 S. 282A(4)(c) and word inserted (retrospective to 20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(c)**

Modifications etc. (not altering text)

C59 S. 282A: power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 4(2)(a)**

[F738 Enforcement outside the United Kingdom

Textual Amendments

F738 Ss. 282B-282F and cross-heading inserted (retrospectively) by Crime and Courts Act 2013 (c. 22), ss. 48(7), 61(11)(d), **Sch. 18 para. 6** (with s. 48(8), Sch. 25); this insertion extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

282B Enforcement abroad before recovery order: enforcement authority

(1) This section applies if—

(a) the property freezing conditions are met in relation to property,

(b) the property is not property to which a recovery order applies, and

(c) an enforcement authority [F739]... believes that the property is in a country outside the United Kingdom (the receiving country).

(2) The property freezing conditions are—

(a) in England and Wales **[**[F740]and Northern Ireland**]** , the conditions in section 245A(5) and (6), and

(b) in Scotland, the conditions in section 255A(5) and (6),

and, for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).

(3) The enforcement authority may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(4) The Secretary of State may forward the request for assistance to the government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

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Textual Amendments

F739 Words in s. 282B(1)(c) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(3)(a)**

F740 Words in s. 282B(2)(a) inserted (retrospective to 20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(3)(b)**

282C Enforcement abroad before recovery order: receiver or administrator

(1) This section applies if—

(a) a property freezing order [F741]... has effect in relation to property, and

(b) the receiver appointed under section 245E in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).

(2) This section also applies if—

(a) an interim receiving order [F742]... or an interim administration order has effect in relation to property, and

(b) the interim receiver or interim administrator believes that the property is in a country outside the United Kingdom (the receiving country).

(3) The receiver or administrator may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(4) The Secretary of State must forward the request for assistance to the government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Textual Amendments

F741 Words in s. 282C(1)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(4)(a)**

F742 Words in s. 282C(2)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(4)(b)**

[F743 282CA Enforcement abroad before recovery order: PPO receiver

(1) This section applies if—

(a) a prohibitory property order made by the Court of Session has effect in relation to property, and

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(b) the PPO receiver appointed under section 255G in respect of the property believes that it is in a country outside the United Kingdom (the "receiving country").

(2) The PPO receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State must forward the request for assistance to the government of the receiving country.

(4) A request for assistance under this section is a request to the government of the receiving country—

(a) to secure that any person is prohibited from dealing with the property,

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.**]**

Textual Amendments

F743 S. 282CA inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(3)**, 88(1); S.I. 2016/148, reg. 3(b)

282D Evidence overseas: interim receiver or interim administrator

(1) This section applies if—

(a) an interim receiving order [F744]... or an interim administration order has effect in relation to property, and

(b) the order requires the interim receiver or interim administrator to take steps to establish a matter described in section 247(2)(a) or (b) or 257(2)(a) or (b).

(2) The interim receiver or interim administrator may request assistance under this section if the interim receiver or interim administrator thinks that there is relevant evidence in a country outside the United Kingdom.

(3) A judge of the High Court [F745]... may request assistance under this section if—

(a) an application is made by the interim receiver or by a person subject to investigation by the interim receiver, and

(b) the judge thinks that there is relevant evidence in a country outside the United Kingdom.

(4) A judge of the Court of Session may request assistance under this section if—

(a) an application is made by the interim administrator or by a person subject to investigation by the interim administrator, and

(b) the judge thinks that there is relevant evidence in a country outside the United Kingdom.

(5) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.

(6) Relevant evidence is—

(a) in relation to an application or request made for the purposes of an investigation by an interim receiver, evidence as to a matter described in section 247(2)(a) or (b);

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(b) in relation to an application or request made for the purposes of an investigation by an interim administrator, evidence as to a matter described in section 257(2)(a) or (b).

(7) A request for assistance under this section may be sent—

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,

(b) to the government of the country concerned, or

(c) to an authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.

(8) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (7).

(9) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.

(10) In a case of urgency, a request for assistance under this section may be sent to—

(a) the International Criminal Police Organisation, [F746]...

[F746](b) . . . . . .

for forwarding to the court, tribunal, government or authority mentioned in subsection (7).

(11) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

(12) "Evidence" includes documents, information in any other form and material.

Textual Amendments

F744 Words in s. 282D(1)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(5)(a)**

F745 Words in s. 282D(3) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(5)(b)**

F746 S. 282D(10)(b) and preceding word omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(4)**; 2020 c. 1, Sch. 5 para. 1(1)

282E Evidence overseas: restrictions on use

(1) This section applies to evidence obtained by means of a request for assistance under section 282D.

(2) The evidence must not be used for any purpose other than—

(a) for the purposes of carrying out the functions of the interim receiver or interim administrator, or

(b) for the purposes of proceedings under this Chapter of this Part in respect of property described in subsection (3) or any proceedings arising out of such proceedings.

Status: *Point in time view as at 05/01/2023.*
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(3) That property is—
  (a) the property that is the subject of the interim receiving order or interim administration order, or
  (b) other property that is recoverable property in respect of the same unlawful conduct.

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

(5) In Scotland, the evidence may be received in evidence without being sworn to by anyone, so far as that may be done without unfairness to any party.

282F Enforcement abroad: after recovery order

(1) This section applies if—
  (a) a recovery order [F747]... has effect in relation to property, and
  (b) the enforcement authority or the trustee for civil recovery believes that the property is in a country outside the United Kingdom (the receiving country).

(2) The enforcement authority or trustee for civil recovery may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State may forward a request for assistance from the enforcement authority to the government of the receiving country.

(4) The Secretary of State must forward a request for assistance from the trustee for civil recovery to the government of the receiving country.

(5) A request for assistance is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and includes a request—
  (a) to secure the detention, custody or preservation of the property;
  (b) in the case of money, to secure that it is applied in accordance with the law of the receiving country;
  (c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country.

(6) A certificate purporting to be issued by or on behalf of the government of the receiving country is admissible as evidence of the facts it states if it states—
  (a) that property has been realised in pursuance of a request under this section,
  (b) the date of realisation, and
  (c) the proceeds of realisation.**]**

Textual Amendments

F747 Words in s. 282F(1)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(6)**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Miscellaneous

283 Compensation

(1) If, in the case of any property to which **[**[F748]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.

(2) Subsection (1) does not apply if the court—

(a) has made a declaration in respect of the property by virtue of section 281, or

(b) makes an order under section 276.

(3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning—

(a) in relation to a decision of the High Court in England and Wales, with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded,

(b) in relation to a decision of the Court of Session or of the High Court in Northern Ireland, with the date of the decision or, if there is an appeal against the decision, with the date on which any proceedings on appeal are finally concluded.

(4) If, in England and Wales or Northern Ireland, the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.

(5) If the court is satisfied that the applicant has suffered loss as a result of the **[**[F749]order mentioned in subsection (1) **]**, it may require the enforcement authority to pay compensation to him.

(6) If, but for section 269(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 269(2).

(8) If the court is satisfied that, in consequence of the operation of section 269, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the enforcement authority to pay compensation to him.

(9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

[[F750](10) In the case of an enforcement authority in relation to England and Wales or Northern Ireland—

(a) the reference in subsection (5) to the enforcement authority is a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned, and

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(b) the reference in subsection (8) to the enforcement authority is a reference to the enforcement authority which obtained the recovery order concerned.**]**

Textual Amendments

F748 Words in s. 283(1) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 19(a)**; S.I. 2005/3136, art. 3(c)

F749 Words in s. 283(5) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 19(b)**; S.I. 2005/3136, art. 3(c)

F750 S. 283(10) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 89**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I265 S. 283 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

284 Payment of interim administrator or trustee (Scotland)

[[F751](1)**]** Any fees or expenses incurred by an interim administrator, or a trustee for civil recovery appointed by the Court of Session, in the exercise of his functions are to be reimbursed by the Scottish Ministers as soon as is practicable after they have been incurred.

[[F752](2) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of such fees or expenses.

(3) Subsection (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff.**]**

Textual Amendments

F751 S. 284(1): s. 284 renumbered as s. 284(1) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 99(3)(a)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(b)

F752 S. 284(2)(3) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 99(3)(b)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(b)

Commencement Information

I266 S. 284 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

285 Effect on diligence of recovery order (Scotland)

(1) An arrestment or **[**[F753]attachment**]** of any recoverable property executed on or after the appointment of the trustee for civil recovery is ineffectual in a question with the trustee.

(2) Any recoverable property so arrested or **[**[F754]attached.**]** , or (if the property has been sold) the proceeds of sale, must be handed over to the trustee for civil recovery.

(3) A poinding of the ground in respect of recoverable property on or after such an appointment is ineffectual in a question with the trustee for civil recovery except for the interest mentioned in subsection (4).

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(4) That interest is—

(a) interest on the debt of a secured creditor for the current half yearly term, and

(b) arrears of interest on that debt for one year immediately before the commencement of that term.

(5) On and after such appointment no other person may raise or insist in an adjudication against recoverable property or be confirmed as an executor-creditor on that property.

(6) An inhibition on recoverable property shall cease to have effect in relation to any heritable property comprised in the recoverable property on such appointment.

(7) **[**[F755]The provisions of this section apply in relation to—

(a) an action of maills and duties, and

(b) an action for sequestration of rent,

as they apply in relation to an arrestment or **[**[F756]attachment**]** .**]**

Textual Amendments

F753 Words in s. 285(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1** {para. 29(1)(a)} (with s. 59)

F754 Words in s. 285(2) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1** {para. 29(1)(b)} (with s. 59)

F755 S. 285(7) repealed (S.) (1.4.2008 for specified purposes) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 2 (with arts. 4-691015)

F756 Words in s. 285(7)(b) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1** {para 29(1)(a)} (with s. 59)

Commencement Information

I267 S. 285 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F757]286 Scope of powers (Scotland)

. . . . . .

Textual Amendments

F757 S. 286 omitted (retrospectively) by virtue of Crime and Courts Act 2013 (c. 22), **ss. 48(4)**(7), 61(11)(c) (with s. 48(8), Sch. 25)

[[F758]286A Legal expenses excluded from freezing: required conditions

(1) The Lord Chancellor may by regulations specify the required conditions for the purposes of section 245C(5) or 252(4).

(2) A required condition may (in particular)—

(a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers), or

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(b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.

(3) A required condition made for the purpose mentioned in subsection (2)(b) may (for example)—

(a) provide for sums to be released only with the agreement of the enforcement authority;

(b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under section 286B in respect of that item and the sum is released for payment of the assessed amount;

(c) provide for a sum to be released in respect of an item of expenditure only if—

(i) the enforcement authority agrees to its release, or

(ii) the court has assessed the amount allowed by regulations under section 286B in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this section, the Lord Chancellor must consult such persons as he considers appropriate.

Textual Amendments

F758 Ss. 286A, 286B inserted (1.8.2005) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 20**; S.I. 2005/2026, art. 2(b)

286B Legal expenses: regulations for purposes of section 266(8B) or 286A(3)

(1) The Lord Chancellor may by regulations—

(a) make provision for the purposes of section 266(8B);

(b) make provision for the purposes of required conditions that make provision of the kind mentioned in section 286A(3)(b) or (c).

(2) Regulations under this section may (in particular)—

(a) limit the amount of remuneration allowable to representatives for a unit of time worked;

(b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;

(c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.

(3) Before making regulations under this section, the Lord Chancellor must consult such persons as he considers appropriate.**]**

Textual Amendments

F758 Ss. 286A, 286B inserted (1.8.2005) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 20**; S.I. 2005/2026, art. 2(b)

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287 Financial threshold

(1) At any time when an order specifying an amount for the purposes of this section has effect, the enforcement authority may not start proceedings for a recovery order unless the authority reasonably believes that the aggregate value of the recoverable property which the authority wishes to be subject to a recovery order is not less than the specified amount.

(2) The power to make an order under subsection (1) is exercisable by the Secretary of State after consultation with the Scottish Ministers **[**[F759]or, in relation to Northern Ireland, exercisable by the Department of Justice**]** .

(3) If the authority applies for **[**[F760]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of **[**[F761]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order which has been properly applied for.

Textual Amendments

F759 Words in s. 287(2) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 56** (with arts. 28-31)

F760 Words in s. 287(3) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 21**; S.I. 2005/3136, art. 3(c)

F761 Words in s. 287(4) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 21**; S.I. 2005/3136, art. 3(c)

Commencement Information

I268 S. 287 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

288 Limitation

(1) After section 27 of the Limitation Act 1980 (c. 58) there is inserted—

"27A Actions for recovery of property obtained through unlawful conduct etc.

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director's cause of action accrued.

(3) Proceedings under that Chapter are brought when—

(a) a claim form is issued, or

(b) an application is made for an interim receiving order,

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whichever is the earlier.

(4) The Director's cause of action accrues in respect of any recoverable property—

(a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,

(b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) If—

(a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel, and

(b) proceedings are started under that Chapter for a recovery order in respect of the chattel,

section 3(2) of this Act does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 3(2) of this Act.

(7) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part."

(2) After section 19A of the Prescription and Limitation (Scotland) Act 1973 (c. 52) there is inserted—

"**19B Actions for recovery of property obtained through unlawful conduct etc.**

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be commenced after the expiration of the period of twelve years from the date on which the Scottish Ministers' right of action accrued.

(3) Proceedings under that Chapter are commenced when—

(a) the proceedings are served, or

(b) an application is made for an interim administration order,

whichever is the earlier.

(4) The Scottish Ministers' right of action accrues in respect of any recoverable property—

(a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,

(b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

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(5) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part."

(3) After Article 72 of the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (N.I. 11)) there is inserted—

"72A **Actions for recovery of property obtained through unlawful conduct etc.**

(1) None of the time limits fixed by Parts II and III applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director's cause of action accrued.

(3) Proceedings under that Chapter are brought when—

(a) a claim form is issued, or

(b) an application is made for an interim receiving order,

whichever is the earlier.

(4) The Director's cause of action accrues in respect of any recoverable property—

(a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,

(b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) If—

(a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and

(b) proceedings are started under that Chapter for a recovery order in respect of the chattel,

Article 17(2) does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2).

(7) Expressions used in this Article and Part 5 of that Act have the same meaning in this Article as in that Part."

Commencement Information

I269 S. 288 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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CHAPTER 3

RECOVERY OF CASH IN SUMMARY PROCEEDINGS

Modifications etc. (not altering text)

C60 Pt. 5 Ch. 3 applied (1.4.2010) by UK Borders Act 2007 (c. 30), **ss. 24(1)**, 59(2); S.I. 2010/606, art. 2

C61 Pt. 5 Ch. 3 modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 3** (as amended (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(a)**)

C62 Pt. 5 Ch. 3 applied (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by 2007 c. 30, s. 24(1) (as substituted by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i))

Searches

289 Searches

(1) If **[**[F762]an officer of Revenue and Customs**]** or constable **[**[F763], an SFO officer**]** who **[**[F764] a constable or an accredited financial investigator**]** is lawfully on any premises **[**[F765] and**]** has reasonable grounds for suspecting that there is on the premises cash—

(a) which is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of which is not less than the minimum amount,

he may search for the cash there.

[[F766](1A) The powers specified in subsection (1D) are exercisable if—

(a) **[**[F767]an officer of Revenue and Customs**]**, a constable **[**[F768], an SFO officer**]** or an accredited financial investigator has reasonable grounds for suspecting that there is cash falling within subsection (1E) in a vehicle, and

(b) it appears to the officer **[**[F769]of Revenue and Customs**]**, constable **[**[F770], SFO officer**]** or investigator that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle.

(1B) The powers are exercisable only if the vehicle is—

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(1C) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the **[**[F771]officer of Revenue and Customs**]**, constable **[**[F772], SFO officer**]****[**[F773]of Revenue and Customs**]** or accredited financial investigator may exercise the powers under subsection (1D) only if the officer, constable **[**[F772], SFO officer**]** or investigator has reasonable grounds for believing—

(a) that the suspect does not reside in the dwelling, and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

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(1D) The **[**[F771]officer of Revenue and Customs**]**, constable **[**[F774], SFO officer**]****[**[F775]of Revenue and Customs**]** or accredited financial investigator may, so far as the officer, constable **[**[F774], SFO officer**]** or investigator thinks it necessary or expedient, require the suspect to—

(a) permit entry to the vehicle,

(b) permit a search of the vehicle.

(1E) Cash falls within this subsection if—

(a) it is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of it is not less than the minimum amount.**]**

(2) If **[**[F776]an officer of Revenue and Customs**]****[**[F777], a constable **[**[F778], an SFO officer**]** or an accredited financial investigator**]** has reasonable grounds for suspecting that a person (the suspect) is carrying cash—

(a) which is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of which is not less than the minimum amount,

he may exercise the following powers.

(3) The officer **[**[F779], constable **[**[F780], SFO officer**]** or accredited financial investigator**]** may, so far as he thinks it necessary or expedient, require the suspect—

(a) to permit a search of any article he has with him,

(b) to permit a search of his person.

(4) An officer **[**[F781], constable **[**[F782], SFO officer**]** or accredited financial investigator**]****[**[F783]may—

(a) in exercising powers by virtue of subsection (1D), detain the vehicle for so long as is necessary for their exercise,

(b) in exercising powers by virtue of subsection (3)(b), detain the suspect for so long as is necessary for their exercise.**]**

(5) The powers conferred by this section—

(a) are exercisable only so far as reasonably required for the purpose of finding cash,

(b) are exercisable by **[**[F784]an officer of Revenue and Customs**]** only if he has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979 (c. 2)).

[F785](ba) . . . . . .

(c) are exercisable by an **[**[F786]SFO officer or**]** accredited financial investigator only in relation to **[**[F787]the following—

(i) premises in England, Wales or Northern Ireland (in the case of subsection (1)),

(ii) vehicles and suspects in England, Wales or Northern Ireland (in the case of subsections (1D) and (4)(a)),

(iii) suspects in England, Wales or Northern Ireland (in the case of subsections (2), (3) and (4)(b)).**]**

[F788](5A) . . . . . .

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(6) Cash means—

(a) notes and coins in any currency,

(b) postal orders,

(c) cheques of any kind, including travellers' cheques,

(d) bankers' drafts,

(e) bearer bonds and bearer shares,

[[F789](f) gaming vouchers,

(g) fixed-value casino tokens,

(h) betting receipts**]**

found at any place in the United Kingdom.

(7) Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by an order made after consultation with the Scottish Ministers **[**[F790]or, in relation to Northern Ireland, is specified by the Department of Justice by an order**]**.

[[F791](7A) For the purposes of subsection (6)—

(a) "gaming voucher" means a voucher in physical form issued by a gaming machine that represents a right to be paid the amount stated on it;

(b) "fixed-value casino token" means a casino token that represents a right to be paid the amount stated on it;

(c) "betting receipt" means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

(7B) In subsection (7A)—

"bet"—

(a) in relation to England and Wales and Scotland, has the same meaning as in section 9(1) of the Gambling Act 2005;

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)) (see Article 2 of that Order);

"betting licence"—

(a) in relation to England and Wales and Scotland, means a general betting operating licence issued under Part 5 of the Gambling Act 2005;

(b) in relation to Northern Ireland, means a bookmaker's licence as defined in Article 2 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985;

"gaming machine"—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Gambling Act 2005 (see section 235 of that Act);

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (see Article 2 of that Order).

(7C) In the application of subsection (7A) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).**]**

Status: *Point in time view as at 05/01/2023.*
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(8) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979 (c. 2)).

Textual Amendments

F762 Words in s. 289(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(2)**

F763 Words in s. 289(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(2)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F764 Words in s. 289(1) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(2)(a)**; S.I. 2008/755, art. 17(1)(f)

F765 Word in s. 289(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(2)(b)**; S.I. 2008/755, art. 17(1)(f)

F766 S. 289(1A)-(1E) inserted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 63(2)**, 116(1); S.I. 2015/983, art. 2(2)(b); S.I. 2016/147, art. 3(d)

F767 Words in s. 289(1A)(a) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(2)**

F768 Words in s. 289(1A)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(3)(a)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F769 Words in s. 289(1A)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(3)(b)(i)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F770 Words in s. 289(1A)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(3)(b)(ii)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F771 Words in s. 289(1C)(1D) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(3)**

F772 Words in s. 289(1C) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(4)(a)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F773 Words in s. 289(1C) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(4)(b)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F774 Words in s. 289(1D) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(5)(a)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F775 Words in s. 289(1D) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(5)(b)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F776 Words in s. 289(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(2)**

F777 Words in s. 289(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(3)**; S.I. 2008/755, art. 17(1)(f)

F778 Words in s. 289(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(6)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F779 Words in s. 289(3) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(4)**; S.I. 2008/755, art. 17(1)(f)

F780 Words in s. 289(3) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(7)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F781 Words in s. 289(4) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(4)**; S.I. 2008/755, art. 17(1)(f)

F782 Words in s. 289(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(8)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F783 Words in s. 289(4) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 63(3)**, 116(1); S.I. 2015/983, art. 2(2)(b); S.I. 2016/147, art. 3(d)

F784 Words in s. 289(5)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 31**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(g)

F785 S. 289(5)(ba) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(a)**, 58(4)(6)

F786 Words in s. 289(5)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(9)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F787 Words in s. 289(5)(c) substituted (1.6.2015 for E.W.S. for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 63(4)**, 116(1); S.I. 2015/983, art. 2(2)(b); S.I. 2016/147, art. 3(d)

F788 S. 289(5A) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(a)**, 58(4)(6)

F789 S. 289(6)(f)-(h) inserted (27.4.2017 for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 14(1)**, 58(1)(6); S.I. 2018/78, reg. 4(a); S.I. 2021/724, reg. 2(1)(e)

F790 Words in s. 289(7) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 57** (with arts. 28-31)

F791 S. 289(7A)-(7C) inserted (27.4.2017 for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 14(2)**, 58(1)(6); S.I. 2018/78, reg. 4(a); S.I. 2021/724, reg. 2(1)(e)

290 Prior approval

(1) The powers conferred by section 289 may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.

(3) A judicial officer means—

(a) in relation to England and Wales and Northern Ireland, a justice of the peace,

(b) in relation to Scotland, the sheriff.

(4) A senior officer means—

(a) in relation to the exercise of the power by **[**[F792]an officer of Revenue and Customs, such an officer**]** of a rank designated by the Commissioners of Customs and Excise as equivalent to that of a senior police officer,

[[F793](aa) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office,**]**

[[F794](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,**]**

(b) in relation to the exercise of the power by a constable, a senior police officer.

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[[F795](ba) in relation to the exercise of a power by an accredited financial investigator who is—

(i) a member of the civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011,

(ii) a member of staff of the City of London police force, or

(iii) a member of staff of the Police Service of Northern Ireland,

a senior police officer,**]**

[[F796](c) in relation to the exercise of the power by an accredited financial investigator **[**[F797]who does not fall within any of the preceding paragraphs**]**, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State **[**[F798]or the Welsh Ministers**]** under section 453.**]**

(5) A senior police officer means a police officer of at least the rank of inspector.

(6) If the powers are exercised without the approval of a judicial officer in a case where—

(a) no cash is seized by virtue of section 294, or

(b) any cash so seized is not detained for more than 48 hours **[**[F799](calculated in accordance with section 295(1B))**]**,

the **[**[F800]officer of Revenue and Customs**]**[[F801], constable **[**[F802], SFO officer**]** or accredited financial investigator**]** who exercised the powers must give a written report to the appointed person.

[[F803](6A) But the duty in subsection (6) does not apply if, during the course of exercising the powers conferred by section 289, the relevant officer seizes property by virtue of section 303J and the property so seized is detained for more than 48 hours (calculated in accordance with section 303K(5)).**]**

(7) The report must give particulars of the circumstances which led him to believe that—

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of a judicial officer.

(8) In this section and section 291, the appointed person means—

(a) in relation to England and Wales [F804]..., a person appointed by the Secretary of State,

(b) in relation to Scotland, a person appointed by the Scottish Ministers.

[[F805](c) in relation to Northern Ireland, a person appointed by the Department of Justice.**]**

(9) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of his appointment, including any remuneration or expenses to be paid to him, are to be determined by the person appointing him.

Textual Amendments

F792 Words in s. 290(4)(a) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 3(a)**

F793 S. 290(4)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 12(2)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

Status: *Point in time view as at 05/01/2023.*
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F794 S. 290(4)(ab) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(6)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F795 S. 290(4)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 31(4)**, 58(1)(6); S.I. 2018/78, reg. 3(n); S.I. 2021/724, reg. 2(1)(o)

F796 S. 290(4)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 3(2)**; S.I. 2008/755, art. 17(1)(f)

F797 Words in s. 290(4)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 32(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F798 Words in s. 290(4)(c) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(d)**

F799 Words in s. 290(6) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(3)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F800 Words in s. 290(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 3(b)**

F801 Words in s. 290(6) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 3(3)**; S.I. 2008/755, art. 17(1)(f)

F802 Words in s. 290(6) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 12(3)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F803 S. 290(6A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 32(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F804 Words in s. 290(8)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 58(a)** (with arts. 28-31)

F805 S. 290(8)(c) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 58(b)** (with arts. 28-31)

Modifications etc. (not altering text)

C63 S. 290(4)(c) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 11**

291 Report on exercise of powers

(1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.

"Financial year" means—

(a) the period beginning with the day on which this section comes into force and ending with the next 31 March (which is the first financial year), and

(b) each subsequent period of twelve months beginning with 1 April.

(2) The report must give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised in cases where the **[**[F806]officer of Revenue and Customs**]**[F807], constable **[**[F808], SFO officer**]** or accredited financial investigator**]** who exercised them is required to give a report under section 290(6).

(3) In the report, he may make any recommendations he considers appropriate.

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(4) He must send a copy of his report to the Secretary of State or, as the case may be, the Scottish Ministers **[**[F809]or the Department of Justice**]**, who must arrange for it to be published.

(5) The Secretary of State must lay a copy of any report he receives under this section before Parliament; and the Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament **[**[F810]; and the Department of Justice must lay a copy of any report it receives under this section before the Northern Ireland Assembly**]**.

[[F811](6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (5) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.**]**

Textual Amendments

F806 Words in s. 291(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 4**

F807 Words in s. 291(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 4**; S.I. 2008/755, art. 17(1)(f)

F808 Words in s. 291(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 13**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F809 Words in s. 291(4) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 59(2)** (with arts. 28-31)

F810 Words in s. 291(5) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 59(3)** (with arts. 28-31)

F811 S. 291(6) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 59(4)** (with arts. 28-31)

292 Code of practice

(1) The Secretary of State must make a code of practice in connection with the exercise by **[**[F812]officers of Revenue and Customs**]**[[F813], SFO officers**]** and (in relation to England and Wales [F814]...) constables **[**[F815]and accredited financial investigators**]** of the powers conferred by virtue of section 289.

(2) Where he proposes to issue a code of practice he must—

(a) publish a draft,

(b) consider any representations made to him about the draft by the Scottish Ministers **[**[F816], the Department of Justice**]** or any other person,

(c) if he thinks it appropriate, modify the draft in the light of any such representations.

[[F817](2A) The Secretary of State must also consult the Attorney General about the draft in its application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.**]**

(3) He must lay a draft of the code before Parliament.

(4) When he has laid a draft of the code before Parliament he may bring it into operation by order.

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(5) He may revise the whole or any part of the code issued by him and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by **[**[F818]an officer of Revenue and Customs**][**[F819]an SFO officer,**][**[F820], a constable or an accredited financial investigator**]** to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Textual Amendments

F812 Words in s. 292(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 5(a)**

F813 Words in s. 292(1) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 14(2)**; S.I. 2017/991, reg. 2(l); S.I. 2021/724, reg. 3(b)

F814 Words in s. 292(1) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 60(2)** (with arts. 28-31)

F815 Words in s. 292(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 5(2)**; S.I. 2008/755, art. 17(1)(f)

F816 Words in s. 292(2)(b) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 60(3)** (with arts. 28-31)

F817 S. 292(2A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 14(3)**; S.I. 2017/991, reg. 2(l); S.I. 2021/724, reg. 3(b)

F818 Words in s. 292(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 5(b)**

F819 Words in s. 292(6) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 14(4)**; S.I. 2017/991, reg. 2(l); S.I. 2021/724, reg. 3(b)

F820 Words in s. 292(6) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 5(3)**; S.I. 2008/755, art. 17(1)(f)

Modifications etc. (not altering text)

C64 S. 292 modified (1.4.2010) by UK Borders Act 2007 (c. 30), **ss. 24(2)(d)**, 59(2); S.I. 2010/606, art. 2 (as amended (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **16(2)** (with arts. 24-28))

293 Code of practice (Scotland)

(1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by virtue of section 289.

(2) Where they propose to issue a code of practice they must—
- (a) publish a draft,
- (b) consider any representations made to them about the draft,
- (c) if they think it appropriate, modify the draft in the light of any such representations.

(3) They must lay a draft of the code before the Scottish Parliament.

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(4) When they have laid a draft of the code before the Scottish Parliament they may bring it into operation by order.

(5) They may revise the whole or any part of the code issued by them and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by a constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

C66 S. 293 excluded (1.4.2010) by UK Borders Act 2007 (c. 30), **ss. 24(2)(e)**, 59(2); S.I. 2010/606, art. 2 (as amended (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **16(3)** (with arts. 24-28))

[F821 293A Code of practice (Northern Ireland)

(1) The Department of Justice must make a code of practice in connection with the exercise by constables and accredited financial investigators, in relation to Northern Ireland, of the powers conferred by virtue of section 289.

(2) Where the Department of Justice proposes to issue a code of practice it must—
   (a) publish a draft,
   (b) consider any representations made to the Department of Justice about the draft,
   (c) if the Department of Justice thinks it appropriate, modify the draft in the light of any such representations.

(3) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.

(4) When the Department of Justice has laid a draft of the code before the Northern Ireland Assembly, the Department of Justice may bring it into operation by order.

(5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsections (3) and (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

(6) The Department of Justice may revise the whole or any part of the code issued by it and issue the code as revised; and subsections (2) to (5) apply to such a revised code as they apply to the original code.

(7) A failure by a constable or accredited financial investigator to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(8) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.**]**

Textual Amendments

F821 S. 293A inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 61** (with arts. 28-31)

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

Seizure and detention

294 Seizure of cash

(1) **[**[F822]An officer of Revenue and Customs**]**[F823], a constable **[**[F824], an SFO officer**]** or an accredited financial investigator**]** may seize any cash if he has reasonable grounds for suspecting that it is—

(a) recoverable property, or

(b) intended by any person for use in unlawful conduct.

(2) **[**[F822]An officer of Revenue and Customs**]**[F825], a constable **[**[F826], an SFO officer**]** or an accredited financial investigator**]** may also seize cash part of which he has reasonable grounds for suspecting to be—

(a) recoverable property, or

(b) intended by any person for use in unlawful conduct,

if it is not reasonably practicable to seize only that part.

[F827](2A) . . . . . .

[F828](2B) . . . . . .

[F829](2C) . . . . . .

(3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than the minimum amount.

[[F830](4) This section does not authorise the seizure by **[**[F831]an SFO officer or**]** an accredited financial investigator of cash found in Scotland.**]**

Textual Amendments

F822 Words in s. 294(1)(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 6(2)**

F823 Words in s. 294(1) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 6(2)**; S.I. 2008/755, art. 17(1)(f)

F824 Words in s. 294(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 15(2)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F825 Words in s. 294(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 6(2)**; S.I. 2008/755, art. 17(1)(f)

F826 Words in s. 294(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 15(3)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F827 S. 294(2A) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(b)**, 58(4)(6)

F828 S. 294(2B) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(b)**, 58(4)(6)

F829 S. 294(2C) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(b)**, 58(4)(6)

F830 S. 294(4) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 6(3)**; S.I. 2008/755, art. 17(1)(f)

F831 Words in s. 294(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 15(4)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

Modifications etc. (not altering text)

C67 S. 294 restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 2 para. 13**; S.I. 2005/1126, art. 2(2)(d)

295 Detention of seized cash

(1) While the **[**[F832]officer of Revenue and Customs**]**[F833] , constable **[**[F834], SFO officer**]** or accredited financial investigator**]** continues to have reasonable grounds for his suspicion, cash seized under section 294 may be detained initially for a period of 48 hours.

[[F835](1A) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (1B).

(1B) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the cash is seized, or

(e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the cash is seized.**]**

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash—

(a) beyond the end of the period of **[**[F836]six months**]** beginning with the date of the order,

(b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.

(3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (2) extending the period.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) An application for an order under subsection (2)—

(a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise **[**[F837], a constable **[**[F838], an SFO officer**]** or an accredited financial investigator**]**,

(b) in relation to Scotland, may be made by the Scottish Ministers in connection with their functions under section 298 or by a procurator fiscal,

and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.

(5) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either—

(a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(6) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—

(a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(7) An application for an order under subsection (2) may also be made in respect of any cash seized under section 294(2), and the court, sheriff or justice may make the order if satisfied that—

(a) the condition in subsection (5) or (6) is met in respect of part of the cash, and

(b) it is not reasonably practicable to detain only that part.

(8) An order under subsection (2) must provide for notice to be given to persons affected by it.

Textual Amendments

F832 Words in s. 295(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 7**

F833 Words in s. 295(1) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 7(2)**; S.I. 2008/755, art. 17(1)(f)

F834 Words in s. 295(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 16(2)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F835 S. 295(1A)(1B) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(2)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F836 Words in s. 295(2)(a) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 64(1)**, 116(1) (with s. 64(2); S.I. 2009/3096, art. 3(i)

F837 Words in s. 295(4)(a) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 7(3)**; S.I. 2008/755, art. 17(1)(f)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F838 Words in s. 295(4)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 16(3)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

296 Interest

(1) If cash is detained under section 295 for more than 48 hours **[**[F839](calculated in accordance with section 295(1B))**]**, it is at the first opportunity to be paid into an interest-bearing account and held there; and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 295 which was seized under section 294(2), the **[**[F840]officer of Revenue and Customs**]**[F841] , constable **[**[F842], SFO officer**]** or accredited financial investigator**]** must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Chapter.

Textual Amendments

F839 Words in s. 296(1) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(3)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F840 Words in s. 296(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 8**

F841 Words in s. 296(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 8**; S.I. 2008/755, art. 17(1)(f)

F842 Words in s. 296(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 17**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

297 Release of detained cash

(1) This section applies while any cash is detained under section 295.

(2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 295 for the detention of the cash are no longer met in relation to the cash to be released.

(4) **[**[F843]An officer of Revenue and Customs**]**, constable **[**[F844], SFO officer**]**[F845]or accredited financial investigator**]** or (in Scotland) procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Textual Amendments

F843 Words in s. 297(4) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 9**

F844 Words in s. 297(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 18**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F845 Words in s. 297(4) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 9**; S.I. 2008/755, art. 17(1)(f)

[F846 Forfeiture without court order

Textual Amendments

F846 Ss. 297A-297G and cross-heading inserted (22.11.2014 for the insertion of s. 297A(3)-(5) for specified purposes, 1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 65(1)**, 116(1) (with s. 65(4)); S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(c); S.I. 2016/147, art. 3(e)

297A Forfeiture notice

(1) Subsection (2) applies while any cash is detained in pursuance of an order under section 295(2) made by a magistrates' court in England and Wales or Northern Ireland.

(2) A senior officer may give a notice for the purpose of forfeiting the cash or any part of it if satisfied that the cash or part—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) The Secretary of State must make regulations about how a notice is to be given.

(4) The regulations may provide—

(a) for a notice to be given to such person or persons, and in such manner, as may be prescribed;

(b) for a notice to be given by publication in such manner as may be prescribed;

(c) for circumstances in which, and the time at which, a notice is to be treated as having been given.

(5) The regulations must ensure that where a notice is given it is, if possible, given to every person to whom notice of an order under section 295(2) in respect of the cash has been given.

(6) A senior officer means—

(a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

[F847(aa) an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,]

(b) a senior police officer, [F848]...

[F849(ba) the Director of the Serious Fraud Office, or]

[F850(bb) 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,]

(c) an accredited financial investigator.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) A senior police officer means a police officer of at least the rank of inspector.

(8) A notice under this section is referred to in this Chapter as a forfeiture notice.

Textual Amendments

F847 S. 297A(6)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 28** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F848 Word in s. 297A(6)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 19(a)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F849 S. 297A(6)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 19(b)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F850 S. 297A(6)(bb) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(7)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

Modifications etc. (not altering text)

C68 S. 297A(6)(c) modified by S.I. 2018/196, Sch. para. 11A (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(3)(a)**)

297B Content

(1) A forfeiture notice must—

(a) state the amount of cash in respect of which it is given,

(b) state when and where the cash was seized,

(c) confirm that the senior officer is satisfied as mentioned in section 297A(2),

(d) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and

(e) explain that the cash will be forfeited unless an objection is received at that address within the period for objecting.

(2) The period for objecting must be at least 30 days starting with the day after the notice is given.

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

297C Effect

(1) This section applies if a forfeiture notice is given in respect of any cash.

(2) The cash is to be detained until—

(a) the cash is forfeited under this section,

(b) the notice lapses under this section, or

(c) the cash is released under a power conferred by this Chapter.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) If no objection is made within the period for objecting, and the notice has not lapsed, the cash is forfeited (subject to section 297E).

(4) If an objection is made within the period for objecting, the notice lapses.

(5) If an application is made for the forfeiture of the whole or any part of the cash under section 298, the notice lapses.

(6) If the cash or any part of it is released under a power conferred by this Chapter, the notice lapses or (as the case may be) lapses in relation to that part.

(7) An objection may be made by anyone, whether a recipient of the notice or not.

(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the cash under section 298.

(10) Nothing in this section affects the validity of an order under section 295(2).

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

297D Detention following lapse of notice

(1) This section applies if—

(a) a forfeiture notice is given in respect of any cash,

(b) the notice lapses under section 297C(4), and

(c) the period for which detention of the cash was authorised under section 295(2) has expired.

(2) The cash may be detained for a further period of up to 48 hours (calculated in accordance with section 295(1B)).

(3) But if within that period the Commissioners for Her Majesty's Revenue and Customs, a constable **[**[F851], an SFO officer**]** or an accredited financial investigator decides that neither of the applications mentioned in subsection (4) ought to be made, the cash must be released.

(4) The applications are—

(a) an application for a further order under section 295(2);

(b) an application for forfeiture of the cash under section 298.

(5) " If within that period an application is made for a further order under section 295(2) the cash may be detained until the application is determined or otherwise disposed of. "

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F851 Words in s. 297D(3) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 20**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

297E Application to set aside forfeiture

(1) This section applies if any cash is forfeited in pursuance of a forfeiture notice.

(2) A person aggrieved by the forfeiture may apply to a magistrates' court in England and Wales or Northern Ireland for an order setting aside the forfeiture of the cash or any part of it.

(3) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended.

(4) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—

(a) failed to object to the forfeiture within the period for objecting, and

(b) failed to make an application within the 30-day period.

(5) On an application under this section the court must consider whether the cash to which the application relates could be forfeited under section 298 (ignoring the forfeiture mentioned in subsection (1) above).

(6) If the court is satisfied that the cash to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that cash or part.

(7) Where the court sets aside the forfeiture of any cash—

(a) it must order the release of that cash, and

(b) that cash is to be treated as never having been forfeited.

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

297F Release of cash subject to forfeiture notice

(1) This section applies while any cash is detained under section 297C or 297D.

(2) A magistrates' court may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the court is not satisfied, on an application by the person from whom the cash was seized, that the cash to be released—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) An officer of Revenue and Customs, **[**[F852]immigration officer,**]** constable **[**[F853], SFO officer**]** or accredited financial investigator may release the cash or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Textual Amendments

F852 Words in s. 297F(4) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 29** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F853 Words in s. 297F(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 21**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

297G Application of forfeited cash

(1) Cash forfeited in pursuance of a forfeiture notice, and any accrued interest on it, is to be paid into the Consolidated Fund.

(2) But it is not to be paid in—

(a) before the end of the period within which an application under section 297E may be made (ignoring the possibility of an application by virtue of section 297E(4)), or

(b) if an application is made within that period, before the application is determined or otherwise disposed of.**]**

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

Forfeiture

298 Forfeiture

(1) While cash is detained under section 295 **[**[F854], 297C or 297D **]**, an application for the forfeiture of the whole or any part of it may be made—

(a) to a magistrates' court by the Commissioners of Customs and Excise **[**[F855], an accredited financial investigator**][**[F856], a constable or an SFO officer**]**,

(b) (in Scotland) to the sheriff by the Scottish Ministers.

(2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

Textual Amendments

F854 Words in s. 298(1) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 65(2)**, 116(1); S.I. 2015/983, art. 2(2)(c)

F855 Words in s. 298(1)(a) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 10**; S.I. 2008/755, art. 17(1)(f)

F856 Words in s. 298(1)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 22**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

[F857299 Appeal against decision under section 298

(1) Any party to proceedings for an order for the forfeiture of cash under section 298 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—

(a) in relation to England and Wales, to the Crown Court;

(b) in relation to Scotland, to the Sheriff Principal;

(c) in relation to Northern Ireland, to a county court.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the cash, it may **[**F858order the release of the whole or any part of the cash**]** .**]**

Textual Amendments

F857 S. 299 substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 101(1)**, 178(7)(a) (with s. 101(2)); S.I. 2005/1521, art. 2(1)(d) (with art. 2(2))

F858 Words in s. 299(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 65(3)**, 116(1); S.I. 2015/983, art. 2(2)(c)

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

300 Application of forfeited cash

(1) Cash forfeited under **[**F859section 298**]**, and any accrued interest on it—

(a) if forfeited by a magistrates' court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,

(b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) But it is not to be paid in—

(a) before the end of the period within which an appeal under section 299 may be made, or

(b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Textual Amendments

F859 Words in s. 300(1) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 107**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

Supplementary

301 Victims and other owners

(1) A person who claims that any cash detained under this Chapter, or any part of it, belongs to him may apply to a magistrates' court or (in Scotland) the sheriff for the cash or part to be released to him.

(2) The application may be made in the course of proceedings under section 295 or 298 or at any other time.

(3) If it appears to the court or sheriff concerned that—

(a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,

(b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property, and

(c) that cash belongs to him,

the court or sheriff may order the cash to which the application relates to be released to the applicant.

(4) If—

(a) the applicant is not the person from whom the cash to which the application relates was seized,

(b) it appears to the court or sheriff that that cash belongs to the applicant,

(c) the court or sheriff is satisfied that **[**[F860]the release condition is met**]** in relation to that cash, and

(d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the court or sheriff may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

[[F861](5) The release condition is met—

(a) in relation to cash detained under section 295, if the conditions in that section for the detention of the cash are no longer met,

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(b) in relation to cash detained under section 297C or 297D, if the cash is not recoverable property and is not intended by a person for use in unlawful conduct, and

(c) in relation to cash detained under 298, if the court or sheriff decides not to make an order under that section in relation to the cash.**]**

Textual Amendments

F860 Words in s. 301(4)(c) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 108(2)**; S.I. 2015/983, arts. 2(2)(e), 3(ff); S.I. 2016/147, art. 3(j)

F861 S. 301(5) inserted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 108(3)**; S.I. 2015/983, arts. 2(2)(e), 3(ff); S.I. 2016/147, art. 3(j)

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

302 Compensation

[[F862](1) If cash detained under this Chapter was seized in England, Wales or Northern Ireland the person to whom the cash belongs or from whom it was seized may make an application to a magistrates' court for compensation if—

(a) the cash is not forfeited in pursuance of a forfeiture notice, and

(b) no forfeiture order is made in respect of the cash.

(1A) If cash detained under this Chapter was seized in Scotland the person to whom the cash belongs or from whom it was seized may make an application to the sheriff for compensation if no forfeiture order is made in respect of the cash.**]**

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours **[**[F863](calculated in accordance with section 295(1B))**]**, the cash was not held in an interest-bearing account while detained, the court or sheriff may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the court or sheriff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court or sheriff is satisfied that, taking account of any interest to be paid under section 296 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subsection (4) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

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(6) If the cash was seized by **[**[F864]an officer of Revenue and Customs**]**, the compensation is to be paid by the Commissioners of Customs and Excise.

(7) If the cash was seized by a constable, the compensation is to be paid as follows—

(a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met,

(b) in the case of a constable of a police force in Scotland, it is to be paid by the **[**[F865]Scottish Police Authority**]**,

[[F866](ba) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority,**]**

(c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.

[[F867](7ZA) If the cash was seized by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.**]**

[[F868](7ZB) If the cash was seized by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.**]**

[[F869](7A) If the cash was seized by an accredited financial investigator who was not an officer of Revenue and Customs **[**[F870], a constable, an SFO officer or a National Crime Agency officer**]**, the compensation is to be paid as follows—

(a) in the case of an investigator—

[[F871](i) who was a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of **[**[F872]that Part of that Act**]**[F872]Part 1 of the Police Reform and Social Responsibility Act 2011**]**), or**]**

(ii) who was a member of staff of the City of London police force,

it is to be paid out of the police fund from which the expenses of the police force are met,

(b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable,

(c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department,

(d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,

[[F873](da) in the case of an investigator who was exercising a function of the Welsh Revenue Authority, it is to be paid by the Welsh Revenue Authority,**]**

(e) in any other case, it is to be paid by the employer of the investigator.

(7B) The Secretary of State may by order amend subsection (7A).**]**

[[F874](7C) If any cash is detained under this Chapter and part only of the cash is forfeited in pursuance of a forfeiture notice, this section has effect in relation to the other part.**]**

(8) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.

[[F875](9) The power in subsection (7B) is exercisable by the Department of Justice (and not by the Secretary of State) so far as it may be used to make provision which could be made

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by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).**]**

Textual Amendments

F862 S. 302(1)(1A) substituted for s. 302(1) (1.6.2015 for E.W.S. for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 109(2)**; S.I. 2015/983, arts. 2(2)(e), 3(gg); S.I. 2016/147, art. 3(j)

F863 Words in s. 302(2) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(3)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F864 Words in s. 302(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 10**

F865 Words in s. 302(7)(b) substituted (S.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 19(3)(a)**

F866 S. 302(7)(ba) inserted (S.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 19(3)(b)**

F867 S. 302(7ZA) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 23**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F868 S. 302(7ZB) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(8)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F869 S. 302(7A)(7B) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 11**; S.I. 2008/755, art. 17(1)(f)

F870 Words in s. 302(7A) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 33**; S.I. 2018/78, reg. 5(1)(e)

F871 S. 302(7A)(a)(i) substituted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), **Sch. 16 para. 306**; S.I. 2011/3019, art. 3, Sch. 1

F872 Words in s. 302(7A)(a)(i) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(9)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F873 S. 302(7A)(da) inserted (25.1.2018) by Tax Collection and Management (Wales) Act 2016 (anaw 6), ss. 186(1)(3), 194(2): S.I. 2018/33, **art. 2(j)**

F874 S. 302(7C) inserted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 109(3)**; S.I. 2015/983, arts. 2(2)(e), 3(gg); S.I. 2016/147, art. 3(j)

F875 S. 302(9) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 62(2)** (with arts. 28-31)

[F876 302A Powers for prosecutors to appear in proceedings

(1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable **[**F877 or an accredited financial investigator**]** in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, a constable **[**F878 or (as the case may be) an accredited financial investigator**]** to do so, and

(b) considers it appropriate to do so.

(2) **[**F879 The Director of Public Prosecutions**]** may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director—

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(a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this section.**]**

[[F880](4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.**]**

Textual Amendments

F876 S. 302A inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 84(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F877 Words in s. 302A(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 12(2)(a)**; S.I. 2008/755, art. 17(1)(f)

F878 Words in s. 302A(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 12(2)(b)**; S.I. 2008/755, art. 17(1)(f)

F879 Words in s. 302A(2) substituted (27.3.2014) by The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 24**

F880 S. 302A(4) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 12(3)**; S.I. 2008/755, art. 17(1)(f)

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

303 "The minimum amount"

(1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers **[**[F881]and the Department of Justice**]** .

(2) For that purpose the amount of any cash held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

Textual Amendments

F881 Words in s. 303(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 63** (with arts. 28-31)

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

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[F882 303A Financial investigators

(1) In this Chapter (apart from this section) any reference in a provision to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State **[**F883 or the Welsh Ministers**]** under section 453.

(2) Subsection (1) does not apply to the second reference to an accredited financial investigator in section 290(4)(c).

(3) Where an accredited financial investigator of a particular description—

(a) applies for an order under section 295,

(b) applies for forfeiture under section 298, or

(c) brings an appeal under, or relating to, this Chapter,

any subsequent step in the application or appeal, or any further application or appeal relating to the same matter, may be taken, made or brought by a different accredited financial investigator of the same description.**]**

Textual Amendments

F882 S. 303A inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 13**; S.I. 2008/755, art. 17(1)(f)

F883 Words in s. 303A(1) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(e)**

Modifications etc. (not altering text)

C65 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

[F884 CHAPTER 3A

RECOVERY OF LISTED ASSETS IN SUMMARY PROCEEDINGS

Textual Amendments

F884 Pt. 5 Ch. 3A inserted (27.4.2017 for specified purposes, 31.10.2017 for the insertion of ss. 303G, 303H for E.W.S. so far as not already in force, 30.1.2018 for the insertion of s. 303E(4) for E.W.S. so far as not already in force, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 15**, 58(1)(6); S.I. 2017/991, reg. 2(d); S.I. 2018/78, regs. 2(a), 4(b); S.I. 2021/724, reg. 2(1)(f)

Modifications etc. (not altering text)

C69 Pt. 5 Ch. 3A applied (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by 2007 c. 30, s. 24(1) (as substituted by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i))

Status: *Point in time view as at 05/01/2023.*
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Definition of listed asset

303B "Listed asset"

(1) In this Chapter, a "listed asset" means an item of property that falls within one of the following descriptions of property—
- (a) precious metals;
- (b) precious stones;
- (c) watches;
- (d) artistic works;
- (e) face-value vouchers;
- (f) postage stamps.

(2) The Secretary of State may by regulations amend subsection (1)—
- (a) by removing a description of property;
- (b) by adding a description of tangible personal (or corporeal moveable) property.

(3) The Secretary of State must consult the Scottish Ministers and the Department of Justice before making regulations under subsection (2).

(4) In this section—
- (a) "precious metal" means gold, silver or platinum (whether in an unmanufactured or a manufactured state);
- (b) "artistic work" means a piece of work falling within section 4(1)(a) of the Copyright, Designs and Patents Act 1988;
- (c) "face-value voucher" means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it.

Searches

303C Searches

(1) If a relevant officer is lawfully on any premises and has reasonable grounds for suspecting that there is on the premises a seizable listed asset, the relevant officer may search for the listed asset there.

(2) The powers conferred by subsection (5) are exercisable by a relevant officer if—
- (a) the relevant officer has reasonable grounds for suspecting that there is a seizable listed asset in a vehicle,
- (b) it appears to the officer that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle, and
- (c) the vehicle is in a place falling within subsection (3).

(3) The places referred to in subsection (2)(c) are—
- (a) a place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, and
- (b) any other place to which at that time people have ready access but which is not a dwelling.

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(4) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the relevant officer may exercise the powers conferred by subsection (5) only if the relevant officer has reasonable grounds for believing—
  (a) that the suspect does not reside in the dwelling, and
  (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) The powers conferred by this subsection are—
  (a) power to require the suspect to permit entry to the vehicle;
  (b) power to require the suspect to permit a search of the vehicle.

(6) If a relevant officer has reasonable grounds for suspecting that a person (the suspect) is carrying a seizable listed asset, the relevant officer may require the suspect—
  (a) to permit a search of any article the suspect has with him or her;
  (b) to permit a search of the suspect's person.

(7) The powers conferred by subsections (5) and (6) are exercisable only so far as the relevant officer thinks it necessary or expedient.

(8) A relevant officer may—
  (a) in exercising powers conferred by subsection (5), detain the vehicle for so long as is necessary for their exercise;
  (b) in exercising powers conferred by subsection (6)(b), detain the suspect for so long as is necessary for their exercise.

(9) In this Chapter, a "relevant officer" means—
  (a) an officer of Revenue and Customs,
  (b) a constable,
  (c) an SFO officer, or
  (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State **[**[F885]or the Welsh Ministers**]** under section 453.

(10) For the purposes of this section a listed asset is a seizable listed asset if—
  (a) all or part of it is recoverable property or is intended by any person for use in unlawful conduct, and
  (b) the value of the asset, or the part of it that falls within paragraph (a), is not less than the minimum value.

(11) Where a power conferred by this section is being exercised in respect of more than one seizable listed asset, this section is to apply as if the value of each asset or (as the case may be) part of an asset was equal to the aggregate value of all of those assets or parts.

Textual Amendments

F885 Words in s. 303C(9)(d) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(a)**

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Modifications etc. (not altering text)

C70 S. 303C(9)(d) modified by S.I. 2018/196, Sch. para. 3A (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(b)**)

303D Searches: supplemental provision

(1) The powers conferred by section 303C—

(a) are exercisable only so far as reasonably required for the purpose of finding a listed asset;

(b) include the power to carry out (or arrange for the carrying out of) tests on anything found during the course of the search for the purpose of establishing whether it is a listed asset;

(c) are exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979);

(d) are exercisable by an SFO officer or an accredited financial investigator only in relation to the following—

(i) premises in England, Wales or Northern Ireland (in the case of section 303C(1));

(ii) vehicles and suspects in England, Wales or Northern Ireland (in the case of section 303C(5) and (8)(a));

(iii) suspects in England, Wales or Northern Ireland (in the case of section 303C(6) and (8)(b)).

(2) Section 303C does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

303E Prior approval

(1) The powers conferred by section 303C may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.

(3) A judicial officer means—

(a) in relation to England and Wales and Northern Ireland, a justice of the peace;

(b) in relation to Scotland, the sheriff.

(4) A senior officer means—

(a) in relation to the exercise of a power by an officer of Revenue and Customs, such an officer of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer;

(b) in relation to the exercise of a power by a constable, a senior police officer;

(c) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office;

(d) 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

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Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose;

(e) in relation to the exercise of a power by an accredited financial investigator who is—

(i) a member of the civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011,

(ii) a member of staff of the City of London police force, or

(iii) a member of staff of the Police Service of Northern Ireland,

a senior police officer;

(f) in relation to the exercise of a power by an accredited financial investigator who does not fall within any of the preceding paragraphs, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State **[**[F886]or the Welsh Ministers**]** under section 453.

(5) A senior police officer means a police officer of at least the rank of inspector.

(6) If the powers are exercised without the approval of a judicial officer in a case where—

(a) no property is seized by virtue of section 303J, or

(b) any property so seized is not detained for more than 48 hours (calculated in accordance with section 303K(5)),

the relevant officer who exercised the power must give a written report to the appointed person.

(7) But the duty in subsection (6) does not apply if, during the course of exercising the powers conferred by section 303C, the relevant officer seizes cash by virtue of section 294 and the cash so seized is detained for more than 48 hours (calculated in accordance with section 295(1B)).

(8) A report under subsection (6) must give particulars of the circumstances which led the relevant officer to believe that—

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of a judicial officer.

(9) In this section and section 303F, the appointed person means—

(a) in relation to England and Wales, a person appointed by the Secretary of State;

(b) in relation to Scotland, a person appointed by the Scottish Ministers;

(c) in relation to Northern Ireland, a person appointed by the Department of Justice.

(10) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of the person's appointment, including any remuneration or expenses to be paid to the person, are to be determined by the person making the appointment.

Textual Amendments

F886 Words in s. 303E(4)(f) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(b)**

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Modifications etc. (not altering text)

C71 S. 303E(4)(f) modified by S.I. 2018/196, Sch. para. 11B (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(3)(a)**)

303F Report on exercise of powers

(1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.

(2) "Financial year" means—

(a) the period beginning with the day on which section 15 of the Criminal Finances Act 2017 (which inserted this section) came into force and ending with the next 31 March (which is the first financial year), and

(b) each subsequent period of 12 months beginning with 1 April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by section 303C are being exercised in cases where the relevant officer who exercised them is required to give a report under section 303E(6).

(4) In the report, the appointed person may make any recommendations he or she considers appropriate.

(5) The appointed person must send a copy of the report to whichever of the Secretary of State, the Scottish Administration or the Department of Justice appointed the person.

(6) The Secretary of State must lay a copy of any report the Secretary of State receives under this section before Parliament and arrange for it to be published.

(7) The Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament and arrange for it to be published.

(8) The Department of Justice must lay a copy of any report it receives under this section before the Northern Ireland Assembly and arrange for it to be published.

(9) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (8) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.

303G Code of practice: Secretary of State

(1) The Secretary of State must make a code of practice in connection with the exercise by officers of Revenue and Customs, SFO officers and (in relation to England and Wales) constables and accredited financial investigators of the powers conferred by section 303C.

(2) Where the Secretary of State proposes to issue a code of practice, the Secretary of State must—

(a) publish a draft,

(b) consider any representations made about the draft by the Scottish Ministers, the Department of Justice or any other person, and

(c) if the Secretary of State thinks it appropriate, modify the draft in the light of any such representations.

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(3) The Secretary of State must also consult the Attorney General about the draft in its application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.

(4) The Secretary of State must lay a draft of the code before Parliament.

(5) When the Secretary of State has laid a draft of the code before Parliament, the Secretary of State may bring it into operation by regulations.

(6) The Secretary of State may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (5) apply to such a revised code as they apply to the original code.

(7) A failure by an officer of Revenue and Customs, an SFO officer, a constable or an accredited financial investigator to comply with a provision of the code does not of itself make him or her liable to criminal or civil proceedings.

(8) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

303H Code of practice: Scotland

(1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by section 303C.

(2) Where the Scottish Ministers propose to issue a code of practice, they must—
  (a) publish a draft,
  (b) consider any representations made about the draft, and
  (c) if they think it appropriate, modify the draft in the light of any such representations.

(3) The Scottish Ministers must lay a draft of the code before the Scottish Parliament.

(4) When the Scottish Ministers have laid a draft of the code before the Scottish Parliament, they may bring it into operation by order.

(5) The Scottish Ministers may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by a constable to comply with a provision of the code does not of itself make the constable liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

303I Code of practice: Northern Ireland

(1) The Department of Justice must make a code of practice in connection with the exercise by constables and accredited financial investigators, in relation to Northern Ireland, of the powers conferred by section 303C.

(2) Where the Department of Justice proposes to issue a code of practice, it must—

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(a) publish a draft,
(b) consider any representations made about the draft, and
(c) if the Department of Justice thinks it appropriate, modify the draft in the light of any such representations.

(3) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.

(4) When the Department of Justice has laid a draft of the code before the Northern Ireland Assembly, the Department of Justice may bring it into operation by order.

(5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsections (3) and (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

(6) The Department of Justice may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (5) apply to such a revised code as they apply to the original code.

(7) A failure by a constable or accredited financial investigator to comply with a provision of the code does not of itself make him or her liable to criminal or civil proceedings.

(8) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Seizure and detention

303J Seizure of listed assets

(1) A relevant officer may seize any item of property if the relevant officer has reasonable grounds for suspecting that—
(a) it is a listed asset,
(b) it is recoverable property or intended by any person for use in unlawful conduct, and
(c) the value of it is not less than the minimum value.

(2) A relevant officer may also seize any item of property if—
(a) the relevant officer has reasonable grounds for suspecting the item to be a listed asset,
(b) the relevant officer has reasonable grounds for suspecting that part of the item is recoverable property or intended by any person for use in unlawful conduct,
(c) the relevant officer has reasonable grounds for suspecting that the value of the part to which the suspicion relates is not less than the minimum value, and
(d) it is not reasonably practicable to seize only that part.

(3) Where the powers conferred by this section are being exercised by a relevant officer in respect of more than one item of property, this section is to apply as if the value of each item was equal to the aggregate value of all of those items.

(4) The references in subsection (3) to the value of an item are to be read as including references to the value of part of an item where the power conferred by subsection (2)

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is being exercised (whether alone or in conjunction with the power conferred by subsection (1)).

(5) This section does not authorise the seizure by an SFO officer or an accredited financial investigator of an item of property found in Scotland.

303K Initial detention of seized property

(1) Property seized under section 303J may be detained for an initial period of 6 hours.

(2) Property seized under section 303J may be detained beyond the initial period of 6 hours only if its continued detention is authorised by a senior officer.

(3) If the continued detention of property seized under section 303J is authorised under subsection (2), the property may be detained for a further period of 42 hours.

(4) Subsections (1) to (3) authorise the detention of property only for so long as a relevant officer continues to have reasonable grounds for suspicion in relation to that property as described in section 303J(1) or (2) (as the case may be).

(5) In calculating a period of hours for the purposes of this section, no account shall be taken of—
- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday,
- (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the property is seized, or
- (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the property is seized.

(6) "Senior officer" has the same meaning in this section as it has in section 303E.

303L Further detention of seized property

(1) The period for which property seized under section 303J, or any part of that property, may be detained may be extended by an order made—
- (a) in England and Wales or Northern Ireland, by a magistrates' court;
- (b) in Scotland, by the sheriff.

(2) An order under subsection (1) may not authorise the detention of any property—
- (a) beyond the end of the period of 6 months beginning with the date of the order, and
- (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (1) extending a particular period of detention.

(4) An application for an order under subsection (1) may be made—
- (a) in relation to England and Wales and Northern Ireland, by a person specified in subsection (5);
- (b) in relation to Scotland, by the Scottish Ministers in connection with their functions under section 303O or by a procurator fiscal.

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(5) The persons referred to in subsection (4)(a) are—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
- (b) a constable,
- (c) an SFO officer, or
- (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State **[**[F887]or the Welsh Ministers**]** under section 453.

(6) The court, sheriff or justice may make the order if satisfied, in relation to the item of property to be further detained, that—
- (a) it is a listed asset,
- (b) the value of it is not less than the minimum value, and
- (c) condition 1 or condition 2 is met.

(7) Subsection (6)(b) does not apply where the application is for a second or subsequent order under this section.

(8) Condition 1 is that there are reasonable grounds for suspecting that the property is recoverable property and that either—
- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the property is connected, or
- (b) proceedings against any person for an offence with which the property is connected have been started and have not been concluded.

(9) Condition 2 is that there are reasonable grounds for suspecting that the property is intended to be used in unlawful conduct and that either—
- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the property is connected, or
- (b) proceedings against any person for an offence with which the property is connected have been started and have not been concluded.

(10) Where an application for an order under subsection (1) relates to an item of property seized under section 303J(2), the court, sheriff or justice may make the order if satisfied that—
- (a) the item of property is a listed asset,
- (b) condition 1 or 2 is met in respect of part of the item,
- (c) the value of that part is not less than the minimum value, and
- (d) it is not reasonably practicable to detain only that part.

(11) Subsection (10)(c) does not apply where the application is for a second or subsequent order under this section.

(12) Where an application for an order under subsection (1) is made in respect of two or more items of property that were seized at the same time and by the same person, this section is to apply as if the value of each item was equal to the aggregate value of all of those items.

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(13) The references in subsection (12) to the value of an item are to be read as including references to the value of part of an item where subsection (10) applies in relation to one or more of the items in respect of which the application under subsection (1) is made.

(14) An order under subsection (1) must provide for notice to be given to persons affected by it.

Textual Amendments

F887 Words in s. 303L(5)(d) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(c)**

Modifications etc. (not altering text)

C72 S. 303L(5)(d) modified by S.I. 2018/196, Sch. para. 3A (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(b)**)

303M Testing and safekeeping of property seized under section 303J

(1) A relevant officer may carry out (or arrange for the carrying out of) tests on any item of property seized under section 303J for the purpose of establishing whether it is a listed asset.

(2) A relevant officer must arrange for any item of property seized under section 303J to be safely stored throughout the period during which it is detained under this Chapter.

303N Release of detained property

(1) This section applies while any property is detained under section 303K or 303L.

(2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the property if the following condition is met.

(3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the property was seized, that the conditions in section 303K or 303L (as the case may be) for the detention of the property are no longer met in relation to the property to be released.

(4) A relevant officer or (in Scotland) a procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order property is being detained, release the whole or any part of it if satisfied that the detention of the property to be released is no longer justified.

Forfeiture

303O Forfeiture

(1) While property is detained under this Chapter, an application for the forfeiture of the whole or any part of it may be made—
  (a) to a magistrates' court by a person specified in subsection (2);
  (b) to the sheriff by the Scottish Ministers.

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(2) The persons referred to in subsection (1)(a) are—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
- (b) a constable,
- (c) an SFO officer, or
- (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State **[**[F888]or the Welsh Ministers**]** under section 453.

(3) The court or sheriff may order the forfeiture of the property or any part of it if satisfied that—
- (a) the property is a listed asset, and
- (b) what is to be forfeited is recoverable property or intended by any person for use in unlawful conduct.

(4) An order under subsection (3) made by a magistrates' court may provide for payment under section 303U of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
- (a) the proceedings in which the order is made, or
- (b) any related proceedings under this Chapter.

(5) A sum in respect of a relevant item of expenditure is not payable under section 303U in pursuance of provision under subsection (4) unless—
- (a) the person who applied for the order under subsection (3) agrees to its payment, or
- (b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(6) For the purposes of subsection (5)—
- (a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B would apply if the order under subsection (3) had instead been a recovery order;
- (b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations;
- (c) if the person who applied for the order under subsection (3) was a constable, an SFO officer or an accredited financial investigator, that person may not agree to the payment of a sum unless the person is a senior officer or is authorised to do so by a senior officer.

(7) "Senior officer" has the same meaning in subsection (6)(c) as it has in section 303E.

(8) Subsection (3) ceases to apply on the transfer of an application made under this section in accordance with section 303R(1)(a) or (b).

(9) Where an application for the forfeiture of any property is made under this section, the property is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

(10) Where the property to which the application relates is being detained under this Chapter as part of an item of property, having been seized under section 303J(2), subsection (9) is to be read as if it required the continued detention of the whole of the item of property.

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Textual Amendments

F888 Words in s. 303O(2)(d) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(d)**

Modifications etc. (not altering text)

C73 S. 303O(2)(d) modified by S.I. 2018/196, Sch. para. 3A (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(b)**)

303P Associated and joint property

(1) Sections 303Q and 303R apply if—

(a) an application is made under section 303O in respect of property detained under this Chapter,

(b) the court or sheriff is satisfied that the property is a listed asset,

(c) the court or sheriff is satisfied that all or part of the property is recoverable property or intended by any person for use in unlawful conduct, and

(d) there exists property that is associated with the property in relation to which the court or sheriff is satisfied as mentioned in paragraph (c).

(2) Sections 303Q and 303R also apply in England and Wales and Northern Ireland if—

(a) an application is made under section 303O in respect of property detained under this Chapter,

(b) the court is satisfied that the property is a listed asset,

(c) the court is satisfied that all or part of the property is recoverable property, and

(d) the property in relation to which the court is satisfied as mentioned in paragraph (c) belongs to joint tenants and one of the tenants is an excepted joint owner.

(3) In this section and sections 303Q and 303R "associated property" means property of any of the following descriptions that is not itself the forfeitable property—

(a) any interest in the forfeitable property;

(b) any other interest in the property in which the forfeitable property subsists;

(c) if the forfeitable property is a tenancy in common, the tenancy of the other tenant;

(d) if (in Scotland) the forfeitable property is owned in common, the interest of the other owner;

(e) if the forfeitable property is part of a larger property, but not a separate part, the remainder of that property.

References to property being associated with forfeitable property are to be read accordingly.

(4) In this section and sections 303Q and 303R the "forfeitable property" means the property in relation to which the court or sheriff is satisfied as mentioned in subsection (1)(c) or (2)(c) (as the case may be).

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303Q Agreements about associated and joint property

(1) Where—

(a) this section applies, and

(b) the person who applied for the order under section 303O (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other hand) agree,

the magistrates' court or sheriff may, instead of making an order under section 303O(3), make an order requiring the person who holds the associated property or who is the excepted joint owner to make a payment to a person identified in the order.

(2) The amount of the payment is (subject to subsection (3)) to be the amount which the persons referred to in subsection (1)(b) agree represents—

(a) in a case where this section applies by virtue of section 303P(1), the value of the forfeitable property;

(b) in a case where this section applies by virtue of section 303P(2), the value of the forfeitable property less the value of the excepted joint owner's share.

(3) The amount of the payment may be reduced if the person who applied for the order under section 303O agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 303J and its subsequent detention.

(4) The reduction that is permissible by virtue of subsection (3) is such amount as the parties to the agreement agree is reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) An order under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(6) An order under subsection (1) made by a magistrates' court may provide for payment under subsection (12) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Chapter.

(7) A sum in respect of a relevant item of expenditure is not payable under subsection (12) in pursuance of provision under subsection (6) unless—

(a) the person who applied for the order under section 303O agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(8) For the purposes of subsection (7)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B would apply if the order under subsection (1) had instead been a recovery order;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations.

(9) For the purposes of section 308(2), on the making of an order under subsection (1), the forfeitable property is to be treated as if it had been forfeited.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(10) If there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the person who applied for the order under section 303O.

(11) If the person who applied for the order under section 303O was a constable, an SFO officer or an accredited financial investigator, that person may enter into an agreement for the purposes of any provision of this section only if the person is a senior officer or is authorised to do so by a senior officer.

"Senior officer" has the same meaning in this subsection as it has in section 303E.

(12) An amount received under an order under subsection (1) must be applied as follows—
- (a) first, it must be applied in making any payment of legal expenses which, after giving effect to subsection (7), are payable under this subsection in pursuance of provision under subsection (6);
- (b) second, it must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the forfeitable property and any associated property whilst detained under this Part;
- (c) third, it must be paid—
  - (i) if the order was made by a magistrates' court, into the Consolidated Fund;
  - (ii) if the order was made by the sheriff, into the Scottish Consolidated Fund.

303R Associated and joint property: default of agreement

(1) Where this section applies and there is no agreement under section 303Q, the magistrates' court or sheriff—
- (a) must transfer the application made under section 303O to the relevant court if satisfied that the value of the forfeitable property and any associated property is £10,000 or more;
- (b) may transfer the application made under section 303O to the relevant court if satisfied that the value of the forfeitable property and any associated property is less than £10,000.

(2) The "relevant court" is—
- (a) the High Court, where the application under section 303O was made to a magistrates' court;
- (b) the Court of Session, where the application under section 303O was made to the sheriff.

(3) Where (under subsection (1)(a) or (b)) an application made under section 303O is transferred to the relevant court, the relevant court may order the forfeiture of the property to which the application relates, or any part of that property, if satisfied that—
- (a) the property is a listed asset, and
- (b) what is to be forfeited is recoverable property or intended by any person for use in unlawful conduct.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) An order under subsection (3) made by the High Court may include provision of the type that may be included in an order under section 303O(3) made by a magistrates' court by virtue of section 303O(4).

(5) If provision is included in an order of the High Court by virtue of subsection (4) of this section, section 303O(5) and (6) apply with the necessary modifications.

(6) The relevant court may, as well as making an order under subsection (3), make an order—
   (a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or
   (b) providing for the excepted joint owner's interest to be severed.

(7) Where (under subsection (1)(b)) the magistrates' court or sheriff decides not to transfer an application made under section 303O to the relevant court, the magistrates' court or sheriff may, as well as making an order under section 303O(3), make an order—
   (a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or
   (b) providing for the excepted joint owner's interest to be severed.

(8) An order under subsection (6) or (7) may be made only if the relevant court, the magistrates' court or the sheriff (as the case may be) thinks it just and equitable to do so.

(9) An order under subsection (6) or (7) must provide for the payment of an amount to the person who holds the associated property or who is an excepted joint owner.

(10) In making an order under subsection (6) or (7), and including provision in it by virtue of subsection (9), the relevant court, the magistrates' court or the sheriff (as the case may be) must have regard to—
   (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or (as the case may) of that person's share (including any value that cannot be assessed in terms of money), and
   (b) the interest of the person who applied for the order under section 303O in realising the value of the forfeitable property.

(11) If the relevant court, the magistrates' court or the sheriff (as the case may be) is satisfied that—
   (a) the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 303J and its subsequent detention, and
   (b) the circumstances are exceptional,

   an order under subsection (6) or (7) may require the payment of compensation to that person.

(12) The amount of compensation to be paid by virtue of subsection (11) is the amount the relevant court, the magistrates' court or the sheriff (as the case may be) thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(13) Compensation to be paid by virtue of subsection (11) is to be paid in the same way that compensation is to be paid under section 303W.

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303S Sections 303O to 303R: appeals

(1) Any party to proceedings for an order for the forfeiture of property under section 303O may appeal against—
  (a) the making of an order under section 303O;
  (b) the making of an order under section 303R(7);
  (c) a decision not to make an order under section 303O unless the reason that no order was made is that an order was instead made under section 303Q;
  (d) a decision not to make an order under section 303R(7).

Paragraphs (c) and (d) do not apply if the application for the order under section 303O was transferred in accordance with section 303R(1)(a) or (b).

(2) Where an order under section 303Q is made by a magistrates' court, any party to the proceedings for the order (including any party to the proceedings under section 303O that preceded the making of the order) may appeal against a decision to include, or not to include, provision in the order under subsection (6) of section 303Q.

(3) An appeal under this section lies—
  (a) in relation to England and Wales, to the Crown Court;
  (b) in relation to Scotland, to the Sheriff Appeal Court;
  (c) in relation to Northern Ireland, to a county court.

(4) An appeal under this section must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(5) The court hearing the appeal may make any order it thinks appropriate.

(6) If the court upholds an appeal against an order forfeiting property, it may order the release of the whole or any part of the property.

303T Realisation of forfeited property

(1) If property is forfeited under section 303O or 303R, a relevant officer must realise the property or make arrangements for its realisation.

(2) But the property is not to be realised—
  (a) before the end of the period within which an appeal may be made (whether under section 303S or otherwise), or
  (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(3) The realisation of property under subsection (1) must be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

303U Proceeds of realisation

(1) The proceeds of property realised under section 303T must be applied as follows—
  (a) first, they must be applied in making any payment required to be made by virtue of section 303R(9);
  (b) second, they must be applied in making any payment of legal expenses which, after giving effect to section 303O(5) (including as applied by

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section 303R(5)), are payable under this subsection in pursuance of provision under section 303O(4) or, as the case may be, 303R(4);

(c) third, they must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the property whilst detained under this Part and in realising the property;

(d) fourth, they must be paid—

(i) if the property was forfeited by a magistrates' court or the High Court, into the Consolidated Fund;

(ii) if the property was forfeited by the sheriff or the Court of Session, into the Scottish Consolidated Fund.

(2) If what is realised under section 303T represents part only of an item of property seized under section 303J and detained under this Chapter, the reference in subsection (1)(c) to costs incurred in storing or insuring the property is to be read as a reference to costs incurred in storing or insuring the whole of the item of property.

Supplementary

303V Victims and other owners

(1) A person who claims that any property detained under this Chapter, or any part of it, belongs to him or her may apply for the property or part to be released.

(2) An application under subsection (1) is to be made—

(a) in England and Wales or Northern Ireland, to a magistrates' court;

(b) in Scotland, to the sheriff.

(3) The application may be made in the course of proceedings under section 303L or 303O or at any other time.

(4) The court or sheriff may order the property to which the application relates to be released to the applicant if it appears to the court or sheriff that—

(a) the applicant was deprived of the property to which the application relates, or of property which it represents, by unlawful conduct,

(b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and

(c) the property belongs to the applicant.

(5) If subsection (6) applies, the court or sheriff may order the property to which the application relates to be released to the applicant or to the person from whom it was seized.

(6) This subsection applies where—

(a) the applicant is not the person from whom the property to which the application relates was seized,

(b) it appears to the court or sheriff that that property belongs to the applicant,

(c) the court or sheriff is satisfied that the release condition is met in relation to that property, and

(d) no objection to the making of an order under subsection (5) has been made by the person from whom that property was seized.

(7) The release condition is met—

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(a) in relation to property detained under section 303K or 303L, if the conditions in section 303K or (as the case may be) 303L for the detention of the property are no longer met, and

(b) in relation to property detained under section 303O, if the court or sheriff decides not to make an order under that section in relation to the property.

303W Compensation

(1) If no order under section 303O, 303Q or 303R is made in respect of any property detained under this Chapter, the person to whom the property belongs or from whom it was seized may make an application for compensation.

(2) An application under subsection (1) is to be made—

(a) in England and Wales or Northern Ireland, to a magistrates' court;

(b) in Scotland, to the sheriff.

(3) If the court or sheriff is satisfied that the applicant has suffered loss as a result of the detention of the property and that the circumstances are exceptional, the court or sheriff may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) If the property was seized by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.

(6) If the property was seized by a constable, the compensation is to be paid as follows—

(a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;

(b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority;

(c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.

(7) If the property was seized by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.

(8) If the property was seized by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.

(9) If the property was seized by an accredited financial investigator who was not an officer of Revenue and Customs, a constable, an SFO officer or a National Crime Agency officer, the compensation is to be paid as follows—

(a) in the case of an investigator who was—

(i) a member of the civilian staff of a police force (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or

(ii) a member of staff of the City of London police force,

it is to be paid out of the police fund from which the expenses of the police force are met,

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(b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland,

(c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department,

(d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,

(e) in the case of an investigator who was exercising a function of the Welsh Revenue Authority, it is to be paid by the Welsh Revenue Authority, and

(f) in any other case, it is to be paid by the employer of the investigator.

(10) The Secretary of State may by regulations amend subsection (9).

(11) The power in subsection (10) is exercisable by the Department of Justice (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998.)

(12) If an order under section 303O, 303Q or 303R is made in respect only of a part of any property detained under this Chapter, this section has effect in relation to the other part.

303X Powers for prosecutors to appear in proceedings

(1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable or an accredited financial investigator in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, a constable or (as the case may be) an accredited financial investigator to do so, and

(b) considers it appropriate to do so.

(2) The Director of Public Prosecutions may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this section.

(4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.

303Y "The minimum value"

(1) For the purposes of this Chapter, "the minimum value" is £1,000.

(2) The Secretary of State may by regulations amend the amount for the time being specified in subsection (1).

Status: *Point in time view as at 05/01/2023.*
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(3) The Secretary of State must consult the Scottish Ministers and the Department of Justice before making regulations under subsection (2).

303Z Financial investigators

Where an accredited financial investigator of a particular description—

(a) applies for an order under section 303L,

(b) applies for forfeiture under section 303O, or

(c) brings an appeal under, or relating to, this Chapter,

any subsequent step in the application or appeal, or any further application or appeal relating to the same matter, may be taken, made or brought by a different accredited financial investigator of the same description.**]**

[F889CHAPTER 3B

FORFEITURE OF MONEY HELD IN **[**F890CERTAIN**]** ACCOUNTS

Textual Amendments

F889 Pt. 5 Ch. 3B inserted (27.4.2017 for specified purposes, 30.1.2018 for the insertion of ss. 303Z2(4), 303Z10 for E.W.S. so far as not already in force, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 16**, 58(1)(6) (as amended (N.I.) on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**) by S.I. 2019/742, regs. 1, **109(3)**); S.I. 2018/78, regs. 2(b), **3(d)**; S.I. 2021/724, **reg. 2(1)(g)**

F890 Word in Pt. 5 Ch. 3B heading substituted (27.4.2017 retrospective for E.W.S, 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 12** (with s. 33(4)); S.I. 2021/739, reg. 2

Modifications etc. (not altering text)

C74 Pt. 5 Ch. 3B applied (31.1.2018 for E.W.S. in so far as not already in force, 27.4.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by 2007 c. 30, s. 24(1) (as substituted by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i))

*Freezing of **[**F891certain**]** accounts*

Textual Amendments

F891 Word in s. 303Z1 cross-heading substituted (27.4.2017 retrospective for E.W.S, 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 13** (with s. 33(4)); S.I. 2021/739, reg. 2

303Z1 Application for account freezing order

(1) This section applies if an enforcement officer has reasonable grounds for suspecting that money held in an account maintained with a **[**F892relevant financial institution**]**—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

Status: *Point in time view as at 05/01/2023.*
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(2) Where this section applies (but subject to section 303Z2) the enforcement officer may apply to the relevant court for an account freezing order in relation to the account in which the money is held.

(3) For the purposes of this Chapter—

(a) an account freezing order is an order that, subject to any exclusions (see section 303Z5), prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account;

(b) an account is operated by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.

(4) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct.

(5) The money referred to in subsection (1) may be all or part of the credit balance of the account.

[F893](5A) . . . . . .

[F894](5B) . . . . . .

(6) In this Chapter—

"bank" has the meaning given by section 303Z7;

"building society" has the same meaning as in the Building Societies Act 1986;

[[F895]"electronic money institution" has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations);**]**

"enforcement officer" means—

(a) an officer of Revenue and Customs,

(b) a constable,

(c) an SFO officer, or

(d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State **[**[F896]or the Welsh Ministers**]** under section 453;

"the minimum amount" has the meaning given by section 303Z8;

[[F895]"payment institution" means an authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752));**]**

"relevant court"—

(a) in England and Wales and Northern Ireland, means a magistrates' court, and

(b) in Scotland, means the sheriff.

[[F897]"relevant financial institution" means—

(a) a bank,

(b) a building society,

(c) an electronic money institution, or

(d) a payment institution.**]**

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Textual Amendments

F892 Words in s. 303Z1(1) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 14(2)** (with s. 33(4)); S.I. 2021/739, reg. 2

F893 S. 303Z1(5A) omitted (28.6.2022) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 59(1)(a)**, 208(5)(h)

F894 S. 303Z1(5B) omitted (28.6.2022) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 59(1)(a)**, 208(5)(h)

F895 Words in s. 303Z1(6) inserted (retrospectively) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 14(5)** (with s. 33(4))

F896 Words in s. 303Z1(6) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(e)**

F897 Words in s. 303Z1(6) inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 59(1)(b)**, 208(5)(h)

Modifications etc. (not altering text)

C75 S. 303Z1(6) modified by S.I. 2018/196, Sch. para. 3B (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(b)**)

303Z2 Restrictions on making of application under section 303Z1

(1) The power to apply for an account freezing order is not exercisable if the money in relation to which the enforcement officer's suspicion exists is less in amount than the minimum amount.

(2) An enforcement officer may not apply for an account freezing order unless the officer is a senior officer or is authorised to do so by a senior officer.

(3) The power to apply for an account freezing order is not exercisable by an SFO officer, or by an accredited financial investigator, in relation to an account maintained with a branch of a **[**[F898]relevant financial institution**]** that is in Scotland.

(4) For the purposes of this Chapter, a "senior officer" is —

(a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

(b) a senior police officer,

(c) the Director of the Serious Fraud Office,

(d) 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, or

(e) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State **[**[F899]or the Welsh Ministers**]** under section 453.

(5) In subsection (4), a "senior police officer" means a police officer of at least the rank of inspector.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F898 Words in s. 303Z2(3) substituted (retrospectively) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 15** (with s. 33(4))

F899 Words in s. 303Z2(4)(e) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(f)**

Modifications etc. (not altering text)

C76 S. 303Z2(4)(e) modified by S.I. 2018/196, Sch. para. 11C (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(3)(a)**)

303Z3 Making of account freezing order

(1) This section applies where an application for an account freezing order is made under section 303Z1 in relation to an account.

(2) The relevant court may make the order if satisfied that there are reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account)—
  (a) is recoverable property, or
  (b) is intended by any person for use in unlawful conduct.

(3) An account freezing order ceases to have effect at the end of the period specified in the order (which may be varied under section 303Z4) unless it ceases to have effect at an earlier or later time in accordance with the provision made by sections 303Z9(6)(c), 303Z11(2) to (7), 303Z14(6) to (8) and 303Z15.

(4) The period specified by the relevant court for the purposes of subsection (3) (whether when the order is first made or on a variation under section 303Z4) may not exceed the period of 2 years, starting with the day on which the account freezing order is (or was) made.

(5) An account freezing order must provide for notice to be given to persons affected by the order.

303Z4 Variation and setting aside of account freezing order

(1) The relevant court may at any time vary or set aside an account freezing order on an application made by—
  (a) an enforcement officer, or
  (b) any person affected by the order.

(2) But an enforcement officer may not make an application under subsection (1) unless the officer is a senior officer or is authorised to do so by a senior officer.

(3) Before varying or setting aside an account freezing order the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(4) In relation to Scotland, the references in this section to setting aside an order are to be read as references to recalling it.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

303Z5 Exclusions

(1) The power to vary an account freezing order includes (amongst other things) power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.

(2) Exclusions from the prohibition may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated—
  (a) to meet the person's reasonable living expenses, or
  (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where a magistrates' court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
  (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,
  (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  (c) is made subject to the same conditions as would be the required conditions (see section 286A) if the order had been made under section 245A (in addition to any conditions imposed under subsection (4)).

(6) A magistrates' court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Part—
  (a) must have regard to the desirability of the person being represented in any proceedings under this Part in which the person is a participant, and
  (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made—
    (i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
    (ii) be funded by the Northern Ireland Legal Services Commission.

(7) The sheriff's power to make exclusions may not be exercised for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that there is not undue prejudice to the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct.

303Z6 Restriction on proceedings and remedies

(1) If a court in which proceedings are pending in respect of an account maintained with a **[**[F900]relevant financial institution**]** is satisfied that an account freezing order has been applied for or made in respect of the account, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

Status: *Point in time view as at 05/01/2023.*
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(2) Before exercising the power conferred by subsection (1), the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

(3) In relation to Scotland, the reference in subsection (1) to staying the proceedings is to be read as a reference to sisting the proceedings.

Textual Amendments

F900 Words in s. 303Z6(1) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 16** (with s. 33(4)); S.I. 2021/739, reg. 2

303Z7 "Bank"

(1) "Bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom.

(2) In subsection (1), "authorised deposit-taker" means—

(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;

(b) a person who—

(i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and

(ii) accepts deposits;

(c) **[**[F901]an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.**]**

(3) A reference in subsection (2) to a person **[**[F902]or firm**]** with permission to accept deposits does not include a person **[**[F902]or firm**]** with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.

Textual Amendments

F901 S. 303Z7(2)(c) omitted (E.W.S.) (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F902 Words in s. 303Z7(3) omitted (E.W.S.) (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

303Z8 "The minimum amount"

(1) "The minimum amount" is £1,000.

(2) The Secretary of State may by regulations amend the amount for the time being specified in subsection (1).

Status: *Point in time view as at 05/01/2023.*
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(3) The Secretary of State must consult the Scottish Ministers and the Department of Justice before making regulations under subsection (2).

(4) For the purposes of this Chapter the amount of any money held in an account maintained with a **[**[F903]relevant financial institution**]** in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

Textual Amendments

F903 Words in s. 303Z8(4) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 17** (with s. 33(4)); S.I. 2021/739, reg. 2

Account forfeiture notices (England and Wales and Northern Ireland)

303Z9 Account forfeiture notice

(1) This section applies while an account freezing order made by a magistrates' court has effect.

In this section the account to which the order applies is "the frozen account".

(2) A senior officer may give a notice for the purpose of forfeiting money held in the frozen account (whether all or part of the credit balance of the account) if satisfied that the money—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) A notice given under subsection (2) is referred to in this Chapter as an account forfeiture notice.

(4) An account forfeiture notice must—

(a) state the amount of money held in the frozen account which it is proposed be forfeited,

(b) confirm that the senior officer is satisfied as mentioned in subsection (2),

(c) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and

(d) explain that the money will be forfeited unless an objection is received at that address within the period for objecting.

(5) The period for objecting must be at least 30 days starting with the day after the notice is given.

(6) If no objection is made within the period for objecting, and the notice has not lapsed under section 303Z11—

(a) the amount of money stated in the notice is forfeited (subject to section 303Z12),

(b) the **[**[F904]relevant financial institution**]** with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and

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(c) immediately after the transfer has been made, the account freezing order made in relation to the frozen account ceases to have effect.

(7) An objection may be made by anyone (whether a recipient of the notice or not).

(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the money held in the frozen account under section 303Z14.

Textual Amendments

F904 Words in s. 303Z9(6)(b) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 18** (with s. 33(4)); S.I. 2021/739, reg. 2

303Z10 [F889][F890]Giving of account forfeiture notice

(1) The Secretary of State must make regulations about how an account forfeiture notice is to be given.

(2) The regulations may (amongst other things) provide—

(a) for an account forfeiture notice to be given to such person or persons, and in such manner, as may be prescribed;

(b) for circumstances in which, and the time at which, an account forfeiture notice is to be treated as having been given.

(3) The regulations must ensure that where an account forfeiture notice is given it is, if possible, given to every person to whom notice of the account freezing order was given.

303Z11 Lapse of account forfeiture notice

(1) An account forfeiture notice lapses if—

(a) an objection is made within the period for objecting specified in the notice under section 303Z9(4)(c),

(b) an application is made under section 303Z14 for the forfeiture of money held in the frozen account, or

(c) an order is made under section 303Z4 setting aside the relevant account freezing order.

(2) If an account forfeiture notice lapses under subsection (1)(a), the relevant account freezing order ceases to have effect at the end of the period of 48 hours starting with the making of the objection ("the 48-hour period").

This is subject to subsections (3) and (7).

(3) If within the 48-hour period an application is made—

(a) for a variation of the relevant account freezing order under section 303Z4 so as to extend the period specified in the order, or

(b) for forfeiture of money held in the frozen account under section 303Z14,

the order continues to have effect until the relevant time (and then ceases to have effect).

(4) In the case of an application of the kind mentioned in subsection (3)(a), the relevant time means—

(a) if an extension is granted, the time determined in accordance with section 303Z3(3), or

(b) if an extension is not granted, the time when the application is determined or otherwise disposed of.

(5) In the case of an application of the kind mentioned in subsection (3)(b), the relevant time is the time determined in accordance with section 303Z14(6).

(6) If within the 48-hour period it is decided that no application of the kind mentioned in subsection (3)(a) or (b) is to be made, an enforcement officer must, as soon as possible, notify the **[**[F905]relevant financial institution**]** with which the frozen account is maintained of that decision.

(7) **[**[F906]If the relevant financial institution**]** is notified in accordance with subsection (6) before the expiry of the 48-hour period, the relevant account freezing order ceases to have effect **[**[F907]on the institution**]** being so notified.

(8) In relation to an account forfeiture notice—

(a) "the frozen account" is the account in which the money to which the account forfeiture notice relates is held;

(b) "the relevant account freezing order" is the account freezing order made in relation to the frozen account.

(9) In calculating a period of 48 hours for the purposes of this section no account is to be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday, or

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the account freezing order was made.

Textual Amendments

F905 Words in s. 303Z11(6) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 19(2)** (with s. 33(4)); S.I. 2021/739, reg. 2

F906 Words in s. 303Z11(7) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 19(3)(a)** (with s. 33(4)); S.I. 2021/739, reg. 2

F907 Words in s. 303Z11(7) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 19(3)(b)** (with s. 33(4)); S.I. 2021/739, reg. 2

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303Z12 [F889][F890]Application to set aside forfeiture

(1) A person aggrieved by the forfeiture of money in pursuance of section 303Z9(6)(a) may apply to a magistrates' court for an order setting aside the forfeiture of the money or any part of it.

(2) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended ("the 30-day period").

(3) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—
  (a) failed to object to the forfeiture within the period for objecting, and
  (b) failed to make an application within the 30-day period.

(4) On an application under this section the court must consider whether the money to which the application relates could be forfeited under section 303Z14 (ignoring the forfeiture mentioned in subsection (1)).

(5) If the court is satisfied that the money to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that money or part.

(6) Where the court sets aside the forfeiture of any money—
  (a) it must order the release of that money, and
  (b) the money is to be treated as never having been forfeited.

(7) Where money is released by virtue of subsection (6)(a), there must be added to the money on its release any interest accrued on it whilst in the account referred to in section 303Z9(6)(b).

303Z13 [F889][F890]Application of money forfeited under account forfeiture notice

(1) Money forfeited in pursuance of section 303Z9(6)(a), and any interest accrued on it whilst in the account referred to in section 303Z9(6)(b), is to be paid into the Consolidated Fund.

(2) But it is not to be paid in—
  (a) before the end of the period within which an application under section 303Z12 may be made (ignoring the possibility of an application by virtue of section 303Z12(3)), or
  (b) if an application is made within that period, before the application is determined or otherwise disposed of.

Forfeiture orders

303Z14 Forfeiture order

(1) This section applies while an account freezing order has effect.

In this section the account to which the account freezing order applies is "the frozen account".

(2) An application for the forfeiture of money held in the frozen account (whether all or part of the credit balance of the account) may be made—
  (a) to a magistrates' court by a person specified in subsection (3), or
  (b) to the sheriff by the Scottish Ministers.

(3) The persons referred to in subsection (2)(a) are—
  (a) the Commissioners for Her Majesty's Revenue and Customs,
  (b) a constable,
  (c) an SFO officer, or
  (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State **[**[F908]or the Welsh Ministers**]** under section 453.

(4) The court or sheriff may order the forfeiture of the money or any part of it if satisfied that the money or part—
  (a) is recoverable property, or
  (b) is intended by any person for use in unlawful conduct.

(5) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, an order by a magistrates' court may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(6) Where an application is made under subsection (2), the account freezing order is to continue to have effect until the time referred to in subsection (7)(b) or (8).

But subsections (7)(b) and (8) are subject to section 303Z15.

(7) Where money held in a frozen account is ordered to be forfeited under subsection (4)—
  (a) the **[**[F909]relevant financial institution**]** with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and
  (b) immediately after the transfer has been made the account freezing order made in relation to the frozen account ceases to have effect.

(8) Where, other than by the making of an order under subsection (4), an application under subsection (2) is determined or otherwise disposed of, the account freezing order ceases to have effect immediately after that determination or other disposal.

Textual Amendments

F908 Words in s. 303Z14(3)(d) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(g)**

F909 Words in s. 303Z14(7)(a) substituted (27.4.2017 (retrospectively except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 20** (with s. 33(4)); S.I. 2021/739, reg. 2

Modifications etc. (not altering text)

C77 S. 303Z14(3)(d) modified by S.I. 2018/196, Sch. para. 3B (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(b)**)

Status: *Point in time view as at 05/01/2023.*
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303Z15 [F889][F890]Continuation of account freezing order pending appeal

(1) This section applies where, on an application under subsection (2) of section 303Z14 in relation to an account to which an account freezing order applies, the court or sheriff decides—
  (a) to make an order under subsection (4) of that section in relation to part only of the money to which the application related, or
  (b) not to make an order under subsection (4) of that section.

(2) The person who made the application under section 303Z14(2) may apply without notice to the court or sheriff that made the decision referred to in subsection (1)(a) or (b) for an order that the account freezing order is to continue to have effect.

(3) Where the court or sheriff makes an order under subsection (2) the account freezing order is to continue to have effect until—
  (a) the end of the period of 48 hours starting with the making of the order under subsection (2), or
  (b) if within that period of 48 hours an appeal is brought under section 303Z16 against the decision referred to in subsection (1)(a) or (b), the time when the appeal is determined or otherwise disposed of.

(4) Subsection (9) of section 303Z11 applies for the purposes of subsection (3) as it applies for the purposes of that section.

303Z16 [F889][F890]Appeal against decision under section 303Z14

(1) Any party to proceedings for an order for the forfeiture of money under section 303Z14 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—
  (a) from an order or decision of a magistrates' court in England and Wales, to the Crown Court;
  (b) from an order or decision of the sheriff, to the Sheriff Appeal Court;
  (c) from an order or decision of a magistrates' court in Northern Ireland, to a county court.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the money, it may order the release of the whole or any part of the money.

(5) Where money is released by virtue of subsection (4), there must be added to the money on its release any interest accrued on it whilst in the account referred to in section 303Z14(7)(a).

303Z17 [F889][F890]Application of money forfeited under account forfeiture order

(1) Money forfeited by an order under section 303Z14, and any interest accrued on it whilst in the account referred to in subsection (7)(a) of that section—
  (a) if forfeited by a magistrates' court, is to be paid into the Consolidated Fund, and
  (b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.

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(2) But it is not to be paid in—
  (a) before the end of the period within which an appeal under section 303Z16 may be made, or
  (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Supplementary

303Z18 Compensation

(1) This section applies if—
  (a) an account freezing order is made, and
  (b) none of the money held in the account to which the order applies is forfeited in pursuance of an account forfeiture notice or by an order under section 303Z14.

(2) Where this section applies a person by or for whom the account to which the account freezing order applies is operated may make an application to the relevant court for compensation.

(3) If the relevant court is satisfied that the applicant has suffered loss as a result of the making of the account freezing order and that the circumstances are exceptional, the relevant court may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) If the account freezing order was applied for by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.

(6) If the account freezing order was applied for by a constable, the compensation is to be paid as follows—
  (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;
  (b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority;
  (c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.

(7) If the account freezing order was applied for by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.

(8) If the account freezing order was applied for by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.

(9) If the account freezing order was applied for by an accredited financial investigator who was not an officer of Revenue and Customs, a constable, an SFO officer or a National Crime Agency officer, the compensation is to be paid as follows—
  (a) in the case of an investigator who was—
    (i) a member of the civilian staff of a police force (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or

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(ii) a member of staff of the City of London police force,

it is to be paid out of the police fund from which the expenses of the police force are met,

(b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland,

(c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department,

(d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,

(e) in the case of an investigator who was exercising a function of the Welsh Revenue Authority, it is to be paid by the Welsh Revenue Authority, and

(f) in any other case, it is to be paid by the employer of the investigator.

(10) The Secretary of State may by regulations amend subsection (9).

(11) The power in subsection (10) is exercisable by the Department of Justice (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998.)

303Z19 Powers for prosecutors to appear in proceedings

(1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable or an accredited financial investigator in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, a constable or (as the case may be) an accredited financial investigator to do so, and

(b) considers it appropriate to do so.

(2) The Director of Public Prosecutions may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this section.

(4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.]

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CHAPTER 4

GENERAL

Modifications etc. (not altering text)

C78 Pt. 5 Ch. 4: power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 7**

Recoverable property

304 Property obtained through unlawful conduct

(1) Property obtained through unlawful conduct is recoverable property.

(2) But if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—

(a) the person who through the conduct obtained the property, or

(b) a person into whose hands it may (by virtue of this subsection) be followed.

305 Tracing property, etc.

(1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.

(2) If a person enters into a transaction by which—

(a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and

(b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

306 Mixing property

(1) Subsection (2) applies if a person's recoverable property is mixed with other property (whether his property or another's).

(2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(3) Recoverable property is mixed with other property if (for example) it is used—

(a) to increase funds held in a bank account,

(b) in part payment for the acquisition of an asset,

(c) for the restoration or improvement of land,

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[[F910](ca) for the discharge (in whole or in part) of a mortgage, charge or other security,**]**

(d) by a person holding a leasehold interest in the property to acquire the freehold.

Textual Amendments

F910 S. 306(3)(ca) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(10)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

307 Recoverable property: accruing profits

(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct.

308 General exceptions

(1) If—

(a) a person disposes of recoverable property, and

(b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) If—

(a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,

(b) the claimant's claim is based on the defendant's unlawful conduct, and

(c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

In relation to Scotland, "claimant" and "defendant" are to be read as "pursuer" and "defender".

(4) If—

(a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)), section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or **[**[F911]Chapter 2 of Part 7 of the Sentencing Code**][**[F912] or in pursuance of a service compensation order under the Armed Forces Act 2006**]**, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.

[[F913](4A) If—

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(a) a payment is made to a person in pursuance of a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.**]**

[[F914](4A) If—

(a) a payment is made to a person in pursuance of a slavery and trafficking reparation order under Schedule 2 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.**]**

(5) If—

(a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) or **[**[F915]Chapter 3 of Part 7 of the Sentencing Code**]** or a person otherwise obtains any property in pursuance of such an order, and

(b) apart from this subsection, the sum received, or the property obtained, would be recoverable property,

the property ceases to be recoverable.

(6) If—

(a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (c. 8) (restitution orders), an amount is paid to or distributed among any persons in accordance with the court's directions, and

(b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

(7) If—

(a) in pursuance of a requirement of the **[**[F916]Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of**]** section 384(5) of the Financial Services and Markets Act 2000 (power [F917]... to require restitution), an amount is paid to or distributed among any persons, and

(b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

[[F918](7A) If—

(a) a payment is made to a person in pursuance of an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.**]**

(8) Property is not recoverable while a restraint order applies to it, that is—

(a) an order under section 41, 120 or 190, or

(b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g).

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[[F919](8A) Property is not recoverable while it is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P.**]**

(9) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—

(a) an order under section 6, 92 or 156, or

(b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

(10) Where—

(a) a person enters into a transaction to which section 305(2) applies, and

(b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 305(2)) of any property obtained on the transaction in place of the property disposed of.

Textual Amendments

F911 Words in s. 308(4)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 200(2)** (with Sch. 27); S.I. 2020/1236, reg. 2

F912 Words in s. 308(4)(a) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 197**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

F913 S. 308(4A) inserted (E.W.) (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 21**; S.I. 2015/1476, reg. 2(j)

F914 S. 308(4A) inserted (N.I.) (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 17**

F915 Words in s. 308(5)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 200(3)** (with Sch. 27); S.I. 2020/1236, reg. 2

F916 Words in s. 308(7)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F917 Words in s. 308(7)(a) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F918 S. 308(7A) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 23**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F919 S. 308(8A) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 78**; S.I. 2015/983, arts. 2(2)(e), 3(o); S.I. 2016/147, art. 3(i)

Modifications etc. (not altering text)

C79 S. 308(4) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 1(3), **Sch. 1 para. 51**

309 Other exemptions

(1) An order may provide that property is not recoverable or (as the case may be) associated property if—

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(a) it is prescribed property, or

(b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 278 as if it had been disposed of in pursuance of a recovery order.

(3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(4) In this section, an order means an order made by the Secretary of State after consultation with the Scottish Ministers **[**[F920]and the Department of Justice**]**, and prescribed means prescribed by the order.

Textual Amendments

F920 Words in s. 309(4) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 64** (with arts. 28-31)

310 Granting interests

(1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his granting an interest in the property ("the property in question")—

(a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct,

(b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

Insolvency

311 Insolvency

(1) Proceedings for a recovery order may not be taken or continued in respect of property to which subsection (3) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

(2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 295 unless the appropriate court gives leave.

[[F921](2A) An application for an order for the further detention of any property to which subsection (3) applies may not be made under section 303L unless the appropriate court gives leave.

(2B) An application for the making of an account freezing order under section 303Z3 in respect of an account in which is held money to which subsection (3) applies, or an

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application under section 303Z4 for the extension of the period specified in such an order, may not be made unless the appropriate court gives leave.**]**

(3) This subsection applies to recoverable property, or property associated with it, if—

(a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,

(b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act, or Part 2 of the 1989 Order, has effect in relation to the company,

(c) an order under **[**[F922]section 286 of the 1986 Act, Article 259 of the 1989 Order or section 54 of the 2016 Act**]** (appointment of interim trustee or interim receiver) has effect in relation to the property,

(d) it is an asset comprised in the estate of an individual who has been **[**[F923]made**]** bankrupt or, in relation to Scotland, of a person whose estate has been sequestrated,

(e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to him, or

(f) in relation to Scotland, it is property comprised in the estate of a person who has granted a trust deed within the meaning of the **[**[F924]2016**]** Act.

(4) An application under this section, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings for a recovery order **[**[F925], or to apply for an account freezing order under section 303Z3,**]** may be made without notice to any person.

(5) Subsection (4) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

(6) References to the provisions of the 1986 Act in sections 420 and 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include subsections (1) to (3) above.

(7) In this section—

[F926](a) . . . . . .

(b) the 1986 Act means the Insolvency Act 1986 (c. 45),

(c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

[[F927](d) the 2016 Act means the Bankruptcy (Scotland) Act 2016**]**

and in subsection (8) "the applicable enactment" means whichever enactment mentioned in paragraphs **[**[F928](b) to (d)**]** is relevant to the resolution, arrangement, order or trust deed mentioned in subsection (3).

(8) In this section—

(a) an asset means any property within the meaning of the applicable enactment or, where the **[**[F929]2016 Act is the applicable enactment, any property comprised in an estate to which that**]** Act applies,

(b) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in subsection (3), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court,

(c) acting as an insolvency practitioner has the same meaning as in section 433,

(d) other expressions used in this section and in the applicable enactment have the same meaning as in that enactment.

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Textual Amendments

F921 S. 311(2A)(2B) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 34(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F922 Words in s. 311(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(a)(i)**

F923 Word in s. 311(3)(d) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F924 Word in s. 311(3)(f) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(a)(ii)**

F925 Words in s. 311(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 34(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F926 S. 311(7)(a) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(i)**

F927 S. 311(7)(d) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(ii)**

F928 Words in s. 311(7) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(iii)**

F929 Words in s. 311(8)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(c)**

Delegation of enforcement functions

312 Performance of functions of Scottish Ministers by constables in Scotland

(1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.

(2) The specified functions are the functions conferred on the Scottish Ministers by—

(a) sections 244(1) and (2) and 256(1) and (7) (proceedings in the Court of Session),

(b) section 267(2) (trustee for civil recovery),

(c) sections 271(3) and (4) and 272(5) (agreements about associated and joint property),

(d) section 275(3) (pension schemes),

(e) section 282(1) (exemptions),

(f) section 283(5) and (8) (compensation),

(g) section 287(2) (financial threshold),

(h) section 293(1) (code of practice),

(i) section 298(1) (forfeiture),

(j) section 303(1) (minimum amount).

[F930(k) section 303B(3) (listed asset);

(l) section 303H(1) (code of practice);

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(m) section 303O(1)(b) (forfeiture);
(n) section 303Y(3) (minimum value);
(o) section 303Z8(3) (minimum amount);
(p) section 303Z14(2)(b) (forfeiture).]

Textual Amendments

F930 S. 312(2)(k)-(p) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 35**; S.I. 2018/78, reg. 5(3)(b)(i)(ii); S.I. 2021/724, reg. 4(g)

Commencement Information

I270 S. 312 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F931]313 Restriction on performance of Director's functions by police

. . . . . .

Textual Amendments

F931 S. 313 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 90, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I271 S. 313 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Interpretation

314 Obtaining and disposing of property

(1) References to a person disposing of his property include a reference—
(a) to his disposing of a part of it, or
(b) to his granting an interest in it,
(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

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315 Northern Ireland courts

In relation to the practice and procedure of courts in Northern Ireland, expressions used in this Part are to be read in accordance with rules of court.

316 General interpretation

(1) In this Part—

[F932"account forfeiture notice" (in Chapter 3B) has the meaning given by section 303Z9(3),]

[F932"account freezing order" (in Chapter 3B) account forfeiture notice " (in Chapter 3B) has the meaning given by section 303Z1(3)(a),]

"associated property" [F933(in Chapter 2)] has the meaning given by section 245,

[F932"bank" (in Chapter 3B) has the meaning given by section 303Z7,]

[F932"building society" (in Chapter 3B) has the meaning given by section 303Z1(6),]

"cash" has the meaning given by section 289(6) or (7),

"constable", in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32),

"country" includes territory,

"the court" (except in sections 253(2) and (3) and 262(2) and (3) and [F934Chapters 3, 3A and 3B]) means the High Court or (in relation to proceedings in Scotland) the Court of Session,

"dealing" with property includes disposing of it, taking possession of it or removing it from the United Kingdom,

[F935"the Department of Justice" means the Department of Justice in Northern Ireland;]

[F936"electronic money institution" (in Chapter 3B) has the meaning given by section 303Z1(6),]

"enforcement authority"—

(a) [F937in relation to England and Wales, means [F938the Financial Conduct Authority,][F939Her Majesty's Revenue and Customs,][F940the National Crime Agency], the Director of Public Prosecutions F941... or the Director of the Serious Fraud Office,]

(b) in relation to Scotland, means the Scottish Ministers,

(c) [F942in relation to Northern Ireland, means [F943the Financial Conduct Authority,][F944Her Majesty's Revenue and Customs,][F940the National Crime Agency], the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland,]

[F932"enforcement officer" (in Chapter 3B) has the meaning given by section 303Z1(6),]

"excepted joint owner" has the meaning given by section 270(4),

"interest", in relation to land—

(a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

(b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

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"interest", in relation to property other than land, includes any right (including a right to possession of the property),

"interim administration order" has the meaning given by section 256(2),

"interim receiving order" has the meaning given by section 246(2),

[[F932]"listed asset" (in Chapter 3A) has the meaning given by section 303B,**]**

"the minimum amount" (in Chapter 3) has the meaning given by section 303,

[[F932]"the minimum amount" (in Chapter 3B) has the meaning given by section 303Z8**]**

[[F932]"the minimum value" (in Chapter 3A) has the meaning given by section 303Y,

"part", in relation to property, includes a portion,

[[F936]"payment institution" (in Chapter 3B) has the meaning given by section 303Z1(6),**]**

[[F945]"PPO receiver" has the meaning given by section 255G(2);**]**

"premises" has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60),

[[F946] "prohibitory property order" has the meaning given by section 255A(2);

"property freezing order" has the meaning given by section 245A(2);**]**

"property obtained through unlawful conduct" has the meaning given by section 242,

"recoverable property" is to be read in accordance with sections 304 to 310,

"recovery order" means an order made under section 266,

[[F932]"relevant court" has the meaning given by section 303Z1(6),**]**

[[F936]"relevant financial institution" (in Chapter 3B) has the meaning given by section 303Z1**[**[F947](6)**]**,**]**

[[F932]"relevant officer" (in Chapter 3A) has the meaning given by section 303C(9),**]**

"respondent" means—

(a) where proceedings are brought by the enforcement authority by virtue of Chapter 2, the person against whom the proceedings are brought,

(b) where no such proceedings have been brought but the enforcement authority has applied for **[**[F948]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order, the person against whom he intends to bring such proceedings,

[[F932]"senior officer" (in Chapter 3B) has the meaning given by section 303Z2(4),**]**

"share", in relation to an excepted joint owner, has the meaning given by section 270(4),

"unlawful conduct" has the meaning given by section 241,

"value" means market value.

(2) The following provisions apply for the purposes of this Part.

(3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

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(4) Property is all property wherever situated and includes—
- (a) money,
- (b) all forms of property, real or personal, heritable or moveable,
- (c) things in action and other intangible or incorporeal property.

(5) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.

(6) In relation to land, it is a reference to any interest which he holds in the land.

(7) In relation to property other than land, it is a reference—
- (a) to the property (if it belongs to him), or
- (b) to any other interest which he holds in the property.

(8) References to the satisfaction of the enforcement authority's right to recover property obtained through unlawful conduct are to be read in accordance with section 279.

F949 **[** (8A) In relation to an order in England and Wales or Northern Ireland which is a recovery order, a property freezing order, an interim receiving order or an order under section 276, references to the enforcement authority are, unless the context otherwise requires, references to the enforcement authority which is seeking, or (as the case may be) has obtained, the order.**]**

F950 **[** (8B) An enforcement authority in relation to **[**F951a part of the United Kingdom**]** may take proceedings there for an order under Chapter 2 of this Part in respect of any property or person, whether or not the property or person is (or is domiciled, resident or present) in that part of the United Kingdom.**]**

(9) Proceedings against any person for an offence are concluded when—
- (a) the person is convicted or acquitted,
- (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or
- (c) the jury is discharged without a finding **[**F952otherwise than in circumstances where the proceedings are continued without a jury**]**.

F953 **[** (10) References (in Chapter 3B) to an account being operated by or for a person are to be read in accordance with section 303Z1(3)(b).**]]**

Textual Amendments

F932 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(2)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F933 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(2)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

F934 Words in s. 316(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(2)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

Status: *Point in time view as at 05/01/2023.*
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F935 Words in s. 316(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 65** (with arts. 28-31)

F936 Words in s. 316(1) inserted (27.4.2017 (retrospective except as it extends to N.I.), 28.6.2021 for N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 21** (with s. 33(4)); S.I. 2021/739, reg. 2

F937 Words in s. 316(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 91(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F938 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F939 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 19(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F940 Words in s. 316(1) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 121**; S.I. 2013/1682, art. 3(v)

F941 Words in s. 316(1) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 25**

F942 Words in s. 316(1) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 91(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F943 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(2)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F944 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 19(2)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F945 Words in s. 316(1) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 54**; S.I. 2015/820, reg. 3(q)(iv)

F946 Words in s. 316(1) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 22(2)**; S.I. 2005/3136, art. 3(c)

F947 Word in s. 316(1) inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 59(2)**, 208(5)(h)

F948 Words in s. 316(1) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 22(3)**; S.I. 2005/3136, art. 3(c)

F949 S. 316(8A) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 91(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F950 S. 316(8B) inserted (E.W.S.) (retrospectively) by Crime and Courts Act 2013 (c. 22), **ss. 48(5)**(7), 61(11)(c) (with s. 48(8), Sch. 25); this insertion extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

F951 Words in s. 316(8B) substituted (retrospective to 20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(7)**

F952 Words in s. 316(9)(c) inserted (24.7.2006 for E.W., 8.1.2007 in so far as not already in force) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 78**; S.I. 2006/1835, art. 2(h), S.I. 2006/3422, art. 2(1)(c)

F953 S. 316(10) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(g)

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Modifications etc. (not altering text)

C80 S. 316(8B): power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 4(2)(f)**

PART 6

REVENUE FUNCTIONS

Modifications etc. (not altering text)

C81 Pt. 6: power to repeal conferred (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 102**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

General functions

317 [F954The National Crime Agency's] general Revenue functions

(1) For the purposes of this section the qualifying condition is that [F955the National Crime Agency] has reasonable grounds to suspect that—

(a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), or

(b) a company is chargeable to corporation tax on its profits arising in respect of a chargeable period and the profits arise as a result of the company's or another person's criminal conduct (whether wholly or partly and whether directly or indirectly).

(2) If the qualifying condition is satisfied [F955the National Crime Agency] may serve on the Commissioners of Inland Revenue (the Board) a notice which—

(a) specifies the person or the company (as the case may be) and the period, and

(b) states that [F955the National Crime Agency] intends to carry out, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice.

(3) Service of a notice under subsection (2) vests in [F955the National Crime Agency], in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice; but this is subject to section 318.

(4) [F955the National Crime Agency]—

(a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);

(b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied.

(5) A notice under subsection (2) and a notice of withdrawal under subsection (4) may be in respect of one or more periods.

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(6) Service of a notice under subsection (4) divests **[**[F955]the National Crime Agency**]** of the functions concerned in relation to the person or the company (as the case may be) and in respect of the period or periods specified in the notice.

(7) The vesting of a function in **[**[F955]the National Crime Agency**]** under this section does not divest the Board or an officer of the Board of the function.

(8) If—

(a) apart from this section the Board's authorisation would be required for the exercise of a function, and

(b) the function is vested in **[**[F955]the National Crime Agency**]** under this section,

the authorisation is not required in relation to the function as so vested.

(9) It is immaterial whether a chargeable period or any part of it falls before or after the passing of this Act.

Textual Amendments

F954 Words in s. 317 title substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 122(2)**; S.I. 2013/1682, art. 3(v)

F955 Words in s. 317 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 122(3)**; S.I. 2013/1682, art. 3(v)

Commencement Information

I272 S. 317 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

318 Revenue functions regarding employment

(1) Subsection (2) applies if—

(a) **[**[F956]the National Crime Agency**]** serves a notice or notices under section 317(2) in relation to a company and in respect of a period or periods, and

(b) the company is an employer.

(2) The general Revenue functions vested in **[**[F956]the National Crime Agency**]** do not include functions relating to any requirement which—

(a) is imposed on the company in its capacity as employer, and

(b) relates to a year of assessment which does not fall wholly within the period or periods.

(3) Subsection (4) applies if—

(a) **[**[F956]the National Crime Agency**]** serves a notice or notices under section 317(2) in relation to an individual and in respect of a year or years of assessment, and

(b) the individual is a self-employed earner.

(4) The general Revenue functions vested in **[**[F956]the National Crime Agency**]** do not include functions relating to any liability to pay Class 2 contributions in respect of a period which does not fall wholly within the year or years of assessment.

(5) In this section in its application to Great Britain—

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(a) "self-employed earner" has the meaning given by section 2(1)(b) of the Social Security Contributions and Benefits Act 1992 (c. 4);

(b) "Class 2 contributions" must be construed in accordance with section 1(2)(c) of that Act.

(6) In this section in its application to Northern Ireland—

(a) "self-employed earner" has the meaning given by section 2(1)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

(b) "Class 2 contributions" must be construed in accordance with section 1(2)(c) of that Act.

Textual Amendments

F956 Words in s. 318 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 123**; S.I. 2013/1682, art. 3(v)

Commencement Information

I273 S. 318 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

319 Source of income

(1) For the purpose of the exercise by **[**[F957]the National Crime Agency**]** of any function vested in **[**[F958] it**]** by virtue of this Part it is immaterial that **[**[F957]the National Crime Agency**]** cannot identify a source for any income.

(2) An assessment made by **[**[F957]the National Crime Agency**]** under section 29 of the Taxes Management Act 1970 (c. 9) (assessment where loss of tax discovered) in respect of income charged to tax under **[**[F959]Chapter 8 of Part 5 of the Income Tax (Trading and Other Income) Act 2005**]** must not be reduced or quashed only because it does not specify (to any extent) the source of the income.

(3) If **[**[F957]the National Crime Agency**]** serves on the Board a notice of withdrawal under section 317(4), any assessment made by **[**[F957]the National Crime Agency**]** under section 29 of the Taxes Management Act 1970 is invalid to the extent that it does not specify a source for the income.

(4) Subsections (2) and (3) apply in respect of years of assessment whenever occurring.

Textual Amendments

F957 Words in s. 319 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 124**; S.I. 2013/1682, art. 3(v)

F958 Word in s. 319(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 95(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F959 Words in s. 319(2) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 582** (with Sch. 2)

Commencement Information

I274 S. 319 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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[F960]320 Appeals

. . . . . .

Textual Amendments

F960 S. 320 omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 333**

Commencement Information

I275 S. 320 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Inheritance tax functions

321 [[F961]The National Crime Agency's] functions: transfers of value

(1) For the purposes of this section the qualifying condition is that **[**[F962]the National Crime Agency**]** has reasonable grounds to suspect that—

(a) there has been a transfer of value within the meaning of the Inheritance Tax Act 1984 (c. 51), and

(b) the value transferred by **[**[F963]the transfer of value**]** is attributable (in whole or part) to criminal property.

(2) If the qualifying condition is satisfied **[**[F962]the National Crime Agency**]** may serve on the Board a notice which—

(a) specifies the transfer of value, and

(b) states that **[**[F962]the National Crime Agency**]** intends to carry out the Revenue inheritance tax functions in relation to the transfer.

(3) Service of a notice under subsection (2) vests in **[**[F962]the National Crime Agency**]** the Revenue inheritance tax functions in relation to the transfer.

(4) **[**[F962]the National Crime Agency**]**—

(a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);

(b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied.

(5) Service of a notice under subsection (4) divests **[**[F962]the National Crime Agency**]** of the Revenue inheritance tax functions in relation to the transfer.

(6) The vesting of a function in **[**[F962]the National Crime Agency**]** under this section does not divest the Board or an officer of the Board of the function.

(7) It is immaterial whether a transfer of value is suspected to have occurred before or after the passing of this Act.

Textual Amendments

F961 Words in s. 321 title substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 125(2)**; S.I. 2013/1682, art. 3(v)

Status: *Point in time view as at 05/01/2023.*
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F962 Words in s. 321 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 125(3)**; S.I. 2013/1682, art. 3(v)

F963 Words in s. 321(1)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 97(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I276 S. 321 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

322 [F964The National Crime Agency's] functions: certain settlements

(1) For the purposes of this section the qualifying condition is that **[**F965the National Crime Agency**]** has reasonable grounds to suspect that—

(a) all or part of the property comprised in a settlement is relevant property for the purposes of Chapter 3 of Part 3 of the Inheritance Tax Act 1984 (settlements without interest in possession), and

(b) the relevant property is (in whole or part) criminal property.

(2) If the qualifying condition is satisfied **[**F965the National Crime Agency**]** may serve on the Board a notice which—

(a) specifies the settlement concerned,

(b) states that **[**F965the National Crime Agency**]** intends to carry out the Revenue inheritance tax functions in relation to the settlement, and

(c) states the period for which **[**F965the National Crime Agency**]** intends to carry them out.

(3) Service of a notice under subsection (2) vests in **[**F965the National Crime Agency**]** the Revenue inheritance tax functions in relation to the settlement for the period.

(4) **[**F965the National Crime Agency**]**—

(a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);

(b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied.

(5) Service of a notice under subsection (4) divests **[**F965the National Crime Agency**]** of the Revenue inheritance tax functions in relation to the settlement for the period.

(6) The vesting of a function in **[**F965the National Crime Agency**]** under this section does not divest the Board or an officer of the Board of the function.

(7) It is immaterial whether the settlement is commenced or a charge to tax arises or a period or any part of it falls before or after the passing of this Act.

Textual Amendments

F964 Words in s. 322 title substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 126(2)**; S.I. 2013/1682, art. 3(v)

F965 Words in s. 322 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 126(3)**; S.I. 2013/1682, art. 3(v)

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I277 S. 322 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

General

323 Functions

(1) The general Revenue functions are such of the functions vested in the Board or in an officer of the Board as relate to any of the following matters—

(a) income tax;
(b) capital gains tax;
(c) corporation tax;
(d) national insurance contributions;
(e) statutory sick pay;
(f) statutory maternity pay;
[F966(g) F967... statutory paternity pay;
F968(ga) . . . . . .]
(h) statutory adoption pay;
[F969(ha) statutory shared parental pay;]
[F970(hb) statutory parental bereavement pay;]
(i) student loans.

(2) The Revenue inheritance tax functions are such functions vested in the Board or in an officer of the Board as relate to inheritance tax.

(3) But the general Revenue functions and the Revenue inheritance tax functions do not include any of the following functions—

(a) functions relating to the making of subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30));
(b) the function of the prosecution of offences;
(c) the function of authorising an officer for the purposes of section 20BA of the Taxes Management Act 1970 (c. 9) (orders for delivery of documents);
(d) the function of giving information under that section;
F971(e) . . . . . .
F971(f) . . . . . .

(4) For the purposes of this section in its application to Great Britain—

(a) national insurance contributions are contributions payable under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4);
(b) "statutory sick pay" must be construed in accordance with section 151(1) of that Act;
(c) "statutory maternity pay" must be construed in accordance with section 164(1) of that Act;
[F972(d) [F973 "statutory paternity pay"] must be construed in accordance with sections 171ZA and 171ZB of that Act;
F974(da) . . . . . .]

Status: *Point in time view as at 05/01/2023.*
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(e) "statutory adoption pay" must be construed in accordance with section 171ZL of that Act;

[[F975](ea) statutory shared parental pay" must be construed in accordance with sections 171ZU and 171ZV of that Act;**]**

[[F976](eb) "statutory parental bereavement pay" must be construed in accordance with section 171ZZ6 of that Act;**]**

(f) "student loans" must be construed in accordance with the Education (Student Loans) (Repayment) Regulations 2000 (S.I. 2000/944).

(5) For the purposes of this section in its application to Northern Ireland—

(a) national insurance contributions are contributions payable under Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

(b) "statutory sick pay" must be construed in accordance with section 147(1) of that Act;

(c) "statutory maternity pay" must be construed in accordance with section 160(1) of that Act;

(d) **[**[F977]statutory paternity pay**]** must be construed in accordance with any Northern Ireland legislation which corresponds to Part 12ZA of the Social Security Contributions and Benefits Act 1992;

(e) "statutory adoption pay" must be construed in accordance with any Northern Ireland legislation which corresponds to Part 12ZB of that Act;

[[F978](ea) statutory shared parental pay" must be construed in accordance with any Northern Ireland legislation which corresponds to Part 12ZC of that Act;**]**

[[F979](eb) "statutory parental bereavement pay" must be construed in accordance with any Northern Ireland legislation which corresponds to Part 12ZD of that Act;**]**

(f) "student loans" must be construed in accordance with the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000 (S.R. 2000/121).

Textual Amendments

F966 S. 323(1)(g)(ga) substituted for s. 323(1)(g) (6.4.2010) by Work and Families Act 2006 (c. 18), s. 19(2), **Sch. 1 para. 59(2)**; S.I. 2010/495, art. 4(d)

F967 Word in s. 323(1)(g) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(2)(a)**; S.I. 2014/1640, art. 7(ii) (with arts. 16, 19)

F968 S. 323(1)(ga) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(2)(b)**; S.I. 2014/1640, art. 7(ii) (with arts. 16, 19)

F969 S. 323(1)(ha) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(2)(c)**; S.I. 2014/1640, art. 5(2)(x)

F970 S. 323(1)(hb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 45(2)**; S.I. 2020/45, reg. 2

F971 S. 323(3)(e)(f) repealed (8.11.2007) by Finance Act 2007 (c. 11), s. 84(4)(5)(5), Sch. 22 para. 15, **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 2(c)

F972 S. 323(4)(d)(da) substituted for s. 323(4)(d) (6.4.2010) by Work and Families Act 2006 (c. 18), s. 19(2), **Sch. 1 para. 59(3)**; S.I. 2010/495, art. 4(d)

F973 Words in s. 323(4)(d) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(3)(a)**; S.I. 2014/1640, art. 7(ii) (with arts. 16, 19)

F974 S. 323(4)(da) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(3)(b)**; S.I. 2014/1640, art. 7(ii) (with arts. 16, 19)

F975 S. 323(4)(ea) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(3)(c)**; S.I. 2014/1640, art. 5(2)(x)

F976 S. 323(4)(eb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 45(3)**; S.I. 2020/45, reg. 2

F977 Words in s. 323(5)(d) substituted (15.3.2015 being the date on which 1992 c. 7, Pt. 12ZC comes into force by virtue of S.R. 2015/86, art. 3(1)(d)) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(4)(a)**; S.I. 2014/1640, art. 8(d) (with art. 18)

F978 S. 323(5)(ea) inserted (15.3.2015 being the date on which 1992 c. 7, Pt. 12ZC comes into force by virtue of S.R. 2015/86, art. 3(1)(d)) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 60(4)(b)**; S.I. 2014/1640, art. 8(d) (with art. 18)

F979 S. 323(5)(eb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 45(4)**; S.I. 2020/45, reg. 2

Commencement Information

I278 S. 323 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

324 Exercise of Revenue functions

(1) This section applies in relation to the exercise by **[**[F980]the National Crime Agency**]** of—

(a) general Revenue functions;

(b) Revenue inheritance tax functions.

(2) **[**[F981]Section 2B(2)**]** does not apply.

(3) **[**[F980]the National Crime Agency**]** must apply—

(a) any interpretation of the law which has been published by the Board;

(b) any concession which has been published by the Board and which is available generally to any person falling within its terms.

(4) **[**[F980]the National Crime Agency**]** must also take account of any material published by the Board which does not fall within subsection (3).

(5) **[**[F980]the National Crime Agency**]** must provide the Board with such documents and information as **[**[F982]the Board**]** consider appropriate.

(6) "Concession" includes any practice, interpretation or other statement in the nature of a concession.

Textual Amendments

F980 Words in s. 324 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 127**; S.I. 2013/1682, art. 3(v)

F981 Words in s. 324(2) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 99(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F982 Words in s. 324(5) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 99(6)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I279 S. 324 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

325 Declarations

[F983](1) . . . . . .

[[F984](2) Every **[**[F985]National Crime Agency officer**]** who is assigned to carry out **[**[F986]any function of the National Crime Agency**]** under this Part must, as soon as practicable after being so assigned, make a declaration in the form set out in Schedule 8 before a person nominated by the **[**[F987]Director General of the National Crime Agency**]** for the purpose.**]**

Textual Amendments

F983 S. 325(1) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 100(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F984 S. 325(2) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 100(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F985 Words in s. 325(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 128(1)(a)**; S.I. 2013/1682, art. 3(v)

F986 Words in s. 325(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 128(1)(b)**; S.I. 2013/1682, art. 3(v)

F987 Words in s. 325(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 128(1)(c)**; S.I. 2013/1682, art. 3(v)

Commencement Information

I280 S. 325 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

326 Interpretation

(1) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(2) But criminal conduct does not include conduct constituting an offence relating to a matter under the care and management of the Board.

(3) In applying subsection (1) it is immaterial whether conduct occurred before or after the passing of this Act.

(4) Property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and it is immaterial—

(a) who carried out the conduct;

(b) who benefited from it.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—
- (a) money;
- (b) all forms of property, real or personal, heritable or moveable;
- (c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—
- (a) property is obtained by a person if he obtains an interest in it;
- (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
- (c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
- (d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Any reference to an officer of the Board includes a reference to—
- (a) a collector of taxes;
- (b) an inspector of taxes.

(12) Expressions used in this Part and in the Taxes Acts have the same meaning as in the Taxes Acts (within the meaning given by section 118 of the Taxes Management Act 1970 (c. 9)).

(13) This section applies for the purposes of this Part.

Commencement Information

I281 S. 326 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

PART 7

MONEY LAUNDERING

Modifications etc. (not altering text)

C82 Pt. 7 applied (24.2.2003) by Proceeds of Crime Act 2002 (Crown Servants) Regulations 2003 (S.I. 2003/173), regs. 1, **3**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Offences

327 Concealing etc

(1) A person commits an offence if he—

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

(d) transfers criminal property;

(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

[[F988](2A) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) " the relevant criminal conduct " is the criminal conduct by reference to which the property concerned is criminal property. **]**

[[F989](2C) A deposit-taking body **[**[F990], electronic money institution or payment institution**]** that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.**]**

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Textual Amendments

F988 S. 327(2A)(2B) inserted (15.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 102(2)**, 178(8); S.I. 2006/1085, art. 3

F989 S. 327(2C) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(2)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F990 Words in s. 327(2C) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(2)**, 49(2)(b)

Commencement Information

I282 S. 327 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

328 Arrangements

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

[[F991](3) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(4) In subsection (3) " the relevant criminal conduct " is the criminal conduct by reference to which the property concerned is criminal property. **]**

[[F992](5) A deposit-taking body **[**[F993], electronic money institution or payment institution**]** that does an act mentioned in subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.**]**

Textual Amendments

F991 S. 328(3)(4) inserted (15.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 102(3)**, 178(8); S.I. 2006/1085, art. 3

F992 S. 328(5) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(3)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F993 Words in s. 328(5) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(3)**, 49(2)(b)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I283 S. 328 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

329 Acquisition, use and possession

(1) A person commits an offence if he—

(a) acquires criminal property;

(b) uses criminal property;

(c) has possession of criminal property.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) he acquired or used or had possession of the property for adequate consideration;

(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

[[F994](2A) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) " the relevant criminal conduct " is the criminal conduct by reference to which the property concerned is criminal property. **]**

[[F995](2C) A deposit-taking body **[**[F996], electronic money institution or payment institution**]** that does an act mentioned in subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.**]**

(3) For the purposes of this section—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F994 S. 329(2A)(2B) inserted (15.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 102(4)**, 178(8); S.I. 2006/1085, art. 3

F995 S. 329(2C) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(4)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F996 Words in s. 329(2C) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(4)**, 49(2)(b)

Commencement Information

I284 S. 329 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

330 Failure to disclose: regulated sector

(1) A person commits an offence if **[**[F997]the conditions in subsections (2) to (4) are satisfied**]**.

(2) The first condition is that he—

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter—

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of a business in the regulated sector.

[[F998](3A) The third condition is—

(a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property, or

(b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to—

(a) a nominated officer, or

(b) a person authorised for the purposes of this Part by **[**[F999]the Director General of the National Crime Agency**]**,

as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of—

(a) the identity of the other person mentioned in subsection (2), if he knows it,

(b) the whereabouts of the laundered property, so far as he knows it, and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(6) But he does not commit an offence under this section if—

(a) he has a reasonable excuse for not making the required disclosure,

(b) he is a professional legal adviser **[**[F1000]or [F1001]... relevant professional adviser**]** and—

(i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or

(ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or

(c) subsection (7) **[**[F1002]or (7B)**]** applies to him.**]**

(7) This subsection applies to a person if—

(a) he does not know or suspect that another person is engaged in money laundering, and

(b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.

[[F1003](7A) Nor does a person commit an offence under this section if—

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering—

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State.**]**

[[F1004](7B) This subsection applies to a person if—

(a) he is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support,

(b) the information or other matter mentioned in subsection (3) comes to the person in connection with the provision of such assistance or support, and

(c) the information or other matter came to the adviser in privileged circumstances.**]**

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—

(a) issued by a supervisory authority or any other appropriate body,

(b) approved by the Treasury, and

(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which—

(a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and

(b) is made in the course of the alleged offender's employment [F1005]....

[[F1006](9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure—

(a) is a professional legal adviser**[**[F1007]or [F1008]... relevant professional adviser**]**,

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) makes it for the purpose of obtaining advice about making a disclosure under this section, and

(c) does not intend it to be a disclosure under this section.**]**

(10) Information or other matter comes to a professional legal adviser **[**[F1009]or [F1010]... relevant professional adviser**]** in privileged circumstances if it is communicated or given to him—

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is—

(a) a business in the regulated sector;

(b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

[[F1011](14) A relevant professional adviser is an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—

(a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

(b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.**]**

Textual Amendments

F997 Words in s. 330(1) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 104(2)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F998 S. 330(3A)-(6) substituted for s. 330(4)-(6) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 104(3)**, 178(8); S.I. 2005/1521, art. 3(1)(c) (with art. 3(4))

F999 Words in s. 330(4)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 129**; S.I. 2013/1682, art. 3(v)

F1000 Words in s. 330(6)(b) inserted (21.2.2006) by Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (S.I. 2006/308), arts. 1, **2(2)**

F1001 Word in s. 330(6)(b) omitted (26.12.2007) by virtue of Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 2**

F1002 Words in s. 330(6)(c) inserted (21.2.2006) by Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (S.I. 2006/308), arts. 1, **2(3)**

F1003 S. 330(7A) inserted (15.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 102(5)**, 178(8); S.I. 2006/1085, art. 3

F1004 S. 330(7B) inserted (21.2.2006) by Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (S.I. 2006/308), arts. 1, **2(4)**

F1005 Words in s. 330(9)(b) repealed (1.7.2005) by virtue of Serious Organised Crime and Police Act 2005 (c. 15), **ss. 105(2)**, 178(8), Sch. 17 Pt. 2; S.I. 2005/1521, art. 3(1)(c)(ee)

F1006 S. 330(9A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 106(2)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1007 Words in s. 330(9A)(a) inserted (21.2.2006) by Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (S.I. 2006/308), arts. 1, **2(2)**

F1008 Word in s. 330(9A)(a) omitted (26.12.2007) by virtue of Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 2**

F1009 Words in s. 330(10) inserted (21.2.2006) by Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (S.I. 2006/308), arts. 1, **2(2)**

F1010 Word in s. 330(10) omitted (26.12.2007) by virtue of Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 2**

F1011 S. 330(14) inserted (21.2.2006) by Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (S.I. 2006/308), arts. 1, **2(5)**

Modifications etc. (not altering text)

C83 S. 330 restricted (1.3.2004) by The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003 (S.I. 2003/3074), arts. 1, **4**

Commencement Information

I285 S. 330 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

331 Failure to disclose: nominated officers in the regulated sector

(1) A person nominated to receive disclosures under section 330 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he—

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter—

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 330.

[[F1012](3A) The third condition is—

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by **[**[F1013]the Director General of the National Crime Agency**]** as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) the identity of the other person mentioned in subsection (2), if disclosed to him under section 330,

(b) the whereabouts of the laundered property, so far as disclosed to him under section 330, and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.**]**

[[F1014](6A) Nor does a person commit an offence under this section if—

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering—

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State.**]**

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—

(a) issued by a supervisory authority or any other appropriate body,

(b) approved by the Treasury, and

(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(8) Schedule 9 has effect for the purpose of determining what is a supervisory authority.

(9) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

Textual Amendments

F1012 S. 331(3A)-(6) substituted for s. 331(4)-(6) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 104(4)**, 178(8); S.I. 2005/1521, art. 3(1)(c) (with art. 3(4))

F1013 Words in s. 331(4) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 130**; S.I. 2013/1682, art. 3(v)

F1014 S. 331(6A) inserted (15.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 102(6)**, 178(8); S.I. 2006/1085, art. 3

Modifications etc. (not altering text)

C84 S. 331 restricted (1.3.2004) by The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003 (S.I. 2003/3074), arts. 1, **4**

Commencement Information

I286 S. 331 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

332 Failure to disclose: other nominated officers

(1) A person nominated to receive disclosures under section 337 or 338 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he knows or suspects that another person is engaged in money laundering.

(3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in consequence of a disclosure made under **[**[F1015]the applicable section**]**.

[[F1016](3A) The third condition is—

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section,

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by **[**[F1017]the Director General of the National Crime Agency**]** as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of—

(a) the identity of the other person mentioned in subsection (2), if disclosed to him under the applicable section,

(b) the whereabouts of the laundered property, so far as disclosed to him under the applicable section, and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects that other person to be engaged in.

(5B) The applicable section is section 337 or, as the case may be, section 338.

(6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.**]**

[[F1018](7) Nor does a person commit an offence under this section if—

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering—

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1015 Words in s. 332(3) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 104(5)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1016 S. 332(3A)-(6) substituted for s. 332(4)-(6) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 104(6)**, 178(8); S.I. 2005/1521, art. 3(1)(c) (with art. 3(4))

F1017 Words in s. 332(4) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 131**; S.I. 2013/1682, art. 3(v)

F1018 S. 332(7) inserted (15.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 102(7)**, 178(8); S.I. 2006/1085, art. 3

Commencement Information

I287 S. 332 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1019]333 Tipping off

. . . . . .

Textual Amendments

F1019 S. 333 omitted (26.12.2007) by virtue of Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 3**

Commencement Information

I288 S. 333 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[[F1020]333A Tipping off: regulated sector

(1) A person commits an offence if—

(a) the person discloses any matter within subsection (2);

(b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and

(c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(2) The matters are that the person or another person has made a disclosure under this Part—

(a) to a constable,

(b) to an officer of Revenue and Customs,

(c) to a nominated officer, or

(d) to a **[**[F1021]National Crime Agency officer**]** authorised for the purposes of this Part by the Director General of that Agency,

of information that came to that person in the course of a business in the regulated sector.

(3) A person commits an offence if—

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(a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
(b) the disclosure is likely to prejudice that investigation; and
(c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(4) A person guilty of an offence under this section is liable—
(a) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the standard scale, or to both;
(b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.

(5) This section is subject to—
(a) section 333B (disclosures within an undertaking or group etc),
(b) section 333C (other permitted disclosures between institutions etc), and
(c) section 333D (other permitted disclosures etc).

Textual Amendments

F1020 Ss. 333A-333E inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 4**

F1021 Words in s. 333A(2)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 132**; S.I. 2013/1682, art. 3(v)

333B Disclosures within an undertaking or group etc

(1) An employee, officer or partner of an undertaking does not commit an offence under section 333A if the disclosure is to an employee, officer or partner of the same undertaking.

(2) A person does not commit an offence under section 333A in respect of a disclosure by a credit institution or a financial institution if—
(a) the disclosure is to a credit institution or a financial institution,
(b) the institution to whom the disclosure is made is situated in **[**[F1022]the United Kingdom or an EEA state**]** or in a country or territory imposing equivalent money laundering requirements, and
(c) both the institution making the disclosure and the institution to whom it is made belong to the same group.

(3) In subsection (2) "group" has the same meaning as in Directive 2002/87/ EC of the European Parliament and of the Council of 16 th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

(4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 333A if—
(a) the disclosure is to professional legal adviser or a relevant professional adviser,
(b) both the person making the disclosure and the person to whom it is made carry on business in **[**[F1023]the United Kingdom or an EEA state**]** or in a country or territory imposing equivalent money laundering requirements, and

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(c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

Textual Amendments

F1020 Ss. 333A-333E inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 4**

F1022 Words in s. 333B(2)(b) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(6)**; 2020 c. 1, Sch. 5 para. 1(1)

F1023 Words in s. 333B(4)(b) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(6)**; 2020 c. 1, Sch. 5 para. 1(1)

333C Other permitted disclosures between institutions etc

(1) This section applies to a disclosure—

(a) by a credit institution to another credit institution,

(b) by a financial institution to another financial institution,

(c) by a professional legal adviser to another professional legal adviser, or

(d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) A person does not commit an offence under section 333A in respect of a disclosure to which this section applies if—

(a) the disclosure relates to—

(i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made,

(ii) a transaction involving them both, or

(iii) the provision of a service involving them both;

(b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;

(c) the institution or adviser to whom the disclosure is made is situated in **[**[F1024]the United Kingdom or an EEA state**]** or in a country or territory imposing equivalent money laundering requirements; and

(d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data **[**[F1025](within the meaning of Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2) and (14) of that Act))**]**.

Textual Amendments

F1020 Ss. 333A-333E inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 4**

F1024 Words in s. 333C(2)(c) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(7)**; 2020 c. 1, Sch. 5 para. 1(1)

F1025 Words in s. 333C(2)(d) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 80** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

333D Other permitted disclosures etc

(1) A person does not commit an offence under section 333A if the disclosure is—

(a) to the authority that is the supervisory authority for that person by virtue of **[**[F1026]the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**]**; [F1027]...

[[F1028](aa) for the purposes of proceedings under section 336A (power of court to extend moratorium period);

(ab) made in good faith by virtue of section 339ZB (disclosures within the regulated sector); or**]**

(b) for the purpose of—

(i) the detection, investigation or prosecution of a criminal offence (whether in the United Kingdom or elsewhere),

(ii) an investigation under this Act, or

(iii) the enforcement of any order of a court under this Act.

[[F1029](1A) Where an application is made to extend a moratorium period under section 336A, a person does not commit an offence under section 333A if—

(a) the disclosure is made to a customer or client of the person,

(b) the customer or client appears to the person making the disclosure to have an interest in the relevant property, and

(c) the disclosure contains only such information as is necessary for the purposes of notifying the customer or client that the application under section 336A has been made.

"Moratorium period" and "relevant property" have the meanings given in section 336D.**]**

(2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 333A if the disclosure—

(a) is to the adviser's client, and

(b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.

(3) A person does not commit an offence under section 333A(1) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(1)(b).

(4) A person does not commit an offence under section 333A(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(3)(b).

Textual Amendments

F1020 Ss. 333A-333E inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 4**

F1026 Words in s. 333D(1)(a) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(2)** (with regs. 8, 15)

F1027 Word in s. 333D(1)(a) omitted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 37(2)(a)**; S.I. 2017/991, reg. 2(r) (with reg. 1(4)); S.I. 2021/724, reg. 4(h)

F1028 S. 333D(1)(aa)(ab) inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 37(2)(b)**; S.I. 2017/991, reg. 2(r) (with reg. 1(4)); S.I. 2021/724, reg. 4(h)

F1029 S. 333D(1A) inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 37(3)**; S.I. 2017/991, reg. 2(r) (with reg. 1(4)); S.I. 2021/724, reg. 4(h)

333E Interpretation of sections 333A to 333D

(1) For the purposes of sections 333A to 333D, Schedule 9 has effect for determining—

(a) what is a business in the regulated sector, and

(b) what is a supervisory authority.

(2) In those sections—

"credit institution" has the same meaning as in Schedule 9;

"financial institution" means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule.

(3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.

(4) For the purposes of those sections a country or territory imposes "equivalent money laundering requirements" if it imposes requirements equivalent to those laid down in **[**[F1030]Directive 2015/849/EU of the Council of 20th May 2015**]** on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing**[**[F1031], as amended by Directive 2018/843 of the European Parliament and of the Council of 30th May 2018**]**.

(5) In those sections "relevant professional adviser" means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—

(a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

(b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.**]**

Textual Amendments

F1020 Ss. 333A-333E inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 4**

F1030 Words in s. 333E(4) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(3)** (with regs. 8, 15)

F1031 Words in s. 333E(4) inserted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(2)**

334 Penalties

(1) A person guilty of an offence under section 327, 328 or 329 is liable—

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(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.

(2) A person guilty of an offence under section 330, 331**[**[F1032]or 332**]** is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

[[F1033](3) A person guilty of an offence under section 339(1A) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.**]**

Textual Amendments

F1032 Words in s. 334(2) substituted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 5**

F1033 S. 334(3) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 105(3)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

Commencement Information

I289 S. 334 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Consent

335 Appropriate consent

(1) The apropriate consent is—

(a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;

(b) the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;

(c) the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.

(2) A person must be treated as having the appropriate consent if—

(a) he makes an authorised disclosure to a constable or a customs officer, and

(b) the condition in subsection (3) or the condition in subsection (4) is satisfied.

(3) The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.

(4) The condition is that—

(a) before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused, and

(b) the moratorium period has expired.

(5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.

[[F1034](6A) Subsection (6) is subject to—

(a) section 336A, which enables the moratorium period to be extended by court order in accordance with that section, and

(b) section 336C, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).**]**

(7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the person is when he makes the disclosure.

(8) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

[[F1035](8A) Subsection (8) is subject to—

(a) section 336A, which enables the moratorium period to be extended by court order in accordance with that section, and

(b) section 336C, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).**]**

(9) A nominated officer is a person nominated to receive disclosures under section 338.

(10) Subsections (1) to (4) apply for the purposes of this Part.

Textual Amendments

F1034 S. 335(6A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(2)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1)); S.I. 2021/724, reg. 2(1)(c)

F1035 S. 335(8A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(3)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1)); S.I. 2021/724, reg. 2(1)(c)

Commencement Information

I290 S. 335 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

336 Nominated officer: consent

(1) A nominated officer must not give the appropriate consent to the doing of a prohibited act unless the condition in subsection (2), the condition in subsection (3) or the condition in subsection (4) is satisfied.

(2) The condition is that—

(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by **[**[F1036]the **[**[F1037]Director General of the National Crime Agency**]]**, and

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(b) such a person gives consent to the doing of the act.

(3) The condition is that—

(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by **[**[F1038]the **[**[F1039]Director General of the National Crime Agency**]]**, and

(b) before the end of the notice period he does not receive notice from such a person that consent to the doing of the act is refused.

(4) The condition is that—

(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by **[**[F1040]the **[**[F1041]Director General of the National Crime Agency**]]**,

(b) before the end of the notice period he receives notice from such a person that consent to the doing of the act is refused, and

(c) the moratorium period has expired.

(5) A person who is a nominated officer commits an offence if—

(a) he gives consent to a prohibited act in circumstances where none of the conditions in subsections (2), (3) and (4) is satisfied, and

(b) he knows or suspects that the act is a prohibited act.

(6) A person guilty of such an offence is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(7) The notice period is the period of seven working days starting with the first working day after the nominated officer makes the disclosure.

(8) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(9) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the nominated officer is when he gives the appropriate consent.

(10) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(11) A nominated officer is a person nominated to receive disclosures under section 338.

Textual Amendments

F1036 Words in s. 336(2)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 173**; S.I. 2006/378, art. 4(1), Sch. para. 10

F1037 Words in s. 336(2)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 133**; S.I. 2013/1682, art. 3(v)

F1038 Words in s. 336(3)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 173**; S.I. 2006/378, art. 4(1), Sch. para. 10

F1039 Words in s. 336(3)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 133**; S.I. 2013/1682, art. 3(v)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1040 Words in s. 336(4)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 173**; S.I. 2006/378, art. 4(1), Sch. para. 10

F1041 Words in s. 336(4)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 133**; S.I. 2013/1682, art. 3(v)

Commencement Information

I291 S. 336 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1042 336A Power of court to extend the moratorium period

(1) The court may, on an application under this section, grant an extension of a moratorium period if satisfied that—

(a) an investigation is being carried out in relation to a relevant disclosure (but has not been completed),

(b) the investigation is being conducted diligently and expeditiously,

(c) further time is needed for conducting the investigation, and

(d) it is reasonable in all the circumstances for the moratorium period to be extended.

(2) An application under this section may be made only by a senior officer.

(3) The application must be made before the moratorium period would otherwise end.

(4) An extension of a moratorium period must end no later than 31 days beginning with the day after the day on which the period would otherwise end.

(5) Where a moratorium period is extended by the court under this section, it may be further extended by the court (on one or more occasions) on the making of another application.

(6) A moratorium period extended in accordance with subsection (2) or (4) of section 336C may also be further extended by the court on the making of an application under this section.

(7) But the court may not grant a further extension of a moratorium period if the effect would be to extend the period by more than 186 days (in total) beginning with the day after the end of the 31 day period mentioned in section 335(6) or (as the case may be) section 336(8).

(8) Subsections (1) to (4) apply to any further extension of a moratorium period as they apply to the first extension of the period under this section.

(9) An application under this section may be made by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the prohibited act in relation to which the moratorium period in question applies—

(a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

(b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.

(10) In subsection (9)—

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"prohibited act" has the meaning given by section 335(8) or (as the case may be) section 336(10);

"relevant nationality enactment" means any enactment in—

(a) the British Nationality Act 1981,

(b) the Hong Kong Act 1985,

(c) the Hong Kong (War Wives and Widows) Act 1996,

(d) the British Nationality (Hong Kong) Act 1997,

(e) the British Overseas Territories Act 2002, or

(f) an instrument made under any of those Acts.

Textual Amendments

F1042 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1)); S.I. 2021/724, reg. 2(1)(c)

F1042F1043 336B Proceedings under section 336A: supplementary

(1) This section applies to proceedings on an application under section 336A.

(2) The court must determine the proceedings as soon as reasonably practicable.

(3) The court may exclude from any part of the hearing—

(a) an interested person;

(b) anyone representing that person.

(4) The person who made the application may apply to the court for an order that specified information upon which he or she intends to rely be withheld from—

(a) an interested person;

(b) anyone representing that person.

(5) The court may make such an order only if satisfied that there are reasonable grounds to believe that if the specified information were disclosed—

(a) evidence of an offence would be interfered with or harmed,

(b) the gathering of information about the possible commission of an offence would be interfered with,

(c) a person would be interfered with or physically injured,

(d) the recovery of property under this Act would be hindered, or

(e) national security would be put at risk.

(6) The court must direct that the following be excluded from the hearing of an application under subsection (4)—

(a) the interested person to whom that application relates;

(b) anyone representing that person.

(7) Subject to this section, rules of court may make provision as to the practice and procedure to be followed in connection with proceedings in relation to applications under section 336A.

(8) An appeal lies to the appropriate appeal court on a point of law arising from a decision made by the Crown Court in Northern Ireland or by the sheriff.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(9) The appropriate appeal court may on such an appeal make any order that it considers appropriate (subject to the restriction mentioned in section 336A(7)).

(10) The appropriate appeal court is—

(a) in the case of a decision of the Crown Court in Northern Ireland, the Court of Appeal in Northern Ireland;

(b) in the case of a decision of the sheriff, the Sheriff Appeal Court.

(11) For rights of appeal in the case of decisions made by the Crown Court in England and Wales, see section 28 of the Senior Courts Act 1981 (appeals from Crown Court and inferior courts).

Textual Amendments

F1042 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1)); S.I. 2021/724, reg. 2(1)(c)

F1043 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1))

F1042 336C Extension of moratorium period pending determination of proceedings etc

(1) A moratorium period is extended in accordance with subsection (2) where—

(a) an application is made to the court under section 336A for the extension (or further extension) of the moratorium period, and

(b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.

(2) The moratorium period is extended from the time when it would otherwise end until the court determines the application or it is otherwise disposed of.

(3) A moratorium period is extended in accordance with subsection (4) where—

(a) proceedings on an appeal in respect of a decision on an application under section 336A have been brought, and

(b) the period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.

(4) The moratorium period is extended from the time when it would otherwise end until the proceedings are finally determined or otherwise disposed of.

(5) But the maximum period by which the moratorium period is extended by virtue of subsection (2) or (4) is 31 days beginning with the day after the day on which the period would otherwise have ended.

(6) A moratorium period is extended in accordance with subsection (7) where—

(a) an application is made to the court under section 336A for an extension of the period,

(b) the court refuses to grant the application, and

(c) the period would (apart from that subsection) end before the end of the 5 day period.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7) The moratorium period is extended from the time when it would otherwise end until—
  (a) the end of the 5 day period, or
  (b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.

(8) The "5 day period" is the period of 5 working days beginning with the day on which the court refuses to grant the application.

(9) This restriction on the overall extension of a moratorium period mentioned in section 336A(7) applies to an extension of a moratorium period in accordance with any provision of this section as it applies to an extension under an order of the court.

Textual Amendments

F1042 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1)); S.I. 2021/724, reg. 2(1)(c)

F1043 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1))

F1042 336D Sections 336A to 336C: interpretation

(1) This section provides for the meaning of terms used in sections 336A to 336C (and in this section).

(2) "The court" means—
  (a) in relation to England and Wales or Northern Ireland, the Crown Court;
  (b) in relation to Scotland, the sheriff.

(3) "Interested person" means—
  (a) the person who made the relevant disclosure, and
  (b) any other person who appears to the person making the application under section 336A to have an interest in the relevant property.

(4) "Moratorium period" means the period of 31 days mentioned in section 335(6) or (as the case may be) section 336(8), or any such period as extended or further extended by virtue of an order under section 336A or in accordance with any provision of section 336C.

(5) "Relevant disclosure" means—
  (a) where the application under section 336A relates to the moratorium period mentioned in section 335(6), the authorised disclosure mentioned in section 335(2)(a);
  (b) where the application under section 336A relates to the moratorium period mentioned in section 336(8), the disclosure mentioned in section 336(4)(a).

(6) "Relevant property" means any property that would be the subject of the prohibited act (within the meaning of section 335(8) or (as the case may be) section 336(10)) in relation to which the moratorium period in question applies.

(7) In the case of an application to the Crown Court, "senior officer" means—

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(a) the Director General of the National Crime Agency,
(b) any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,
(c) a police officer of at least the rank of inspector,
(d) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that rank,
(e) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank,
(f) a member of staff of the Financial Conduct Authority who is not below such grade as is designated by the Treasury for the purposes of this Part,
(g) the Director of the Serious Fraud Office (or a member of staff of that Office authorised for the purposes of section 336A by virtue of section 2C(2)), or
(h) an accredited financial investigator who falls within a description specified in an order made for the purposes of section 336A by the Secretary of State **[**[F1044]or the Welsh Ministers**]** under section 453.

(8) In the case of an application to the sheriff, "senior officer" means a procurator fiscal.

(9) "Working day" means a day other than—
(a) a Saturday,
(b) a Sunday,
(c) Christmas Day,
(d) Good Friday, or
(e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the application in question under section 336A is made.**]**

Textual Amendments

F1042 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1)); S.I. 2021/724, reg. 2(1)(c)

F1043 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 10(4)**, 58(1)(6); S.I. 2017/991, reg. 2(a) (with reg. 3(1))

F1044 Words in s. 336D(7)(h) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(h)**

Modifications etc. (not altering text)

C85 S. 336D(7)(h) modified by S.I. 2018/196, Sch. para. 11D (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(3)(a)**)

Disclosures

337 Protected disclosures

(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

Status: *Point in time view as at 05/01/2023.*
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(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.

(3) The second condition is that the information or other matter—
  (a) causes the discloser to know or suspect, or
  (b) gives him reasonable grounds for knowing or suspecting,
that another person is engaged in money laundering.

(4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

[[F1045](4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of—
  (a) the identity of the other person mentioned in subsection (3), and
  (b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,
the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).**]**

(5) A disclosure to a nominated officer is a disclosure which—
  (a) is made to a person nominated by the discloser's employer to receive disclosures under**[**[F1046]section 330 or **]** this section, and
  (b) is made in the course of the discloser's employment [F1047]....

Textual Amendments

F1045 S. 337(4A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 104(7)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1046 Words in s. 337(5)(a) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 106(3)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1047 Words in s. 337(5)(b) repealed (1.7.2005) by virtue of Serious Organised Crime and Police Act 2005 (c. 15), **ss. 105(2)**, 178(8), Sch. 17 Pt. 2; S.I. 2005/1521, art. 3(1)(c)(ee)

Commencement Information

I292 S. 337 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

338 Authorised disclosures

(1) For the purposes of this Part a disclosure is authorised if—
  (a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property,
  (b) [F1048]... and
  (c) the first **[**[F1049], second or third**]** condition set out below is satisfied.

(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

Status: *Point in time view as at 05/01/2023.*
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[[F1050](2A) The second condition is that—

(a) the disclosure is made while the alleged offender is doing the prohibited act,

(b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and

(c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.**]**

(3) The **[**[F1051] third **]** condition is that—

(a) the disclosure is made after the alleged offender does the prohibited act,

(b) **[**[F1052]he has a reasonable excuse**]** for his failure to make the disclosure before he did the act, and

(c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

(4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

[[F1053](4A) Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.**]**

(5) A disclosure to a nominated officer is a disclosure which—

(a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures, and

(b) is made in the course of the alleged offender's employment [F1054]....

(6) References to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

Textual Amendments

F1048 S. 338(1)(b) repealed (1.7.2005) by virtue of Serious Organised Crime and Police Act 2005 (c. 15), **ss. 105(4)**, 178(8), Sch. 17 Pt. 2; S.I. 2005/1521, art. 3(1)(c)(ee)

F1049 Words in s. 338(1)(c) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 106(4)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1050 S. 338(2A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 106(5)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1051 Word in s. 338(3) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 106(6)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1052 Words in s. 338(3)(b) substituted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 6**

F1053 S. 338(4A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 37**, 88(1); S.I. 2015/820, reg. 3(k)

F1054 Words in s. 338(5)(b) repealed (1.7.2005) by virtue of Serious Organised Crime and Police Act 2005 (c. 15), **ss. 105(2)**, 178(8), Sch. 17 Pt. 2; S.I. 2005/1521, art. 3(1)(c)(ee)

Commencement Information

I293 S. 338 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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339 Form and manner of disclosures

(1) The Secretary of State may by order prescribe the form and manner in which a disclosure under section 330, 331, 332 or 338 must be made.

[[F1055](1A) A person commits an offence if he makes a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.

(1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.

(2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.

(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must—

(a) state that there is no obligation to comply with the request, and

(b) explain the protection conferred by subsection (4) on a person who complies with the request.**]**

(4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).

[F1056](5) . . . . . .

[F1056](6) . . . . . .

(7) Subsection (2) does not apply to a disclosure made to a nominated officer.

Textual Amendments

F1055 S. 339(1A)-(3) substituted for s. 339(2)(3) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 105(5)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1056 S. 339(5)(6) repealed (E.W.) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8)(8), **Sch. 17 Pt. 2**; S.I. 2005/1521, art. 3(1)(ee)

Commencement Information

I294 S. 339 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[[F1057]339ZA Disclosures to [[F1058]the NCA]

Where a disclosure is made under this Part to a constable or an officer of Revenue and Customs, the constable or officer of Revenue and Customs must disclose it in full to a person authorised for the purposes of this Part by the **[**[F1059]Director General of the National Crime Agency**]** as soon as practicable after it has been made.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1057 S. 339ZA inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 7**

F1058 Words in s. 339ZA title substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 134(a)**; S.I. 2013/1682, **art. 3(v)**

F1059 Words in s. 339ZA substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 134(b)**; S.I. 2013/1682, **art. 3(v)**

[F1060 339ZB Voluntary disclosures within the regulated sector

(1) A person (A) may disclose information to one or more other persons if conditions 1 to 4 are met.

(2) Condition 1 is that—

(a) A is carrying on a business in the regulated sector as a relevant undertaking,

(b) the information on which the disclosure is based came to A in the course of carrying on that business, and

(c) the person to whom the information is to be disclosed (or each of them, where the disclosure is to more than one person) is also carrying on a business in the regulated sector as a relevant undertaking (whether or not of the same kind as A).

(3) Condition 2 is that—

(a) an NCA authorised officer has requested A to make the disclosure, or

(b) the person to whom the information is to be disclosed (or at least one of them, where the disclosure is to more than one person) has requested A to do so.

(4) Condition 3 is that, before A makes the disclosure, the required notification has been made to an NCA authorised officer (see section 339ZC(3) to (5)).

(5) Condition 4 is that A is satisfied that the disclosure of the information will or may assist in determining any matter in connection with a suspicion that a person is engaged in money laundering.

(6) A person may disclose information to A for the purposes of making a disclosure request if, and to the extent that, the person has reason to believe that A has in A's possession information that will or may assist in determining any matter in connection with a suspicion that a person is engaged in money laundering.

Textual Amendments

F1060 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 11**, 58(1)(6); S.I. 2017/991, reg. 2(b); S.I. 2017/1028, reg. 2(a)

339ZC Section 339ZB: disclosure requests and required notifications

(1) A disclosure request must—

(a) state that it is made in connection with a suspicion that a person is engaged in money laundering,

(b) identify the person (if known),

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(c) describe the information that is sought from A, and

(d) specify the person or persons to whom it is requested that the information is disclosed.

(2) Where the disclosure request is made by a person mentioned in section 339ZB(3)(b), the request must also—

(a) set out the grounds for the suspicion that a person is engaged in money laundering, or

(b) provide such other information as the person making the request thinks appropriate for the purposes of enabling A to determine whether the information requested ought to be disclosed under section 339ZB(1).

(3) A required notification must be made—

(a) in the case of a disclosure request made by an NCA authorised officer, by the person who is to disclose information under section 339ZB(1) as a result of the request;

(b) in the case of a disclosure request made by a person mentioned in section 339ZB(3)(b), by the person who made the request.

(4) In a case within subsection (3)(a), the required notification must state that information is to be disclosed under section 339ZB(1).

(5) In a case within subsection (3)(b), the required notification must—

(a) state that a disclosure request has been made,

(b) specify the person to whom the request was made,

(c) identify any person (if known) suspected of being engaged in money laundering in connection with whom the request was made, and

(d) provide all such other information that the person giving the notification would be required to give if making the required disclosure for the purposes of section 330 (see in particular subsection (5)(b) and (c) of that section).

Textual Amendments

F1060 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 11**, 58(1)(6); S.I. 2017/991, reg. 2(b); S.I. 2017/1028, reg. 2(a)

339ZD Section 339ZB: effect on required disclosures under section 330 or 331

(1) This section applies if in any proceedings a question arises as to whether the required disclosure has been made for the purposes of section 330(4) or 331(4)—

(a) by a person (A) who discloses information under section 339ZB(1) as a result of a disclosure request,

(b) by a person (B) who makes a required notification in accordance with section 339ZC(3)(b) in connection with that request, or

(c) by any other person (C) to whom A discloses information under section 339ZB(1) as a result of that request.

(2) The making of a required notification in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of A, B and C.

This is subject to section 339ZE(1) to (8).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) The making of a joint disclosure report in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of the persons who jointly make the report.

This is subject to section 339ZE(10).

(4) A joint disclosure report is a report to an NCA authorised officer that—

(a) is made jointly by A and B (whether or not also jointly with other persons to whom A discloses information under section 339ZB(1)),

(b) satisfies the requirements as to content mentioned in subsection (5),

(c) is prepared after the making of a disclosure by A to B under section 339ZB(1) in connection with a suspicion of a person's engagement in money laundering, and

(d) is sent to the NCA authorised officer before the end of the applicable period.

(5) The requirements as to content are that the report must—

(a) explain the extent to which there are continuing grounds to suspect that the person mentioned in subsection (4)(c) is engaged in money laundering,

(b) identify the person (if known),

(c) set out the grounds for the suspicion, and

(d) provide any other information relevant to the matter.

(6) The applicable period is—

(a) in a case where the disclosure under section 339ZB was made as a result of a disclosure request from an NCA authorised officer by virtue of subsection (3)(a) of that section, whatever period may be specified by the officer when making the request;

(b) in a case where the disclosure was made as a result of a disclosure request from another person by virtue of subsection (3)(b) of that section, the period of 84 days beginning with the day on which a required notification is made in connection with the request.

(7) A joint disclosure report must be—

(a) approved by the nominated officer of each person that jointly makes the report, and

(b) signed by the nominated officer on behalf of each such person.

If there is no nominated officer the report must be approved and signed by another senior officer.

(8) References in this section to A, B or C include—

(a) a nominated officer acting on behalf of A, B or C, and

(b) any other person who is an employee, officer or partner of A, B or C.

Textual Amendments

F1060 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 11**, 58(1)(6); S.I. 2017/991, reg. 2(b); S.I. 2017/1028, reg. 2(a)

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339ZE Limitations on application of section 339ZD(2) and (3)

(1) Subsections (2) and (3) apply in a case where the required notification is made by A (notification made as a result of disclosure request received from NCA authorised officer).

(2) Section 339ZD(2) has effect in the case of A, B or C only so far as relating to—
- (a) the suspicion in connection with which the required notification is made, and
- (b) matters known, suspected or believed as a result of the making of the disclosure request concerned.

(3) Accordingly, section 339ZD(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the disclosure request.

(4) Subsections (5) to (7) apply in a case where the required notification is made by B (notification made as a result of disclosure request received from another undertaking in the regulated sector).

(5) Section 339ZD(2) has effect in the case of A or C only so far as relating to—
- (a) the suspicion in connection with which the notification by B is made, and
- (b) matters known, suspected or believed by A or C as a result of the making of that notification.

(6) Accordingly, section 339ZD(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the notification.

(7) Section 339ZD(2) has effect in the case of B only so far as relating to—
- (a) the suspicion in connection with which the notification is made, and
- (b) matters known, suspected or believed by B at the time of the making of the notification.

(8) If a joint disclosure report is not made before the end of the applicable period (whether the required notification was made by A or B), section 339ZD(2)—
- (a) has effect only so far as relating to any requirement to make the required disclosure that would have otherwise arisen within that period, and
- (b) does not remove a requirement to make the required disclosure so far as arising after the end of that period on the part of any person in respect of matters that may become known, suspected or believed by the person after the time when the required notification was made.

(9) If a joint disclosure report is not made before the end of the applicable period, the person who made the required notification must notify an NCA authorised officer that a report is not being made as soon as reasonably practicable after the period ends.

(10) Section 339ZD(3) has effect only so far as relating to—
- (a) the suspicion in connection with which the report is made, and
- (b) matters known, suspected or believed at the time of the making of the report.

(11) Terms used in this section have the same meanings as in section 339ZD.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1060 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 11**, 58(1)(6); S.I. 2017/991, reg. 2(b); S.I. 2017/1028, reg. 2(a)

339ZF Section 339ZB: supplementary

(1) A relevant disclosure made in good faith does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information,

however imposed.

(2) But a relevant disclosure may not include information obtained from a UK law enforcement agency unless that agency consents to the disclosure.

(3) In a case where a person is acting on behalf of another ("the undertaking") as a nominated officer—

(a) a relevant disclosure by the undertaking must be made by the nominated officer on behalf of the undertaking, and

(b) a relevant disclosure to the undertaking must be made to that officer.

(4) Subsection (1) applies whether or not the conditions in section 339ZB were met in respect of the disclosure if the person making the disclosure did so in the reasonable belief that the conditions were met.

(5) In this section—

"relevant disclosure" means any disclosure made in compliance, or intended compliance, with section 339ZB;

"UK law enforcement agency" means—

(a) the National Crime Agency;

(b) a police force in England, Scotland, Northern Ireland or Wales;

(c) any other person operating in England, Scotland, Northern Ireland or Wales charged with the duty of preventing, detecting, investigating or prosecuting offences.

Textual Amendments

F1060 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 11**, 58(1)(6); S.I. 2017/991, reg. 2(b); S.I. 2017/1028, reg. 2(a)

339ZG Sections 339ZB to 339ZF: interpretation

(1) This section applies for the purposes of sections 339ZB to 339ZF.

(2) "Disclosure request" means a request made for the purposes of condition 2 in section 339ZB(3).

(3) "NCA authorised officer" means a person authorised for the purposes of this Part by the Director General of the National Crime Agency.

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(4) "Nominated officer" means a person nominated to receive disclosures under section 330.

(5) "Relevant undertaking" means any of the following—
- (a) a credit institution;
- (b) a financial institution;
- (c) a professional legal adviser;
- (d) a relevant professional adviser;
- (e) other persons (not within paragraphs (a) to (d)) whose business consists of activities listed in paragraph 1(1) of Schedule 9.

(6) "Required disclosure" has the same meaning as in section 330(5) or (as the case may be) section 331(5).

(7) "Required notification" means a notification made for the purposes of condition 3 in section 339ZB(4).

(8) For the purposes of subsection (5)—
- (a) "credit institution" has the same meaning as in Schedule 9;
- (b) "financial institution" means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule;
- (c) "relevant professional adviser" has the meaning given by section 333E(5).

(9) Schedule 9 has effect for determining what is a business in the regulated sector.**]**

Textual Amendments

F1060 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 11**, 58(1)(6); S.I. 2017/991, reg. 2(b); S.I. 2017/1028, reg. 2(a)

[F1061 Further information orders

Textual Amendments

F1061 Ss. 339ZH-339ZK and cross-heading inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 12**, 58(1)(6); S.I. 2017/991, reg. 2(c) (with reg. 3(2))

339ZH Further information orders

(1) A magistrates' court or (in Scotland) the sheriff may, on an application made by a relevant person, make a further information order if satisfied that either condition 1 or condition 2 is met.

(2) The application must—
- (a) specify or describe the information sought under the order, and
- (b) specify the person from whom the information is sought ("the respondent").

(3) A further information order is an order requiring the respondent to provide—

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(a) the information specified or described in the application for the order, or
(b) such other information as the court or sheriff making the order thinks appropriate,

so far as the information is in the possession, or under the control, of the respondent.

(4) Condition 1 for the making of a further information order is met if—
(a) the information required to be given under the order would relate to a matter arising from a disclosure made under this Part,
(b) the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,
(c) the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and
(d) it is reasonable in all the circumstances for the information to be provided.

(5) Condition 2 for the making of a further information order is met if—
(a) the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,
(b) an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,
(c) the respondent is carrying on a business in the regulated sector,
(d) the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and
(e) it is reasonable in all the circumstances for the information to be provided.

(6) For the purposes of subsection (5), "external request" means a request made by an authority of a foreign country which has responsibility in that country for carrying out investigations into whether a corresponding money laundering offence has been committed.

(7) A further information order must specify—
(a) how the information required under the order is to be provided, and
(b) the date by which it is to be provided.

(8) If a person fails to comply with a further information order made by a magistrates' court, the magistrates' court may order the person to pay an amount not exceeding £5,000.

(9) The sum mentioned in subsection (8) is to be treated as adjudged to be paid by a conviction of the court for the purposes of the Magistrates' Courts Act 1980 or (as the case may be) the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

(10) In order to take account of changes in the value of money the Secretary of State may by regulations substitute another sum for the sum for the time being specified in subsection (8).

(11) Schedule 9 has effect for the purposes of this section in determining what is a business in the regulated sector.

(12) In this section—

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"corresponding disclosure requirement" means a requirement to make a disclosure under the law of the foreign country concerned that corresponds to a requirement imposed by virtue of this Part;

"corresponding money laundering offence" means an offence under the law of the foreign country concerned that would, if done in the United Kingdom, constitute an offence specified in paragraph (a), (b) or (c) of section 340(11);

"foreign country" means a country or territory outside the United Kingdom;

"relevant person" means—

(a) in the case of an application to a magistrates' court, 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, or

(b) in the case of an application to the sheriff, a procurator fiscal.

339ZI Statements

(1) A statement made by a person in response to a further information order may not be used in evidence against the person in criminal proceedings.

(2) Subsection (1) does not apply—

(a) in the case of proceedings under this Part,

(b) on a prosecution for perjury, or

(c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

(4) In subsection (2)(b) the reference to a prosecution for perjury is—

(a) in the case of England and Wales, a reference to a prosecution for an offence under section 5 of the Perjury Act 1911;

(b) in the case of Northern Ireland, a reference to a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

Modifications etc. (not altering text)

C86 S. 339ZI applied by S.I. 2003/425, art. 12A(3) (as inserted (31.1.2018) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017 (S.I. 2017/1280), art. 1(3), **Sch. para. 3**)

C87 S. 339ZI applied by S.I. 2003/425, art. 12B(3) (as inserted (31.1.2018) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017 (S.I. 2017/1280), art. 1(3), **Sch. para. 3**)

C88 S. 339ZI applied by S.I. 2003/425, art. 22A(3) (as inserted (31.1.2018) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017 (S.I. 2017/1280), art. 1(3), **Sch. para. 4**)

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C89 S. 339ZI applied by S.I. 2003/425, art. 22B(3) (as inserted (31.1.2018) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017 (S.I. 2017/1280), art. 1(3), **Sch. para. 4**)

C90 S. 339ZI applied by S.I. 2003/425, art. 32A(3) (as inserted (31.1.2018) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017 (S.I. 2017/1280), art. 1(3), **Sch. para. 5**)

C91 S. 339ZI applied by S.I. 2003/425, art. 32B(3) (as inserted (31.1.2018) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017 (S.I. 2017/1280), art. 1(3), **Sch. para. 5**)

339ZJ Appeals

(1) An appeal from a decision on an application for a further information order lies to the relevant appeal court.

(2) An appeal under this section lies at the instance of any person who was a party to the proceedings on the application.

(3) The "relevant appeal court" is—

(a) the Crown Court, in the case of a decision made by a magistrates' court in England and Wales;

(b) a county court, in the case of a decision made by a magistrates' court in Northern Ireland;

(c) the Sheriff Appeal Court, in the case of a decision made by the sheriff.

(4) On an appeal under this section the relevant appeal court may—

(a) make or (as the case may be) discharge a further information order, or

(b) vary the order.

339ZK Supplementary

(1) A further information order does not confer the right to require a person to provide privileged information.

(2) "Privileged information" is information which a person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court or, in Scotland, legal privilege as defined by section 412.

(3) Information provided in pursuance of a further information order is not to be taken to breach any restriction on the disclosure of information (however imposed).

(4) An application for a further information order may be heard and determined in private.

(5) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to further information orders.**]**

[F1062 Threshold amounts

Textual Amendments

F1062 S. 339A and cross-heading inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(5)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

Status: *Point in time view as at 05/01/2023.*
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339A Threshold amounts

(1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).

(2) The threshold amount for acts done by a deposit-taking body **[**[F1063], electronic money institution or payment institution**]** in operating an account is £**[**[F1064]1,000**]** unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).

(3) An officer of Revenue and Customs, or a constable, may specify the threshold amount for acts done by a deposit-taking body **[**[F1065], electronic money institution or payment institution**]** in operating an account—

(a) when he gives consent, or gives notice refusing consent, to the **[**[F1066]body's or institution's**]** doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or

(b) on a request from the **[**[F1067]body or institution**]**.

(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, an officer of Revenue and Customs, or a constable, may vary the amount (whether on a request from the deposit-taking body **[**[F1068], electronic money institution or payment institution**]** or otherwise) by specifying a different amount.

(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.

(6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).

(7) The Secretary of State may by order vary the amount for the time being specified in subsection (2).

(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body **[**[F1069], electronic money institution or payment institution**]** and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body **[**[F1070]or institution**]** as respects the operation of the account.**]**

Textual Amendments

F1063 Words in s. 339A(2) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(a)**, 49(2)(b)

F1064 Sum in s. 339A(2) substituted (5.1.2023) by The Proceeds of Crime (Money Laundering) (Threshold Amount) Order 2022 (S.I. 2022/1355), arts. 1(1), **2**

F1065 Words in s. 339A(3) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(b)**, 49(2)(b)

F1066 Words in s. 339A(3)(a) substituted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(c)**, 49(2)(b)

F1067 Words in s. 339A(3)(b) substituted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(d)**, 49(2)(b)

F1068 Words in s. 339A(4) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(e)**, 49(2)(b)

F1069 Words in s. 339A(8) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(f)(i)**, 49(2)(b)

F1070 Words in s. 339A(8) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(5)(f)(ii)**, 49(2)(b)

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Interpretation

340 Interpretation

(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which—

(a) constitutes an offence under section 327, 328 or 329,

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(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

(12) For the purposes of a disclosure to a nominated officer—

(a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and

(b) references to employment must be construed accordingly.

(13) References to a constable include references to a person authorised for the purposes of this Part by **[**[F1071]the **[**[F1072]Director General of the National Crime Agency**]]**.

[[F1073](14) "Deposit-taking body" means—

(a) a business which engages in the activity of accepting deposits, [F1074]...

(b) the National Savings Bank **[**[F1075], or

(c) a person specified, or of a description specified, in regulations made by the Treasury or the Secretary of State.**]]**

[[F1076](14A) In subsection (14)(a)—

(a) the reference to the activity of accepting deposits is a reference to that activity so far as it is, for the time being, a regulated activity for the purposes of the Financial Services and Markets Act 2000 by virtue of an order under section 22 of that Act, but

(b) the reference to a business which engages in that activity does not include a person specified, or of a description specified, in regulations made by the Treasury or the Secretary of State.

(14B) Before making regulations under subsection (14A)(b), the Treasury or the Secretary of State (as appropriate) must consult such persons likely to be affected by the regulations, or such representatives of such persons, as they consider appropriate.

(14C) "Electronic money institution" has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).**]**

[[F1077](15) "Further information order" means an order made under section 339ZH.**]**

[[F1078](16) "Payment institution" means an authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752)).**]**

Textual Amendments

F1071 Words in s. 340(13) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 174**; S.I. 2006/378, art. 4(1), Sch. para. 10

F1072 Words in s. 340(13) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 135**; S.I. 2013/1682, art. 3(v)

F1073 S. 340(14) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(6)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1074 Word in s. 340(14)(a) omitted (29.6.2021) by virtue of Financial Services Act 2021 (c. 22), **ss. 32(6)(a)(i)**, 49(2)(b)
F1075 S. 340(14)(c) and word inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(6)(a)(ii)**, 49(2)(b)
F1076 S. 340(14A)-(14C) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(6)(b)**, 49(2)(b)
F1077 S. 340(15) inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 38**; S.I. 2017/991, reg. 2(s)
F1078 S. 340(16) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(6)(c)**, 49(2)(b)

Modifications etc. (not altering text)
C92 S. 340(11)(b) modified (E.W.N.I.) (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 44(a)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

Commencement Information
I295 S. 340 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, **art. 14**)

PART 8

INVESTIGATIONS

CHAPTER 1

INTRODUCTION

Modifications etc. (not altering text)
C93 Pt. 8 Ch. 1: power to modify conferred (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 47**, 61(2); S.I. 2015/813, art. 2(b)

341 Investigations

(1) For the purposes of this Part a confiscation investigation is an investigation into—
(a) whether a person has benefited from his criminal conduct, [F1079]...
(b) the extent or whereabouts of his benefit from his criminal conduct **[**[F1080], or
(c) **[**[F1081]the available amount in respect of the person or**]** the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of him.**]**

(2) **[**[F1082]For the purposes of this Part a civil recovery investigation is an investigation for the purpose of identifying recoverable property or associated property and includes investigation into—
(a) whether property is or has been recoverable property or associated property,
(b) who holds or has held property,
(c) what property a person holds or has held, or
(d) the nature, extent or whereabouts of property.**]**

(3) **[**[F1082]But an investigation is not a civil recovery investigation to the extent that it relates to—

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(a) property in respect of which proceedings for a recovery order have been started,
(b) property to which an interim receiving order applies,
(c) property to which an interim administration order applies, [F1083]...
(d) property detained under section 295 **[**[F1084], 303K or 303L**].[**[F1085], or
(e) property held in an account in relation to which an account freezing order made under section 303Z3 has effect.**]**

[[F1086](3A) For the purposes of this Part a detained cash investigation is **[**[F1087] an investigation for the purposes of Chapter 3 of Part 5 into**]**—
(a) [F1088]... the derivation of cash detained under **[**[F1089]that Chapter**]** or a part of such cash, or
(b) [F1088]... whether cash detained under **[**[F1090]that Chapter**]**, or a part of such cash, is intended by any person to be used in unlawful conduct.**]**

[[F1091](3B) For the purposes of this Part a detained property investigation is an investigation for the purposes of Chapter 3A of Part 5 into—
(a) the derivation of property detained under that Chapter, or a part of such property, or
(b) whether property detained under that Chapter, or a part of such property, is intended by any person to be used in unlawful conduct.

(3C) For the purposes of this Part a frozen funds investigation is an investigation for the purposes of Chapter 3B of Part 5 into—
(a) the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a "frozen account") or of a part of such money, or
(b) whether money held in a frozen account, or a part of such money, is intended by any person to be used in unlawful conduct.**]**

(4) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

[[F1092](5) For the purposes of this Part an exploitation proceeds investigation is an investigation for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) into—
(a) whether a person is a qualifying offender,
(b) whether a person has obtained exploitation proceeds from a relevant offence,
(c) the value of any benefits derived by a person from a relevant offence, or
(d) the available amount in respect of a person.

Paragraphs (a) to (d) are to be construed in accordance with that Part of that Act.**]**

Textual Amendments

F1079 Word in s. 341(1) omitted (1.3.2016) by virtue of Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 55**; S.I. 2016/148, reg. 3(g)

F1080 S. 341(1)(c) and word inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 38(1)**, 88(1); S.I. 2016/148, reg. 3(c)

F1081 Words in s. 341(1)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 33**, 58(1)(6); S.I. 2018/78, reg. 3(q); S.I. 2021/724, reg. 2(1)(r)

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F1082 S. 341(2)(3) substituted (1.6.2015 for E.W.S., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 2**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1083 Word in s. 341(3)(c) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 39(2)(a)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii); S.I. 2021/724, reg. 4(i)

F1084 Words in s. 341(3)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 39(2)(b)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii); S.I. 2021/724, reg. 4(i)

F1085 S. 341(3)(e) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 39(2)(c)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii); S.I. 2021/724, reg. 4(i)

F1086 S. 341(3A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 75(1)**, 94(1); S.I. 2008/755, art. 17(1)(a)

F1087 Words in s. 341(3A) inserted (1.6.2015 for E.W.S., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 25(a)**; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1088 Words in s. 341(3A)(a)(b) omitted (1.6.2015 for E.W.S., 1.2.2017 in so far as not already in force) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 25(b)**; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1089 Words in s. 341(3A)(a) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 110**; S.I. 2015/983, arts. 2(2)(e), 3(hh); S.I. 2016/147, art. 3(j)

F1090 Words in s. 341(3A)(b) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 110**; S.I. 2015/983, arts. 2(2)(e), 3(hh); S.I. 2016/147, art. 3(j)

F1091 S. 341(3B)(3C) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 39(3)**; S.I. 2018/78, reg. 5(3)(b)(i)(ii); S.I. 2021/724, reg. 4(i)

F1092 S. 341(5) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 2** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

Commencement Information

I296 S. 341 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1093 341A Orders and warrants sought for civil recovery investigations

Where an application under this Part for an order or warrant specifies property that is subject to a civil recovery investigation, references in this Part to the investigation for the purposes of which the order or warrant is sought include investigation into—

(a) whether a person who appears to hold or to have held the specified property holds or has held other property,

(b) whether the other property is or has been recoverable property or associated property, and

(c) the nature, extent or whereabouts of the other property.]

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Textual Amendments

F1093 S. 341A inserted (1.6.2015 for E.W.S., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 3**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

342 Offences of prejudicing investigation

(1) This section applies if a person knows or suspects that an appropriate officer or (in Scotland) a proper person is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation **[**[F1094], a detained cash investigation **][**[F1095], a detained property investigation, a frozen funds investigation**][**[F1096], an exploitation proceeds investigation**]** or a money laundering investigation which is being or is about to be conducted.

(2) The person commits an offence if—

(a) he makes a disclosure which is likely to prejudice the investigation, or

(b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if—

(a) he does not know or suspect that the disclosure is likely to prejudice the investigation,

(b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act, or

[[F1097](ba) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector,**]**

[[F1098](bb) the disclosure is made in the exercise of a function under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) or in compliance with a requirement imposed under or by virtue of that Act,**]**

(c) he is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure—

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.

(6) A person does not commit an offence under subsection (2)(b) if—

(a) he does not know or suspect that the documents are relevant to the investigation, or

(b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer or (in Scotland) proper person carrying out the investigation.

(7) A person guilty of an offence under subsection (2) is liable—

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(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(8) For the purposes of this section—

(a) "appropriate officer" must be construed in accordance with section 378;

(b) "proper person" must be construed in accordance with section 412.

[[F1099](c) Schedule 9 has effect for determining what is a business in the regulated sector.**]**

Textual Amendments

F1094 Words in s. 342(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 2**; S.I. 2008/755, art. 17(1)(d)(ii)

F1095 Words in s. 342(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 40**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1096 Words in s. 342(1) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 3(a)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1097 S. 342(3)(ba) inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 8(2)**

F1098 S. 342(3)(bb) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 3(b)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1099 S. 342(8)(c) inserted (26.12.2007) by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (S.I. 2007/3398), reg. 1(2), **Sch. 2 para. 8(3)**

Modifications etc. (not altering text)

C94 S. 342 applied (24.2.2003) by Proceeds of Crime Act 2002 (Crown Servants) Regulations 2003 (S.I. 2003/173), regs. 1, **3**

Commencement Information

I297 S. 342 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3-6) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

CHAPTER 2

ENGLAND AND WALES AND NORTHERN IRELAND

Modifications etc. (not altering text)

C95 Pt. 8 Ch. 2: power to modify conferred (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 47**, 61(2); S.I. 2015/813, art. 2(b)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Judges and courts

343 Judges

(1) In this Chapter references to a judge in relation to an application must be construed in accordance with this section.

(2) In relation to an application for the purposes of a confiscation investigation **[**[F1100], a money laundering investigation **[**[F1101], a detained cash investigation, a detained property investigation or a frozen funds investigation**]]** a judge is—

(a) in England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;

(b) in Northern Ireland, a Crown Court judge.

(3) In relation to an application for the purposes of a civil recovery investigation **[**[F1102]or an exploitation proceeds investigation**]**[F1103]... a judge is a judge of the High Court.

Textual Amendments

F1100 Words in s. 343(2) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 66(2)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a) (with art. 5); S.I. 2016/147, art. 3(f) (with art. 5)

F1101 Words in s. 343(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 41**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1102 Words in s. 343(3) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 4** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1103 Words in s. 343(3) repealed (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(2)(b), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

Commencement Information

I298 S. 343 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

344 Courts

In this Chapter references to the court are to—

(a) the Crown Court, in relation to an order for the purposes of a confiscation investigation **[**[F1104], a money laundering investigation **[**[F1105], a detained cash investigation, a detained property investigation or a frozen funds investigation**]]**;

(b) the High Court, in relation to an order for the purposes of a civil recovery investigation **[**[F1106]or an exploitation proceeds investigation **]**[F1107]...

Textual Amendments

F1104 Words in s. 344(a) substituted (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 66(3)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a) (with art. 5); S.I. 2016/147, art. 3(f) (with art. 5)

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F1105 Words in s. 344(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 42**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1106 Words in s. 344(b) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 5** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1107 Words in s. 344(b) repealed (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(3)(b), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

Commencement Information

I299 S. 344 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Production orders

345 Production orders

(1) A judge may, on an application made to him by an appropriate officer, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a production order must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1108], a civil recovery investigation**][**[F1109], an exploitation proceeds investigation **]** or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation **[**[F1110], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**.

(3) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought in relation to material, or material of a description, specified in the application;

(c) a person specified in the application appears to be in possession or control of the material.

(4) A production order is an order either—

(a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate officer for him to take away, or

(b) requiring that person to give an appropriate officer access to the material,

within the period stated in the order.

(5) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

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Textual Amendments

F1108 Words in s. 345(2)(a) inserted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 4**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1109 Words in s. 345(2)(a) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 6** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1110 Words in s. 345(2)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 43**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Modifications etc. (not altering text)

C96 S. 345(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(3)(4)**, 13(3)(4), 23(3)(4), 24(3)

C97 S. 345(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(3)**, (4)

C98 S. 345(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(3)**, (4)

C99 S. 345(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(3)**

Commencement Information

I300 S. 345 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

346 Requirements for making of production order

(1) These are the requirements for the making of a production order.

(2) There must be reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;

[F1111(b) in the case of a civil recovery investigation—

(i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;]

[F1112(ba) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(bb) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;]

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[[F1113](bc) in the case of a detained property investigation into the derivation of property, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(bd) in the case of a detained property investigation into the intended use of property, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;

(be) in the case of a frozen funds investigation into the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a "frozen account"), the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(bf) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;**]**

(c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.

[[F1114](d) in the case of an exploitation proceeds investigation, the person the application for the order specifies as being subject to the investigation is within subsection (2A).**]**

[[F1115](2A) A person is within this subsection if, for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc), exploitation proceeds have been obtained by the person from a relevant offence by reason of any benefit derived by the person.

This subsection is to be construed in accordance with that Part.**]**

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to—

(a) the benefit likely to accrue to the investigation if the material is obtained;

(b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Textual Amendments

F1111 S. 346(2)(b) substituted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 5**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1112 S. 346(2)(ba)(bb) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 75(3)**, 94(1); S.I. 2008/755, art. 17(1)(a)

F1113 S. 346(2)(bc)-(bf) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not

already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 44**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1114 S. 346(2)(d) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 7(a)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1115 S. 346(2A) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 7(b)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

Commencement Information

I301 S. 346 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

347 Order to grant entry

(1) This section applies if a judge makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) The judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

Modifications etc. (not altering text)

C100 S. 347(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(3)**, (4)

C101 S. 347(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(3)**(4), 13(3)(4), 23(3)(4), 24(3)

C102 S. 347(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(3)**, (4)

C103 S. 347(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(3)**

Commencement Information

I302 S. 347 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

348 Further provisions

(1) A production order does not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(3) A production order does not require a person to produce, or give access to, excluded material.

(4) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(6) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.

(7) But if an appropriate officer has reasonable grounds for believing that—

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Modifications etc. (not altering text)

C104 S. 348(1)-(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(6)**, 4(6), 13(6), 14(6),

C105 S. 348(1)-(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(6)**

C106 S. 348(1)-(4) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(6)**

C107 S. 348(1)-(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(6)**

C108 S. 348(1)-(4) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(6)**, 24(6)

C109 S. 348(1)-(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(6)**

C110 S. 348(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(3)**, (4)

C111 S. 348(5)(7) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(3)**, (4)

C112 S. 348(5)(7) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(3)**

C113 S. 348(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(3)**(4), 13(3)(4), 23(3)(4), 24(3)

C114 S. 348(7) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(3)**(4), 13(3)(4), 23(3)(4), 24(3)

C115 S. 348(7) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(3)**, (4)

Commencement Information

I303 S. 348 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

349 Computer information

(1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

Status: *Point in time view as at 05/01/2023.*
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(2) If the order is an order requiring a person to produce the material to an appropriate officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

(3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

Modifications etc. (not altering text)

C116 S. 349 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(3)**, (4)

C117 S. 349 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(3)**(4), 13(3)(4), 23(3)(4), 24(3)

C118 S. 349 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(3)**, (4)

C119 S. 349 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(3)**

Commencement Information

I304 S. 349 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

350 Government departments

(1) A production order may be made in relation to material in the possession or control of an authorised government department.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department.

(4) If an order contains such a requirement—

(a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;

(b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 345(4)) the person on whom it is served must report the reasons for the failure to—

(a) a judge entitled to exercise the jurisdiction of the Crown Court or (in Northern Ireland) a Crown Court judge, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation **[**[F1116], a money laundering investigation **[**[F1117], a detained cash investigation, a detained property investigation or a frozen funds investigation**]]**;

(b) a High Court judge, in the case of an order made for the purposes of a civil recovery investigation **[**[F1118]or an exploitation proceeds investigation**]**[F1119]...

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(6) An authorised government department is a government department, or a Northern Ireland department, which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44).

Textual Amendments

F1116 Words in s. 350(5)(a) substituted (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 66(4)(a)**, 116(1); S.I. 2015/983, art. 2(2)(a) (with art. 5); S.I. 2016/147, art. 3(f) (with art. 5)

F1117 Words in s. 350(5)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 45**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1118 Words in s. 350(5)(b) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 8** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1119 Words in s. 350(5)(b) repealed (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(4)(b), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

Modifications etc. (not altering text)

C120 S. 350 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(7)**

C121 S. 350 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **13(7)**

C122 S. 350 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(7)**, 24(7)

C123 S. 350 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(7)**

C124 S. 350 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(7)**

C125 S. 350 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **3(7)**, 4(7), 13(7), 14(7)

Commencement Information

I305 S. 350 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

351 Supplementary

(1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.

(3) An application to discharge or vary a production order or an order to grant entry may be made to the court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court—

(a) may discharge the order;

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(b) may vary the order.

[[F1120](5) An application to discharge or vary a production order or an order to grant entry need not be made by the same appropriate officer that applied for the order (but must be made by an appropriate officer of the same description).

(5A) If the application for the order was, by virtue of an order under section 453, made by an accredited financial investigator of a particular description, the reference in subsection (5) to an appropriate officer of the same description is to another accredited financial investigator of that description.**]**

(6) References to a person who applied for a production order or an order to grant entry must be construed accordingly.

(7) Production orders and orders to grant entry have effect as if they were orders of the court.

(8) Subsections (2) to (7) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation **[**[F1121]or an exploitation proceeds investigation**]**[F1122]....

Textual Amendments

F1120 S. 351(5)(5A) substituted for s. 351(5) (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 46**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1121 Words in s. 351(8) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 9** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1122 Words in s. 351(8) repealed (22.11.2014 for specified purposes, 1.6.2015 for E.W.S. in so far as not already in force, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(5), 116(1), **Sch. 8 Pt. 5**; S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

Commencement Information

I306 S. 351 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Search and seizure warrants

352 Search and seizure warrants

(1) A judge may, on an application made to him by an appropriate officer, issue a search and seizure warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.

(2) The application for a search and seizure warrant must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1123], a civil recovery investigation**][**[F1124], an exploitation proceeds investigation**]** or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation **[**[F1125], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**.

Status: *Point in time view as at 05/01/2023.*
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(3) The application must also state—

(a) that the warrant is sought for the purposes of the investigation;

(b) that the warrant is sought in relation to the premises specified in the application;

(c) that the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 353(6), (7) **[**[F1126], (7A), (7B)**]** or (8) on the premises.

(4) A search and seizure warrant is a warrant authorising an appropriate person—

(a) to enter and search the premises specified in the application for the warrant, and

(b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

(5) An appropriate person is—

[F1127](a) . . . . . .

(b) **[**[F1128]a Financial Conduct Authority officer,**]** a **[**[F1129]**[**[F1130]National Crime Agency officer **[**[F1131], an officer of Revenue and Customs**]** or a member**]** of the staff of the relevant Director**]**, if the warrant is sought for the purposes of a civil recovery investigation.

[[F1132](c) a constable **[**[F1133]an SFO officer,**]****[**[F1134], an accredited financial investigator**]** or an officer of Revenue and Customs **[**[F1135]or an immigration officer**]**, if the warrant is sought for the purposes of a detained cash investigation **[**[F1136], a confiscation investigation or a money laundering investigation**]**.**]**

[[F1137](ca) a constable, an SFO officer, an accredited financial investigator or an officer of Revenue and Customs, if the warrant is sought for the purposes of a detained property investigation;

(cb) a constable, an SFO officer, an accredited financial investigator or an officer of Revenue and Customs, if the warrant is sought for the purposes of a frozen funds investigation;**]**

[[F1138](d) a **[**[F1139]National Crime Agency officer**]**, if the warrant is sought for the purposes of an exploitation proceeds investigation.**]**

[[F1140](5A) In this Part "relevant Director"—

(a) in relation to England and Wales, means the Director of Public Prosecutions [F1141]... or the Director of the Serious Fraud Office; and

(b) in relation to Northern Ireland, means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.**]**

(6) The requirements for the issue of a search and seizure warrant are—

(a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or

(b) that section 353 is satisfied in relation to the warrant.

[[F1142](7) The reference in **[**[F1143]paragraph [F1144]... (c)**]****[**[F1143]paragraphs (c), (ca) and (cb)**]** of subsection (5) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State **[**[F1145]or the Welsh Ministers**]** under section 453.**]**

Status: *Point in time view as at 05/01/2023.*
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[[F1146](8) Criminal Procedure Rules may make provision about proceedings under this section on an application to a judge entitled to exercise the jurisdiction of the Crown Court in England and Wales.**]**

Textual Amendments

F1123 Words in s. 352(2)(a) inserted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 6**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1124 Words in s. 352(2)(a) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 10(a)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1125 Words in s. 352(2)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 47(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1126 Words in s. 352(3)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 7(2)**; S.I. 2008/755, art. 17(1)(d)(ii)

F1127 S. 352(5)(a) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 48 para. 12(2)(a)**

F1128 Words in s. 352(5)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 47(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1129 Words in s. 352(5)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 105(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1130 Words in s. 352(5)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 137(a)**; S.I. 2013/1682, art. 3(v)

F1131 Words in s. 352(5)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 47(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1132 S. 352(5)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 7(3)**; S.I. 2008/755, art. 17(1)(d)(ii)

F1133 Words in s. 352(5)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 47(3)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1134 Words in s. 352(5)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 80(1)(b)**, 94(1); S.I. 2008/755, art. 17(1)(g)

F1135 Words in s. 352(5)(c) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 31(b)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

F1136 Words in s. 352(5)(c) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 12(2)(b)**

F1137 S. 352(5)(ca)(cb) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 47(3)(d)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1138 S. 352(5)(d) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 10(b)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1139 Words in s. 352(5)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 137(b)**; S.I. 2013/1682, art. 3(v)

F1140 S. 352(5A) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 105(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1141 Words in s. 352(5A)(a) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 26**

F1142 S. 352(7) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 80(2)**, 94(1); S.I. 2008/755, art. 17(1)(g)

F1143 Words in s. 352(7) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 47(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1144 Words in s. 352(7) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 48 para. 12(3)**

F1145 Words in s. 352(7) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(f)**

F1146 S. 352(8) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 82(6)**, 115(7); S.I. 2015/994, art. 6(o)

Modifications etc. (not altering text)

C126 S. 352(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **5(2)**, 15(2), 25(2), 26(2)

C127 S. 352(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **5(3)**(4), 15(3)(4), 25(3)(4), 26(3)(4) (as amended (6.4.2008) by S.I. 2008/298, arts. 1(2), **2(3)**(6))

C128 S. 352(5)(c) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 4**

C129 S. 352(5)(ca)(cb) modified by S.I. 2018/196, Sch. para. 4 (as amended (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(c)**)

Commencement Information

I307 S. 352 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

353 Requirements where production order not available

(1) This section is satisfied in relation to a search and seizure warrant if—

(a) subsection (2) applies, and

(b) either the first or the second set of conditions is complied with.

(2) This subsection applies if there are reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;

[F1147(b) in the case of a civil recovery investigation—

(i) the person specified in the application for the warrant holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property specified in the application for the warrant is recoverable property or associated property;]

[F1148(ba) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;

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(bb) in the case of a detailed cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;**]**

[[F1149](bc) in the case of a detained property investigation into the derivation of property, the property specified in the application for the warrant, or a part of it, is recoverable property;

(bd) in the case of a detained property investigation into the intended use of property, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;

(be) in the case of a frozen funds investigation into the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a "frozen account"), the property specified in the application for the warrant, or a part of it, is recoverable property;

(bf) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;**]**

(c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.

[[F1150](d) in the case of an exploitation proceeds investigation, the person specified in the application for the warrant is within section 346(2A).**]**

(3) The first set of conditions is that there are reasonable grounds for believing that—

(a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought,

(b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).

(4) The reasons are—

(a) that it is not practicable to communicate with any person against whom the production order could be made;

(b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises;

(c) that the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.

(5) The second set of conditions is that—

(a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7) **[**[F1151], (7A), (7B)**][**[F1152], (7C), (7D), (7E), (7F)**][**[F1153], (8) or (8A)**]**,

(b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) any one or more of the requirements in subsection (9) is met.

(6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct **[**[F1154]or of realisable property available for satisfying a confiscation order made in respect of him**]** or any question as to the extent or whereabouts of his benefit from his criminal conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

[[F1155](a) relates to the person or property specified in the application or to any of the questions listed in subsection (7ZA), and**]**

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

[[F1156](7ZA) Those questions are—

(a) where a person is specified in the application, any question as to—

(i) what property the person holds or has held,

(ii) whether the property is or has been recoverable property or associated property, or

(iii) the nature, extent or whereabouts of the property, and

(b) where property is specified in the application, any question as to—

(i) whether the property is or has been recoverable property or associated property,

(ii) who holds it or has held it,

(iii) whether a person who appears to hold or to have held it holds or has held other property,

(iv) whether the other property is or has been recoverable property or associated property, or

(v) the nature, extent or whereabouts of the specified property or the other property.**]**

[[F1157](7A) In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7B) In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.**]**

[[F1158](7C) In the case of a detained property investigation into the derivation of property, material falls within this subsection if it cannot be identified at the time of the application but it—

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7D) In the case of a detained property investigation into the intended use of property, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7E) In the case of a frozen funds investigation into the derivation of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7F) In the case of a frozen funds investigation into the intended use of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.**]**

(8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

[[F1159](8A) In the case of an exploitation proceeds investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the person specified in the application, the question whether exploitation proceeds have been obtained from a relevant offence in relation to that person, any question as to the extent or whereabouts of any benefit as a result of which exploitation proceeds are obtained or any question about the person's available amount, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

This subsection is to be construed in accordance with Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).**]**

(9) The requirements are—

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(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that entry to the premises will not be granted unless a warrant is produced;

(c) that the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.

(10) An appropriate person is—

[F1160](a) . . . . . .

(b) **[**[F1161]a Financial Conduct Authority officer,**]** a **[**[F1162]National Crime Agency officer **[**[F1163], an officer of Revenue and Customs**]** or a member**][**[F1164]of the staff of the relevant Director**]**, if the warrant is sought for the purposes of a civil recovery investigation.

[[F1165](c) a constable, **[**[F1166]an SFO officer,**][**[F1167] an accredited financial**][**[F1168]investigator,**]** an officer of Revenue and Customs **[**[F1169]or an immigration officer**]**, if the warrant is sought for the purposes of a detained cash investigation **[**[F1170], a confiscation investigation or a money laundering investigation**].]**

[[F1171](ca) a constable, an SFO officer, an accredited financial investigator or an officer of Revenue and Customs, if the warrant is sought for the purposes of a detained property investigation;

(cb) a constable, an SFO officer, an accredited financial investigator or an officer of Revenue and Customs, if the warrant is sought for the purposes of a frozen funds investigation;**]**

[[F1172](d) a **[**[F1173]National Crime Agency officer**]**, if the warrant is sought for the purposes of an exploitation proceeds investigation.**]**

[[F1174](11) The reference in **[**[F1175]paragraphs (c), (ca) and (cb)**]** of subsection (10) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State **[**[F1176]or the Welsh Ministers**]** under section 453.**]**

Textual Amendments

F1147 S. 353(2)(b) substituted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 7(2)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1148 S. 353(2)(ba)(bb) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 76(2)**, 94(1); S.I. 2008/755, art. 17(1)(b)

F1149 S. 353(2)(bc)-(bf) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1150 S. 353(2)(d) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 11(a)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1151 Words in s. 353(5)(a) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 8(2)**; S.I. 2008/755, art. 17(1)(d)(ii)

F1152 Words in s. 353(5)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1153 Words in s. 353(5)(a) substituted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 11(b)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1154 Words in s. 353(6)(a) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 38(2)**, 88(1); S.I. 2016/148, reg. 3(c)

F1155 S. 353(7)(a) substituted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 7(3)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1156 S. 353(7ZA) inserted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 7(4)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1157 S. 353(7A)(7B) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 76(3)**, 94(1); S.I. 2008/755, art. 17(1)(b)

F1158 S. 353(7C)-(7F) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1159 S. 353(8A) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 11(c)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1160 S. 353(10)(a) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 48 para. 13(2)(a)**

F1161 Words in s. 353(10)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(5)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1162 Words in s. 353(10)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 138(a)**; S.I. 2013/1682, art. 3(v)

F1163 Words in s. 353(10)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(5)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1164 Words in s. 353(10)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 106**; S.I. 2008/755, **art. 2(1)(a)** (with arts. 3-14)

F1165 S. 353(10)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 8(3)**; S.I. 2008/755, art. 17(1)(d)(ii)

F1166 Words in s. 353(10)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(5)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1167 Words in s. 353(10)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 80(3)(b)**, 94(1); S.I. 2008/755, art. 17(1)(g)

F1168 Word in s. 353(10)(c) substituted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 32(b)(i)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

F1169 Words in s. 353(10)(c) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 32(b)(ii)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

F1170 Words in s. 353(10)(c) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 13(2)(b)**

F1171 S. 353(10)(ca)(cb) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(5)(d)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1172 S. 353(10)(d) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 11(d)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1173 Words in s. 353(10)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 138(b)**; S.I. 2013/1682, art. 3(v)

F1174 S. 353(11) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 80(4)**, 94(1); S.I. 2008/755, art. 17(1)(g)

Status: *Point in time view as at 05/01/2023.*
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F1175 Words in s. 353(11) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 48(6)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1176 Words in s. 353(11) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(g)**

Modifications etc. (not altering text)

C130 S. 353(10)(c) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 5**

C131 S. 353(10)(ca)(cb) modified by S.I. 2018/196, Sch. para. 5 (as amended (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(d)**)

Commencement Information

I308 S. 353 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

354 Further provisions: general

(1) A search and seizure warrant does not confer the right to seize privileged material.

(2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(3) A search and seizure warrant does not confer the right to seize excluded material.

Modifications etc. (not altering text)

C132 S. 354 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **25(5)**, 26(5)

C133 S. 354 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **16(3)**

C134 S. 354 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **26(5)**

C135 S. 354 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **15(5)**

C136 S. 354 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **5(5)**, 6(3), 15(5), 16(3)

C137 S. 354 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **6(3)**

Commencement Information

I309 S. 354 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

355 Further provisions: confiscation [F1177, money laundering, detained cash, detained property and frozen funds investigations]

(1) This section applies to—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) search and seizure warrants sought for the purposes of a confiscation investigation **[**[F1178], a money laundering investigation **[**[F1179], a detained cash investigation, a detained property investigation or a frozen funds investigation**]]**, and

(b) powers of seizure under them.

(2) In relation to such warrants and powers, the Secretary of State may make an order which applies **[**[F1180], in relation to England and Wales,**]** the provisions to which **[**[F1181]subsection (3) applies**]** subject to any specified modifications.

(3) This subsection applies to the following provisions of the Police and Criminal Evidence Act 1984 (c. 60)—

(a) section 15 (search warrants -safeguards);

(b) section 16 (execution of warrants);

(c) section 21 (access and copying);

(d) section 22 (retention).

[[F1182](3A) In relation to such warrants and powers, the Department of Justice in Northern Ireland may make an order which applies, in relation to Northern Ireland, the provisions to which subsection (4) applies subject to any specified modifications.**]**

(4) This subsection applies to the following provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))—

(a) Article 17 (search warrants -safeguards);

(b) Article 18 (execution of warrants);

(c) Article 23 (access and copying);

(d) Article 24 (retention).

Textual Amendments

F1177 Words in s. 355 heading substituted (27.4.2017 for specified purposes, 30.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 49(2)**; S.I. 2018/78, reg. 2(j); S.I. 2021/724, reg. 4(i)

F1178 Words in s. 355(1)(a) substituted (22.11.2014 for specified purposes, 1.6.2015 for E.W.S. in so far as not already in force, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 66(6)**, 116(1); S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(a) (with art. 5); S.I. 2016/147, art. 3(f) (with art. 5)

F1179 Words in s. 355(1)(a) substituted (27.4.2017 for specified purposes, 30.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 49(3)**; S.I. 2018/78, reg. 2(j); S.I. 2021/724, reg. 4(i)

F1180 Words in s. 355(2) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 66(2)(a)** (with arts. 28-31)

F1181 Words in s. 355(2) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 66(2)(b)** (with arts. 28-31)

F1182 S. 355(3A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 66(3)** (with arts. 28-31)

Commencement Information

I310 S. 355 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

356 Further provisions: civil recovery [F1183]... [[F1184]and exploitation proceeds investigations]

(1) This section applies to search and seizure warrants sought for the purposes of civil recovery investigations **[**[F1185]or exploitation proceeds investigations **]**[F1186]....

(2) An application for a warrant may be made ex parte to a judge in chambers.

(3) A warrant may be issued subject to conditions.

(4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.

(5) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form—

(a) in which it can be taken away, and

(b) in which it is visible and legible.

[F1187](6) . . . . . .

(7) A warrant may include provision authorising a person who is exercising powers under it to do other things which—

(a) are specified in the warrant, and

(b) need to be done in order to give effect to it.

(8) Copies may be taken of any material seized under a warrant.

(9) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.

(10) But **[**[F1188]if an appropriate officer has reasonable**]** grounds for believing that—

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

[F1189](11) . . . . . .

[F1190](12) . . . . . .

Textual Amendments

F1183 Words in s. 356 heading repealed (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(7)(a), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5);

F1184 Words in s. 356 heading inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 50**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1185 Words in s. 356(1) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 12** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

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F1186 Words in s. 356(1) repealed (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(7)(b), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

F1187 S. 356(6) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 107(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1188 Words in s. 356(10) substituted (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 66(7)(c)**, 116(1); S.I. 2015/983, art. 2(2)(a) (with art. 5); S.I. 2016/147, art. 3(f) (with art. 5)

F1189 S. 356(11) repealed (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(7)(d), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

F1190 S. 356(12) repealed (1.6.2015 for E.W., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), ss. 66(7)(d), 116(1), **Sch. 8 Pt. 5**; S.I. 2015/983, art. 2(2)(a)(g) (with art. 5); S.I. 2016/147, art. 3(f)(l) (with art. 5)

Commencement Information

I311 S. 356 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1191 356A Certain offences in relation to execution of search and seizure warrants

(1) A person commits an offence if the person assaults an appropriate person who is acting in the exercise of a power conferred by a search and seizure warrant issued under section 352.

(2) A person commits an offence if the person resists or wilfully obstructs an appropriate person who is acting in the exercise of a power conferred by a search and seizure warrant issued under section 352.

(3) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine, or to both;

(b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

(4) A person guilty of an offence under subsection (2) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 3 on the standard scale, or to both;

(b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 1 month, or to a fine not exceeding level 3 on the standard scale, or to both.

(5) An appropriate person is—

(a) a National Crime Agency officer, a Financial Conduct Authority officer or a member of the staff of the relevant Director, if the warrant was issued for the purposes of a civil recovery investigation;

(b) a National Crime Agency officer, if the warrant was issued for the purposes of an exploitation proceeds investigation.

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(6) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales)—

(a) the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months;

(b) the reference in subsection (4)(a) to 51 weeks is to be read as a reference to 1 month.**]**

Textual Amendments

F1191 S. 356A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. for specified purposes, 28.6.2021 for N.I. in so far as not already in force, 28.6.2021 for E.W. for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 22**, 58(1)(6); S.I. 2018/78, reg. 3(g); S.I. 2021/724, reg. 2(1)(j)(2)(a)

Disclosure orders

357 Disclosure orders

(1) A judge may, on an application made to him by **[**[F1192]the relevant authority**]**, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for a disclosure order may be made in relation to a **[**[F1193]detained cash investigation **][**[F1194], a detained property investigation or a frozen funds investigation**]**[F1195]....

[F1196](2A) . . . . . .

(3) The application for a disclosure order must state that—

(a) a person specified in the application is subject to a confiscation investigation which is being carried out by **[**[F1197]an appropriate officer**]** and the order is sought for the purposes of the investigation, or

(b) **[**[F1198]a person specified in the application or**]** property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation**[**[F1199], or

[[F1200](ba) a person specified in the application is subject to a money laundering investigation which is being carried out by an appropriate officer and the order is sought for the purposes of the investigation, or**]**

(c) a person specified in the application is subject to an exploitation proceeds investigation and the order is sought for the purposes of the investigation.**]**

(4) A disclosure order is an order authorising **[**[F1201]an appropriate officer**]** to give to any person **[**[F1202]the appropriate officer**]** considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following—

(a) answer questions, either at a time specified in the notice or at once, at a place so specified;

(b) provide information specified in the notice, by a time and in a manner so specified;

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(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(5) Relevant information is information (whether or not contained in a document) which **[**[F1203]the appropriate officer concerned**]** considers to be relevant to the investigation.

(6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

[[F1204](7) In this Part "relevant authority" means—

(a) in relation to a confiscation investigation, **[**[F1205]an appropriate officer**]**; and

(b) in relation to a civil recovery investigation, **[**[F1206]a Financial Conduct Authority officer,**]** a **[**[F1207]National Crime Agency officer**][**[F1208], an officer of Revenue and Customs**]** or the relevant Director **[**[F1209]; and

[F1210]**[** (ba) in relation to a money laundering investigation, an appropriate officer, and**]**

(c) in relation to an exploitation proceeds investigation, a **[**[F1207]National Crime Agency officer**].]**

[F1211](8) . . . . . .

[F1211](9) . . . . . .**]**

Textual Amendments

F1192 Words in s. 357(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 108(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1193 Words in s. 357(2) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 10**; S.I. 2008/755, art. 17(1)(d)(ii)

F1194 Words in s. 357(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 51(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1195 Words in s. 357(2) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 7(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1196 S. 357(2A) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 7(2)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1197 Words in s. 357(3)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 108(4)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1198 Words in s. 357(3)(b) inserted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 8**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1199 S. 357(3)(c) and preceding word added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 13(a)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1200 S. 357(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 7(2)(c)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1201 Words in s. 357(4) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 108(5)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1202 Words in s. 357(4) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 108(5)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

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F1203 Words in s. 357(5) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 108(6)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1204 S. 357(7)-(9) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 108(7)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1205 Words in s. 357(7)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 7(2)(d)(i)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1206 Words in s. 357(7)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 51(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1207 Words in s. 357 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 139**; S.I. 2013/1682, art. 3(v)

F1208 Words in s. 357(7)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 51(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1209 S. 357(7)(c) and preceding word added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 13(b)** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1210 S. 357(7)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 7(2)(d)(ii)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1211 S. 357(8)(9) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 7(2)(e)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

Commencement Information

I312 S. 357 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

358 Requirements for making of disclosure order

(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;

[F1212(b) in the case of a civil recovery investigation—

(i) the person specified in the application for the order holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property specified in the application for the order is recoverable property or associated property;]

[F1213(ba) in the case of a money laundering investigation, the person specified in the application for the order has committed a money laundering offence,]

[F1214(c) in the case of an exploitation proceeds investigation, the person specified in the application for the order is a person within section 346(2A).]

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be

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of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Textual Amendments

F1212 S. 358(2)(b) substituted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 9**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1213 S. 358(2)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 7(3)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1214 S. 358(2)(c) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 14** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

Commencement Information

I313 S. 358 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

359 Offences

(1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—

(a) imprisonment for a term not exceeding six months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he—

(a) makes a statement which he knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Modifications etc. (not altering text)

C138 S. 359 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(1)**(2)(6)-(8), 18(2)(6)(7), 27(6)(7), 28(7) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), **2(9)**(10))

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

C139 S. 359 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **27(2)**, 28(2) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), **2(9)**(10))

Commencement Information

I314 S. 359 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

360 Statements

(1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.

(2) But subsection (1) does not apply—

(a) in the case of proceedings under Part 2 or 4,

(b) on a prosecution for an offence under section 359(1) or (3),

(c) on a prosecution for an offence under section 5 of the Perjury Act 1911 (c. 6) or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

Modifications etc. (not altering text)

C140 S. 360 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **7(3)**, 17(3)

C141 S. 360 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **27(3)**(4), 28(3)(4) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), 2(9)**(10)**)

C142 S. 360 restricted (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **27(6)**(8), 28(8) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), 2(9)**(10)**)

Commencement Information

I315 S. 360 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

361 Further provisions

(1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of a client of his.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(5) A disclosure order does not confer the right to require a person to produce excluded material.

(6) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

(7) **[**[F1215]An appropriate officer**]** may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(8) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(9) But if **[**[F1216]an appropriate officer**]** has reasonable grounds for believing that—

(a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Textual Amendments

F1215 Words in s. 361(7) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 109(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1216 Words in s. 361(9) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 109(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Modifications etc. (not altering text)

C143 S. 361 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(1)**(5), 18(5) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), 2(5)(8))

C144 S. 361 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **7(4)**, 17(4)

C145 S. 361 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(6)-(8)**, 18(6)(7), 27(5), 28(5) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), 2(5)(8)(9)**(10)**)

Commencement Information

I316 S. 361 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

362 Supplementary

(1) An application for a disclosure order may be made ex parte to a judge in chambers.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

(3) An application to discharge or vary a disclosure order may be made to the court by—
  (a) the **[**[F1217]person who applied for the order**]**;
  (b) any person affected by the order.

(4) The court—
  (a) may discharge the order;
  (b) may vary the order.

[[F1218]**[** An application to discharge or vary a disclosure order need not be made by the same
[F1219](4A) appropriate officer or (as the case may be) the same National Crime Agency officer that applied for the order (but must be made by an appropriate officer of the same description or (as the case may be) by another National Crime Agency officer).

[F1219](4AA) If the application for the order was, by virtue of an order under section 453, made by an accredited financial investigator of a particular description, the reference in subsection (4A) to an appropriate officer of the same description is to another accredited financial investigator of that description.**]**

(4B) References to a person who applied for a disclosure order must be construed accordingly.**]**

(5) Subsections (2) to **[**[F1220](4B)**]** do not apply to orders made in England and Wales for the purposes of a civil recovery investigation **[**[F1221]or an exploitation proceeds investigation**]**.

[[F1222](6) An appropriate officer may not make an application for a disclosure order, or an application for the discharge or variation of such an order, unless the officer is a senior appropriate officer or is authorised to do so by a senior appropriate officer.**]**

Textual Amendments

F1217 Words in s. 362(3)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 110(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1218 S. 362(4A)(4B) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 110(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1219 S. 362(4A)(4AA) substituted for s. 362(4A) (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 7(4)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

F1220 Word in s. 362(5) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 110(4)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1221 Words in s. 362(5) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 15** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1222 S. 362(6) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 7(4)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(b); S.I. 2021/724, reg. 2(1)(b)

Commencement Information

I317 S. 362 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[F1223 Unexplained wealth orders

Textual Amendments

F1223 Ss. 362A-362I and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 1**, 58(1)(6) (as amended (N.I.) (31.12.2020) by S.I. 2019/742, regs. 1, **109(2)**; 2020 c. 1, **Sch. 5 para. 1(1)**); S.I. 2018/78, **reg. 3(a)**; S.I. 2021/724, **reg. 2(1)(a)**

362A Unexplained wealth orders

(1) The High Court may, on an application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order must—

(a) specify or describe the property in respect of which the order is sought, and

(b) specify the person whom the enforcement authority thinks holds the property ("the respondent") (and the person specified may include a person outside the United Kingdom).

[In a case where the respondent is not an individual, the application may also specify
F1224(2A) a person who is a responsible officer of the respondent (and a person specified may include a person outside the United Kingdom).**]**

(3) An unexplained wealth order is an order requiring the respondent **[**F1225or any responsible officer specified in the order (a "specified responsible officer")**]** to provide a statement—

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,

(b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),

(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify—

(a) the form and manner in which the statement is to be given,

(b) the person to whom it is to be given, and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent **[**F1226or any specified responsible officer**]** to provide the statement mentioned in subsection (3), also **[**F1227require them**]** to produce documents of a kind specified or described in the order.

(6) The respondent **[**F1228or any specified responsible officer**]** must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(7) In this Chapter "enforcement authority" means—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) the National Crime Agency,
(b) Her Majesty's Revenue and Customs,
(c) the Financial Conduct Authority,
(d) the Director of the Serious Fraud Office, or
(e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland).

[For the purposes of this Chapter, each of the following is a "responsible officer" of [F1229](8) the respondent (in a case where the respondent is not an individual)—

(a) any director of the respondent, including any person occupying the position of a director, by whatever name called;
(b) any member of a body of the respondent equivalent to a board of directors;
(c) any other manager, secretary or similar officer of the respondent;
(d) where the respondent is a partnership, a partner or a member of the partnership;
(e) any person in accordance with whose directions or instructions the board of directors or equivalent body of the respondent are accustomed to act.**]**

Textual Amendments

F1224 S. 362A(2A) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(3)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1225 Words in s. 362A(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(4)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1226 Words in s. 362A(5) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(5)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1227 Words in s. 362A(5) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(5)(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1228 Words in s. 362A(6) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(6)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1229 S. 362A(8) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(7)**, 69(1); S.I. 2022/519, regs. 1(3), 2

362B Requirements for making of unexplained wealth order

(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The High Court must be satisfied that there is reasonable cause to believe that—

(a) the respondent holds the property, and
(b) the value of the property is greater than £50,000.

(3) The High Court must be satisfied that there are reasonable grounds for suspecting **[**[F1230]—

(a)**]** that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property**[**[F1231], or
(b) that the property has been obtained through unlawful conduct (within the meaning given by section 242).**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) The High Court must be satisfied that—

(a) the respondent is a politically exposed person, or

(b) there are reasonable grounds for suspecting that—

(i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or

(ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of subsection (2)(a)—

(a) whether or not there are other persons who also hold the property;

(b) whether the property was obtained by the respondent before or after the coming into force of this section.

(6) For the purposes of subsection (3)—

(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;

(b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In subsection (4)(a), "politically exposed person" means a person who is—

(a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than **[**[F1232]the United Kingdom or another EEA State,**]**

[F1232]**[** (i) the United Kingdom, or

(ii) an EEA state,**]**

(b) a family member of a person within paragraph (a),

(c) known to be a close associate of a person within that paragraph, or

(d) otherwise connected with a person within that paragraph.

(8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining—

(a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),

(b) whether a person is a family member (see point (10) of that Article), and

(c) whether a person is known to be a close associate of another (see point (11) of that Article).

(9) For the purposes of this section—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) a person is involved in serious crime in a part of the United Kingdom or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);

(b) section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies in determining whether a person is connected with another.

(10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

Textual Amendments

F1230 Word in s. 362B(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 47(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1231 S. 362B(3)(b) and word inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 47(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1232 S. 362B(7)(a)(i)(ii) substituted for words (E.W.) (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(8)**; 2020 c. 1, Sch. 5 para. 1(1)

362C Effect of order: cases of non-compliance

(1) This section applies in a case where **[**[F1233]the respondent and the specified responsible officer (if any), between them, fail**]**, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5, unless the contrary is shown.

(3) The presumption in subsection (2) applies in relation to property—

(a) only so far as relating to the respondent's interest in the property, and

(b) only if the value of that interest is greater than the sum specified in section 362B(2)(b).

It is for the court hearing the proceedings under Part 5 in relation to which reliance is placed on the presumption to determine the matters in this subsection.

(4) The "response period" is whatever period the court specifies under section 362A(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).

(5) For the purposes of subsection (1)—

(a) a respondent **[**[F1234]or a specified responsible officer**]** who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 362D);

(b) where an unexplained wealth order imposes more than one requirement, [F1235]... **[**[F1236]the respondent and the specified responsible officer (if any) are**]** to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(6) Subsections (7) and (8) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—

(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 362B), or

(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(7) In a case within subsection (6)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(8) In a case within subsection (6)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 362B.

(9) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

Textual Amendments

F1233 Words in s. 362C(1) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(8)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1234 Words in s. 362C(5)(a) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(8)(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1235 Words in s. 362C(5)(b) omitted (15.5.2022) by virtue of Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(8)(c)(i)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1236 Words in s. 362C(5)(b) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(8)(c)(ii)**, 69(1); S.I. 2022/519, regs. 1(3), 2

362D Effect of order: cases of compliance or purported compliance

(1) This section applies in a case where, before the end of the response period (as defined by section 362C(4)), **[**[F1237]the respondent and the specified responsible officer (if any) between them comply, or purport to comply, with all of the**]** requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) If an interim freezing order has effect in relation to the property (see section 362J), the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) must be made within the period of 60 days starting with the day of compliance **[**[F1238], or that period as it may be extended by virtue of section 362DA or 362DB (the "determination period")**]**.

(4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the enforcement authority must notify the High Court of that fact as soon as reasonably practicable (and in any event before the end of the **[**[F1239]determination period**]**).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) If there is no interim freezing order in effect in relation to the property, the enforcement authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise, and whether or not by the same enforcement authority) in relation to the property.

(7) For the purposes of this section—

F1240(a) . . . . . .

(b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days), and

(c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs **[**F1241(b) and (c)**]** references to compliance include purported compliance.

(8) In this section "enforcement or investigatory proceedings" means any proceedings in relation to property taken under—

(a) Part 2 or 4 (confiscation proceedings in England and Wales or Northern Ireland) (in relation to cases where the enforcement authority is also a prosecuting authority for the purposes of that Part),

(b) Part 5 (civil recovery of the proceeds of unlawful conduct), or

(c) this Chapter.

Textual Amendments

F1237 Words in s. 362D(1) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(9)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1238 Words in s. 362D(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 49(2)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1239 Words in s. 362D(4) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 49(2)(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1240 S. 362D(7)(a) omitted (15.5.2022) by virtue of Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(9)(b)(i)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1241 Words in s. 362D(7) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(9)(b)(ii)**, 69(1); S.I. 2022/519, regs. 1(3), 2

[F1242 362DA Extension of period for making determination where interim freezing order has been made

(1) The High Court may, on an application made by the enforcement authority, extend the determination period if satisfied that—

(a) the enforcement authority is working diligently and expeditiously towards making a determination under section 362D(2),

(b) further time is needed for the authority to make that determination, and

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(c) it is reasonable in all the circumstances for the period to be extended.

(2) The application must be made before the determination period would otherwise end.

(3) An extension of the determination period must end no later than the end of the period of 63 days beginning with the day after that on which the period would otherwise end.

(4) Where the determination period is extended under subsection (1), it may be further extended by the High Court (and subsections (2) and (3) apply in relation to any further extension as they apply in relation to the first one).

(5) But the determination period as extended must not in total exceed the period of 186 days starting with the day of compliance (within the meaning given by section 362D(7)(b)).

Textual Amendments

F1242 Ss. 362DA, 362DB inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 49(3)**, 69(1); S.I. 2022/519, regs. 1(3), 2

362DB Extension of period pending determination of proceedings etc

(1) Subsection (2) applies where—

(a) an application is made to the High Court under section 362DA for the extension (or further extension) of the determination period, and

(b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.

(2) The determination period is extended from the time when it would otherwise end until—

(a) the Court determines the application or it is otherwise disposed of, or

(b) if earlier, the end of the period of 31 days beginning with the day after that on which the period would otherwise have ended.

(3) Subsection (4) applies where—

(a) proceedings on an appeal in respect of a decision on an application under section 362DA have been brought, and

(b) the determination period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.

(4) The determination period is extended from the time when it would otherwise end until—

(a) the proceedings are finally determined or otherwise disposed of, or

(b) if earlier, the end of the period mentioned in subsection (2)(b).

(5) Subsection (6) applies where—

(a) an application is made to the Court under section 362DA for an extension of the determination period,

(b) the Court refuses to grant the application, and

(c) the period would (apart from that subsection) end before the end of the 5 day period.

Status: *Point in time view as at 05/01/2023.*
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(6) The determination period is extended from the time when it would otherwise end until—
  (a) the end of the 5 day period, or
  (b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.

(7) The "5 day period" is the period of 5 working days beginning with the day on which the Court refuses to grant the application; and for these purposes "working day" means a day other than—
  (a) a Saturday or a Sunday,
  (b) Christmas Day or Good Friday, or
  (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the application in question under section 362DA is made.

(8) The restriction on the overall extension of the determination period mentioned in section 362DA(5) applies to an extension of the period in accordance with any provision of this section as it applies to an extension under an order of the Court.**]**

Textual Amendments

F1242 Ss. 362DA, 362DB inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 49(3)**, 69(1); S.I. 2022/519, regs. 1(3), 2

362E Offence

(1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person—
  (a) makes a statement that the person knows to be false or misleading in a material particular, or
  (b) recklessly makes a statement that is false or misleading in a material particular.

(2) A person guilty of an offence under this section is liable—
  (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
  (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;
  (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

(3) In relation to an offence committed before **[**[F1243]2 May 2022**]**, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.

Textual Amendments

F1243 Words in s. 362E(3) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**

Status: *Point in time view as at 05/01/2023.*
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362F Statements

(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) does not apply—
- (a) in the case of proceedings under Part 2 or 4,
- (b) on a prosecution for an offence under section 362E,
- (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

362G Disclosure of information, copying of documents, etc

(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) But subsections (1) to (5) of section 361 (rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The enforcement authority may take copies of any documents produced by the respondent **[**[F1244]or any specified responsible officer**]** in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 341 in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the enforcement authority has reasonable grounds to believe that the documents—
- (a) may need to be produced for the purposes of any legal proceedings, and
- (b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Textual Amendments

F1244 Words in s. 362G(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(10)**, 69(1); S.I. 2022/519, regs. 1(3), 2

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

362H Holding of property: trusts and company arrangements etc

(1) This section applies for the purposes of sections 362A and 362B.

(2) The cases in which a person (P) is to be taken to "hold" property include those where—
- (a) P has effective control over the property;
- (b) P is the trustee of a settlement in which the property is comprised;
- (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—
- (a) exercises,
- (b) is able to exercise, or
- (c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.

(6) For further provision about how to construe references to the holding of property, see section 414.

362I Supplementary

(1) An application for an unexplained wealth order may be made without notice.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to unexplained wealth orders before the High Court in Northern Ireland.

(3) An application to the High Court in Northern Ireland to discharge or vary an unexplained wealth order may be made by—
- (a) the enforcement authority, or
- (b) the respondent **[**[F1245]or any specified responsible officer**]**.

(4) The High Court in Northern Ireland—
- (a) may discharge the order;
- (b) may vary the order.

Textual Amendments

F1245 Words in s. 362I(3)(b) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 45(11)**, 69(1); S.I. 2022/519, regs. 1(3), 2

[F1246]**[362IA** Annual reports

(1) The Secretary of State must prepare and publish a report in respect of each relevant period setting out—

Status: *Point in time view as at 05/01/2023.*
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(a) the number of unexplained wealth orders made by the High Court in England and Wales during that period, and

(b) the number of applications made to that Court by enforcement authorities for such an order during that period.

(2) Each of the following is a "relevant period"—

(a) the period of 12 months beginning with the day on which section 51 of the Economic Crime (Transparency and Enforcement) Act 2022 comes into force;

(b) each subsequent period of 12 months.

(3) A report under this section must be prepared and published within the period of 4 months beginning with the end of the relevant period to which the report relates.

(4) The Secretary of State must lay a copy of each report prepared under this section before Parliament.**]]**

Textual Amendments

F1246 S. 362IA inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 51**, 69(1); S.I. 2022/519, regs. 1(3), 2

[F1247 Unexplained wealth orders: interim freezing of property

Textual Amendments

F1247 S. 362J 362R and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 2**, 58(1)(6); S.I. 2018/78, reg. 3(a); S.I. 2021/724, reg. 2(1)(a)

362J Application for interim freezing order

(1) This section applies where the High Court makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 362L).

(4) An interim freezing order—

(a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates,

(b) must be made in the same proceedings as those in which the unexplained wealth order is made, and

(c) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

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362K Variation and discharge of interim freezing order

(1) The High Court may at any time vary or discharge an interim freezing order.

(2) The High Court must discharge an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.

(3) The first case is where—
- (a) the applicable 48 hour period has ended, and
- (b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where—
- (a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned, and
- (b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.

(5) The third case is where the court has received a notification in relation to the property concerned under section 362D(4) (notification from enforcement authority of no further proceedings).

(6) The "applicable 48 hour period" is to be read as follows—
- (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the **[**[F1248]determination period (see section 362D(3))**]** ends;
- (b) in any other case, it is the period of 48 hours beginning with the day after the day with which the response period ends.

(7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of—
- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday, or
- (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the interim freezing order concerned is made.

(8) Section 362D(7) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.

(9) Before exercising power under this section to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(10) Subsection (9) does not apply where the court is acting as required by subsection (2).

(11) In this section—

"relevant application" means an application for—
- (a) a restraint order under section 41 or 190,
- (b) a property freezing order, or

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(c) an interim receiving order;

"response period" has the meaning given by section 362C(4).

Textual Amendments

F1248 Words in s. 362K(6)(a) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 49(4)**, 69(1); S.I. 2022/519, regs. 1(3), 2

362L Exclusions

(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

(a) to meet the person's reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Chapter, it must ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs,

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to the same conditions as would be the required conditions (see section 286A) if the order had been made under section 245A (in addition to any conditions under subsection (4)).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Chapter—

(a) must have regard to the desirability of the person being represented in any proceedings under this Chapter in which the person is a participant, and

(b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by the Northern Ireland Legal Services Commission.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

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362M Restrictions on proceedings and remedies

(1) While an interim freezing order has effect—

(a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distress may be levied, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised, against the property to which the order applies except with the leave of the High Court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may—

(a) stay the proceedings, or

(b) allow them to continue on any terms it thinks fit.

(3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable—

(a) only with the leave of the High Court, and

(b) subject to any terms that the court may impose.

(4) The reference in subsection (3) to a "right of forfeiture" in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.

(5) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

362N Receivers in connection with interim freezing orders

(1) This section applies where the High Court makes an interim freezing order on an application by an enforcement authority.

(2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the enforcement authority to obtain a recovery order in respect of any property.

(5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the enforcement authority.

(7) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the enforcement authority (but it does apply in relation

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to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

362O Powers of receivers appointed under section 362N

(1) If the High Court appoints a receiver under section 362N on an application by an enforcement authority, the court may act under this section on the application of the authority.

(2) The court may by order authorise or require the receiver—
  (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the receiver is appointed;
  (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed—
  (a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);
  (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place them in the custody of the receiver.

(5) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(6) Subsection (7) applies in a case where—
  (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 362N, but
  (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of the appointment.

(7) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.

(8) But subsection (7) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

362P Supervision of section 362N receiver and variations

(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under section 362N—
  (a) the receiver;
  (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;

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(c) a person affected by an action taken by the receiver;

(d) a person who may be affected by an action proposed to be taken by the receiver.

(2) Before it gives directions under subsection (1) the court must give an opportunity to be heard to—

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;

(c) a person who may be interested in the application under subsection (1).

(3) The court may at any time vary or discharge—

(a) the appointment of a receiver under section 362N,

(b) an order under section 362O, or

(c) directions under this section.

(4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver, for the order under section 362O or (as the case may be) for the directions under this section;

(c) the parties to the proceedings for the interim freezing order concerned;

(d) any person who may be affected by the court's decision.

362Q Registration

Sections 248 (registration: England and Wales) and 249 (registration: Northern Ireland) apply in relation to interim freezing orders as they apply in relation to property freezing orders under section 245A.

Modifications etc. (not altering text)

C146 S. 362Q applied by S.I. 2013/2605, art. 21O (as inserted (E.W.) (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **8**)

C147 S. 362Q applied by S.I. 2014/1893, art. 34O (as inserted (E.W.) (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **20**)

362R Compensation

(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

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(a) the applicant has suffered loss as a result of the making of the interim freezing order,
(b) there has been a serious default on the part of the enforcement authority that applied for the order, and
(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—
(a) the compensation is payable by the enforcement authority that applied for the interim freezing order, and
(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.**]**

[F1249 Unexplained wealth orders: enforcement abroad

Textual Amendments

F1249 S. 362S 362T and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 3**, 58(1)(6); S.I. 2018/78, reg. 3(a); S.I. 2021/724, reg. 2(1)(a)

362S Enforcement abroad: enforcement authority

(1) This section applies if—
(a) the High Court makes an unexplained wealth order in respect of any property,
(b) it appears to the enforcement authority that the risk mentioned in section 362J(2) applies in relation to the property, and
(c) the enforcement authority believes that the property is in a country outside the United Kingdom (the receiving country).

(2) The enforcement authority may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State may forward the request for assistance to the government of the receiving country.

(4) A request for assistance under this section is a request to the government of the receiving country—
(a) to secure that any person is prohibited from dealing with the property;
(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

362T Enforcement abroad: receiver

(1) This section applies if—
(a) an interim freezing order has effect in relation to property, and
(b) the receiver appointed under section 362N in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).

(2) The receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

Status: *Point in time view as at 05/01/2023.*
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(3) The Secretary of State must forward the request for assistance to the government of the receiving country.

(4) A request for assistance under this section is a request to the government of the receiving country—
  (a) to secure that any person is prohibited from dealing with the property;
  (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.**]**

[F1250 Unexplained wealth orders: costs of proceedings

Textual Amendments

F1250 S. 362U and cross-heading inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 52**, 69(1); S.I. 2022/519, regs. 1(3), 2 (with reg. 3)

362U Costs orders

(1) This section applies in the following cases—
  (a) an enforcement authority has made an application for an unexplained wealth order under section 362A;
  (b) an enforcement authority has made an application for the determination period to be extended under section 362DA;
  (c) an application has been made to discharge or vary an unexplained wealth order;
  (d) an enforcement authority has made an application for an interim freezing order under section 362J;
  (e) an application has been made to discharge or vary an interim freezing order;
  (f) an application has been made in the circumstances referred to in section 362M to—
    (i) stay an action, execution or other legal process,
    (ii) grant leave to levy distress or use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods),
    (iii) stay proceedings in respect of property or allow them to continue, or
    (iv) grant leave to exercise a right of forfeiture in relation to a tenancy;
  (g) an enforcement authority has made an application for an order for the appointment of a receiver under section 362N;
  (h) an enforcement authority has made an application for an order under section 362O (powers of receiver);
  (i) an application has been made for directions to a receiver under section 362P;
  (j) an application has been made to discharge or vary—
    (i) the appointment of a receiver under section 362N,
    (ii) an order under section 362O, or
    (iii) directions under section 362P;
  (k) an application has been made for compensation under section 362R;

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(l) the High Court has of its own motion exercised a power to do anything an application mentioned in paragraphs (a) to (k) may be made for;

(m) an application has been made for permission to appeal in relation to anything mentioned in paragraphs (a) to (l).

(2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—

(a) the authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate, or

(b) the authority acted dishonestly or improperly in the course of the proceedings.**]**

Customer information orders

363 Customer information orders

(1) A judge may, on an application made to him by an appropriate officer, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.

[[F1251](1A) No application for a customer information order may be made in relation to a detained cash investigation **[**[F1252], a detained property investigation or a frozen funds investigation**].]**

(2) The application for a customer information order must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1253], a civil recovery investigation**][**[F1254], an exploitation proceeds investigation**]** or a money laundering investigation, [F1255] ...

[F1255](b) . . . . . .

(3) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution or financial institutions specified in the application.

(4) An application for a customer information order may specify—

(a) all financial institutions,

(b) a particular description, or particular descriptions, of financial institutions, or

(c) a particular financial institution or particular financial institutions.

(5) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(6) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(7) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the

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notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

Textual Amendments

F1251 S. 363(1A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 11**; S.I. 2008/755, art. 17(1)(d)(ii)

F1252 Words in s. 363(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 52**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1253 Words in s. 363(2) inserted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 10(a)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1254 Words in s. 363(2)(a) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 16** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1255 S. 363(2)(b) and word omitted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 10(b)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

Commencement Information

I318 S. 363 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

364 Meaning of customer information

(1) "Customer information", in relation to a person and a financial institution, is information whether the person holds, or has held, **[**[F1256] an account or accounts**]** at the financial institution (whether solely or jointly with another) and (if so) information as to—

(a) the matters specified in subsection (2) if the person is an individual;

(b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.

(2) The matters referred to in subsection (1)(a) are—

(a) the account number or numbers**[**[F1257]or the number of any safe deposit box**]**;

(b) the person's full name;

(c) his date of birth;

(d) his most recent address and any previous addresses;

(e) **[**[F1258]in the case of an account or accounts,**]**the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;

[[F1259](ee) in the case of any safe deposit box, the date on which the box was made available to him and if the box has ceased to be available to him the date on which it so ceased;**]**

(f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

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(g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;

(h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.

(3) The matters referred to in subsection (1)(b) are—

(a) the account number or numbers**[**[F1260] or the number of any safe deposit box**]**;

(b) the person's full name;

(c) a description of any business which the person carries on;

(d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under **[**[F1261]the Companies Act 2006**]** or corresponding legislation of any country or territory outside the United Kingdom;

(e) any number assigned to it for the purposes of value added tax in the United Kingdom;

(f) its registered office, and any previous registered offices, under **[**[F1262]the Companies Act 2006 (or corresponding earlier legislation)**]** or anything similar under corresponding legislation of any country or territory outside the United Kingdom;

(g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000 (c. 12) or anything similar under corresponding legislation of any country or territory outside Great Britain;

(h) **[**[F1263]in the case of an account or accounts, **]**the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;

[[F1264](hh) in the case of any safe deposit box, the date on which the box was made available to it and if the box has ceased to be available to it the date on which it so ceased;**]**

(i) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

(j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

(4) The Secretary of State may by order provide for information of a description specified in the order—

(a) to be customer information, or

(b) no longer to be customer information.

(5) Money laundering is an act which—

(a) constitutes an offence under section 327, 328 or 329 of this Act or section 18 of the Terrorism Act 2000 (c. 11), or

[[F1265](aa) constitutes an offence specified in section 415(1A) of this Act,**]**

(b) would constitute an offence specified in paragraph (a)**[**[F1266]or (aa) **]** if done in the United Kingdom.

[[F1267](6) A "safe deposit box" includes any procedure under which a financial institution provides a facility to hold items for safe keeping on behalf of another person.**]**

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Textual Amendments

F1256 Words in s. 364(1) inserted (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(2)**

F1257 Words in s. 364(2)(a) added (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(3)(a)**

F1258 Words in s. 364(2)(e) inserted (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(3)(b)**

F1259 S. 364(2)(ee) inserted (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(3)(b)**

F1260 Words in s. 364(3)(a) added (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(4)(a)**

F1261 Words in s. 364(3)(d) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 196(2)(a)** (with art. 10)

F1262 Words in s. 364(3)(f) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 196(2)(b)** (with art. 10)

F1263 Words in s. 364(3)(h) inserted (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(4)(b)**

F1264 S. 364(3)(hh) inserted (N.I.) (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(4)(b)**

F1265 S. 364(5)(aa) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 107(2)(a)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)

F1266 Words in s. 364(5)(b) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 107(2)(b)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)

F1267 S. 364(6) added (20.8.2005) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(4), **14(5)**

Modifications etc. (not altering text)

C148 S. 364 modified (1.11.2006) by Crime (International Co-operation) Act 2003 (c. 32), **ss. 32(6)**, 94(1); S.I. 2006/2811, art. 2

C149 S. 364 modified (31.7.2017) by The Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730), regs. 1(1), **44(8)** (with reg. 3)

C150 S. 364 modified (31.12.2020) by 2003 c. 32, s. 32(6) (as substituted by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 3(2)** (with Sch. 3 para. 3(4)); S.I. 2020/1662, reg. 2(dd))

Commencement Information

I319 S. 364 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

365 Requirements for making of customer information order

(1) These are the requirements for the making of a customer information order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

[F1268 (3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application—

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(a) holds recoverable property or associated property, or

(b) has, at any time, held property that was recoverable property or associated property at the time.**]**

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Textual Amendments

F1268 S. 365(3A) substituted for s. 365(3) (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 11**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

Modifications etc. (not altering text)

C151 S. 365 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **28(5)**

Commencement Information

I320 S. 365 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

366 Offences

(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A financial institution commits an offence if, in purported compliance with a customer information order, it—

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to a fine.

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Modifications etc. (not altering text)

C152 S. 366 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **20(2)**

C153 S. 366 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **29(1)**, (2)

C154 S. 366 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **10(2)**, 20(2), 29(1)(2), 30(1)(2)

C155 S. 366 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **30(1)**, (2)

Commencement Information

I321 S. 366 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

367 Statements

(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply—

(a) in the case of proceedings under Part 2 or 4,

(b) on a prosecution for an offence under section 366(1) or (3), or

(c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Modifications etc. (not altering text)

C156 S. 367 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **30(1)**, (3)

C157 S. 367 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **29(1)**(3), 30(1)(3)

C158 S. 367 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **19(3)**

C159 S. 367 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **9(3)**, 19(3)

Commencement Information

I322 S. 367 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

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368 Disclosure of information

A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

Modifications etc. (not altering text)

C160 S. 368 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **19(4)**

C161 S. 368 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **9(4)**, 10(4), 19(4), 20(4)

C162 S. 368 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **20(4)**

C163 S. 368 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **10(4)**

Commencement Information

I323 S. 368 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

369 Supplementary

(1) An application for a customer information order may be made ex parte to a judge in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(3) An application to discharge or vary a customer information order may be made to the court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court—

(a) may discharge the order;

(b) may vary the order.

[[F1269](5) An application to discharge or vary a customer information order need not be made by the same appropriate officer that applied for the order (but must be made by an appropriate officer of the same description).

(5A) If the application for the order was, by virtue of an order under section 453, made by an accredited financial investigator of a particular description, the reference in subsection (5) to an appropriate officer of the same description is to another accredited financial investigator of that description.**]**

(6) References to a person who applied for a customer information order must be construed accordingly.

(7) An accredited financial investigator, **[**[F1270]a **[**[F1271]National Crime Agency officer**]**, **[**[F1272]a Financial Conduct Authority officer,**]]** a constable **[**[F1273], an SFO officer**]** or **[**[F1274]an officer of Revenue and Customs**][**[F1275]or an immigration officer**]** may not make an application for a customer information order or an application to vary such an

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order unless he is a senior appropriate officer or he is authorised to do so by a senior appropriate officer.

(8) Subsections (2) to (6) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Textual Amendments

F1269 S. 369(5)(5A) substituted for s. 369(5) (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 53(2)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1270 Words in s. 369(7) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 111(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1271 Words in s. 369 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 141**; S.I. 2013/1682, art. 3(v)

F1272 Words in s. 369(7) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 53(3)(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1273 Words in s. 369(7) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 53(3)(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1274 Words in s. 369(7) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 14(3)**

F1275 Words in s. 369(7) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 35(3)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

Commencement Information

I324 S. 369 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Account monitoring orders

370 Account monitoring orders

(1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

[[F1276](1A) No application for an account monitoring order may be made in relation to a detained cash investigation **[**[F1277], a detained property investigation or a frozen funds investigation**].]**

(2) The application for an account monitoring order must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1278], a civil recovery investigation**][**[F1279], an exploitation proceeds investigation**]** or a money laundering investigation, [F1280]...

[F1280](b) . . . . . .

(3) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

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(4) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(5) The application for an account monitoring order may specify information relating to—
- (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
- (b) a particular description, or particular descriptions, of accounts so held, or
- (c) a particular account, or particular accounts, so held.

(6) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner, and at or by the time or times, stated in the order.

(7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Textual Amendments

F1276 S. 370(1A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 12**; S.I. 2008/755, art. 17(1)(d)(ii)

F1277 Words in s. 370(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 54**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1278 Words in s. 370(2) inserted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 12(a)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

F1279 Words in s. 370(2)(a) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 17** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1280 S. 370(2)(b) and word omitted (1.6.2015 for E.W. for specified purposes, 1.2.2017 in so far as not already in force) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 12(b)**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

Modifications etc. (not altering text)

C164 S. 370(6) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **31(3)**

C165 S. 370(6) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **11(3)**, 21(3), 31(3), 32(3)

C166 S. 370(6) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **32(3)**

C167 S. 370(6) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **21(3)**

Commencement Information

I325 S. 370 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

371 Requirements for making of account monitoring order

(1) These are the requirements for the making of an account monitoring order.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

[F1281(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.]

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Textual Amendments

F1281 S. 371(3A) substituted for s. 371(3) (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 13**; S.I. 2015/964, art. 2(d) (with art. 3); S.I. 2017/4, art. 2 (with art. 3)

Commencement Information

I326 S. 371 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

372 Statements

(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply—
- (a) in the case of proceedings under Part 2 or 4,
- (b) in the case of proceedings for contempt of court, or
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—
- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C168 S. 372 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **31(5)**

C169 S. 372 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **11(5)**, 21(5), 31(5), 32(5)

C170 S. 372 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **32(5)**

C171 S. 372 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **21(5)**

Commencement Information

I327 S. 372 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

373 Applications

An application for an account monitoring order may be made ex parte to a judge in chambers.

Commencement Information

I328 S. 373 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

374 Disclosure of information

An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Modifications etc. (not altering text)

C172 S. 374 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **22(6)**

C173 S. 374 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **11(6)**, 12(6), 21(6), 22(6)

C174 S. 374 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **12(6)**

C175 S. 374 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **21(6)**

Commencement Information

I329 S. 374 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

375 Supplementary

(1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) An application to discharge or vary an account monitoring order may be made to the court by—
  (a) the person who applied for the order;
  (b) any person affected by the order.

(3) The court—
  (a) may discharge the order;
  (b) may vary the order.

[[F1282](4) An application to discharge or vary an account monitoring order need not be made by the same appropriate officer that applied for the order (but must be made by an appropriate officer of the same description).

(4A) If the application for the order was, by virtue of an order under section 453, made by an accredited financial investigator of a particular description, the reference in subsection (4) to an appropriate officer of the same description is to another accredited financial investigator of that description.**]**

(5) References to a person who applied for an account monitoring order must be construed accordingly.

(6) Account monitoring orders have effect as if they were orders of the court.

(7) This section does not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Textual Amendments

F1282 S. 375(4)(4A) substituted for s. 375(4) (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 55**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Commencement Information

I330 S. 375 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[[F1283]**375A Evidence overseas**

(1) This section applies if a person or property is subject to a civil recovery investigation, a detained cash investigation **[**[F1284], a detained property investigation, a frozen funds investigation**]** or an exploitation proceeds investigation.

(2) A judge may request assistance under this section if—
  (a) an application is made by an appropriate officer or a person subject to the investigation, and
  (b) the judge thinks that there is relevant evidence in a country or territory outside the United Kingdom.

(3) The relevant Director or a senior appropriate officer may request assistance under this section if the Director or officer thinks that there is relevant evidence in a country or territory outside the United Kingdom.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.

(5) Relevant evidence is—

(a) in relation to an application or request made for the purposes of a civil recovery investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 341(2)(a) to (d);

(b) in relation to an application or request made for the purposes of a detained cash investigation, evidence as to a matter described in section 341(3A)(a) or (b);

[F1285(ba) in relation to an application or request made for the purposes of a detained property investigation, evidence as to a matter described in section 341(3B)(a) or (b);

(bb) in relation to an application or request made for the purposes of a frozen funds investigation, evidence as to a matter described in section 341(3C)(a) or (b);]

(c) in relation to an application or request made for the purposes of an exploitation proceeds investigation, evidence as to a matter described in section 341(5)(a) to (d).

(6) A request for assistance under this section may be sent—

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,

(b) to the government of the country or territory concerned, or

(c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.

(7) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).

(8) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.

(9) In a case of urgency, a request for assistance under this section may be sent to—

(a) the International Criminal Police Organisation, F1286...

F1286(b) . . . . . .

for forwarding to the court, tribunal, government or authority mentioned in subsection (6).

(10) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

(11) "Evidence" includes documents, information in any other form and material.

Textual Amendments

F1283 Ss. 375A, 375B inserted (22.11.2014 for specified purposes, 1.6.2015 for E.W.S. in so far as not already in force, 1.2.2017 for N.I. in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 26**; S.I. 2014/3098, art. 3; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1284 Words in s. 375A(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 56(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1285 S. 375A(5)(ba)(bb) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 56(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1286 S. 375A(9)(b) and preceding word omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(9)**; 2020 c. 1, Sch. 5 para. 1(1)

375B Evidence overseas: restrictions on use

(1) This section applies to evidence obtained by means of a request for assistance under section 375A.

(2) The evidence must not be used for any purpose other than—

(a) for the purposes of the investigation for which it was obtained, or

(b) for the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.

(3) Those proceedings are—

(a) if the request was made for the purposes of a civil recovery investigation, proceedings under Chapter 2 of Part 5 of this Act arising out of the investigation;

(b) if the request was made for the purposes of a detained cash investigation, proceedings under Chapter 3 of Part 5 of this Act arising out of the investigation;

[F1287 (ba) if the request was made for the purposes of a detained property investigation, proceedings under Chapter 3A of Part 5 of this Act arising out of the investigation;

(bb) if the request was made for the purposes of a frozen funds investigation, proceedings under Chapter 3B of Part 5 of this Act arising out of the investigation;**]**

(c) if the request was made for the purposes of an exploitation proceeds investigation, proceedings under Part 7 of the Coroners and Justice Act 2009 arising out of the investigation.

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.**]**

Textual Amendments

F1283 Ss. 375A, 375B inserted (22.11.2014 for specified purposes, 1.6.2015 for E.W.S. in so far as not already in force, 1.2.2017 for N.I. in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 26**; S.I. 2014/3098, art. 3; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1287 S. 375B(3)(ba)(bb) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 57**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Officers of Revenue and Customs

[F1288]375C Restriction on exercise of certain powers conferred on officers of Revenue and Customs

. . . . . .

Textual Amendments

F1288 S. 375C omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(c)**, 58(4)(6)

Evidence overseas

[F1289]376 Evidence overseas

. . . . . .

Textual Amendments

F1289 S. 376 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 113, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I331 S. 376 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Code of practice

377 Code of practice [[F1290]of Secretary of State etc.]

(1) The Secretary of State must prepare a code of practice as to the exercise by all of the following of functions they have under this Chapter—

[[F1291](a) the Director General of the National Crime Agency;

(b) other National Crime Agency officers;]

(c) [[F1292]in relation to England and Wales,] accredited financial investigators;

(d) [[F1292]in relation to England and Wales,] constables;

[[F1293](e) officers of Revenue and Customs;]

[[F1294](f) immigration officers.]

[[F1295](g) Financial Conduct Authority officers.]

(2) After preparing a draft of the code the Secretary of State—

(a) must publish the draft;

(b) must consider any representations made to him about the draft;

(c) may amend the draft accordingly.

[[F1296](2A) The Secretary of State must also consult the Treasury about the draft in its application to functions that Financial Conduct Authority officers have under this Chapter.]

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) After the Secretary of State has proceeded under **[**[F1297]subsections (2) and (2A)**]** he must lay the code before Parliament.

(4) When he has done so the Secretary of State may bring the code into operation on such day as he may appoint by order.

(5) A person specified in subsection (1)(a) to **[**[F1298](f)**]** must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.

(6) If such a person fails to comply with any provision of such a code of practice he is not by reason only of that failure liable in any criminal or civil proceedings.

(7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(8) The Secretary of State may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

[F1299](9) . . . . . .

Textual Amendments

F1290 Words in s. 377 heading inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 114(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1291 S. 377(1)(a)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 143**; S.I. 2013/1682, art. 3(v)

F1292 Words in s. 377(1)(c)(d) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 67(2)** (with arts. 28-31)

F1293 S. 377(1)(e) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 17**

F1294 S. 377(1)(f) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 37(2)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

F1295 S. 377(1)(g) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 58(2)**; S.I. 2017/991, reg. 2(t); S.I. 2021/724, reg. 4(i)

F1296 S. 377(2A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 58(3)**; S.I. 2017/991, reg. 2(t); S.I. 2021/724, reg. 4(i)

F1297 Words in s. 377(3) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 58(4)**; S.I. 2017/991, reg. 2(t); S.I. 2021/724, reg. 4(i)

F1298 Word in s. 377(5) substituted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 37(3)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

F1299 S. 377(9) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 67(3)** (with arts. 28-31)

Commencement Information

I332 S. 377 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[F1300 377ZA Code of practice (Northern Ireland)

(1) The Department of Justice in Northern Ireland must prepare a code of practice as to the exercise, in relation to Northern Ireland, by constables and accredited financial investigators of functions they have under this Chapter.

(2) After preparing a draft of the code the Department of Justice—
  (a) must publish the draft;
  (b) must consider any representations made to the Department of Justice about the draft;
  (c) may amend the draft accordingly.

(3) After the Department of Justice has proceeded under subsection (2) it must lay the code before the Northern Ireland Assembly.

(4) When the Department of Justice has done so it may bring the code into operation on such day as the Department of Justice may appoint by order.

(5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (3) in relation to the laying of a code as it applies in relation to the laying of a statutory document under an enactment.

(6) A constable or accredited financial investigator must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.

(7) If a constable or accredited financial investigator fails to comply with any provision of such a code of practice he is not by reason only of that failure liable in any criminal or civil proceedings.

(8) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(9) The Department of Justice may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

Textual Amendments

F1300 Ss. 377ZA, 377ZB inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 68** (with arts. 28-31)

377ZB Disapplication of PACE codes

The following provisions do not apply to an appropriate officer or the relevant authority in the exercise of any function either has under this Chapter—
  (a) section 67(9) of the Police and Criminal Evidence Act 1984 (application of codes of practice under that Act to persons other than police officers);
  (b) Article 66(8) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (which makes similar provision for Northern Ireland).]

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1300 Ss. 377ZA, 377ZB inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 68** (with arts. 28-31)

[F1301 377A Code of practice of Attorney General or Advocate General for Northern Ireland

(1) The Attorney General must prepare a code of practice as to—

(a) the exercise by the Director of Public Prosecutions [F1302, SFO officers] F1303... and the Director of the Serious Fraud Office of functions they have under this Chapter; and

(b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) in relation to a confiscation investigation, of functions he has under this Chapter in relation to England and Wales as the relevant authority.

(2) The Advocate General for Northern Ireland must prepare a code of practice as to—

(a) the exercise by the Director of Public Prosecutions for Northern Ireland of functions he has under this Chapter; and

(b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) in relation to a confiscation investigation, of functions he has under this Chapter in relation to Northern Ireland as the relevant authority.

(3) After preparing a draft of the code the Attorney General or (as the case may be) the Advocate General for Northern Ireland—

(a) must publish the draft;

(b) must consider any representations made to him about the draft;

(c) may amend the draft accordingly.

(4) After the Attorney General or the Advocate General for Northern Ireland has proceeded under subsection (3) he must lay the code before Parliament.

(5) When the code has been so laid the Attorney General or (as the case may be) the Advocate General for Northern Ireland may bring the code into operation on such day as he may appoint by order.

(6) A person specified in subsection (1)(a) or (b) or (2)(a) or (b) must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter to which the code relates.

(7) If such a person fails to comply with any provision of such a code of practice the person is not by reason only of that failure liable in any criminal or civil proceedings.

(8) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(9) The Attorney General or (as the case may be) the Advocate General for Northern Ireland may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(10) In this section references to the Advocate General for Northern Ireland are to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as references to the Attorney General for Northern Ireland.**]**

Textual Amendments

F1301 S. 377A inserted (1.3.2008 for specified purposes, 1.4.2008 in so far as not already in force) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 115**; S.I. 2008/219, art. 3(m); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1302 Words in s. 377A(1)(a) inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 24**; S.I. 2017/991, reg. 2(l); S.I. 2021/724, reg. 3(b)

F1303 Words in s. 377A(1)(a) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 28**

Interpretation

378 Officers

(1) In relation to a confiscation investigation these are appropriate officers—

[F1304(a) a National Crime Agency officer;**]**

(b) an accredited financial investigator;

(c) a constable;

[F1305(ca) an SFO officer;**]**

[F1306(d) an officer of Revenue and Customs;**]**

[F1307(e) an immigration officer.**]**

(2) In relation to a confiscation investigation these are senior appropriate officers—

[F1308(a) a senior National Crime Agency officer;**]**

(b) a police officer who is not below the rank of superintendent;

[F1309(ba) the Director of the Serious Fraud Office;**]**

(c) **[**F1310an officer of Revenue and Customs**]** who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank;

[F1311(ca) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank;**]**

(d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**F1312or the Welsh Ministers**]** under section 453.

(3) **[**F1313In relation to a civil recovery investigation these are appropriate officers—

(a) a National Crime Agency officer;

(b) the relevant Director;

(c) an officer of Revenue and Customs.

[F1314(d) a Financial Conduct Authority officer.**]**

(3ZA) In relation to a civil recovery investigation these are senior appropriate officers—

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(a) a senior National Crime Agency officer;

(b) the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs authorised by the Commissioners (whether generally or specifically) for this purpose.**]**

[[F1315](c) a senior Financial Conduct Authority officer.**]**

[[F1316](3A) In relation to a detained cash investigation these are appropriate officers—

(a) a constable;

[[F1317](aa) an SFO officer;**]**

[(ab) an accredited financial investigator;**]**

(b) an officer of Revenue and Customs.

[[F1318](c) an immigration officer.**]]**

[[F1319](3AA) In relation to a detained cash investigation these are senior appropriate officers—

(a) a police officer who is not below the rank of superintendent;

[[F1320](aa) the Director of the Serious Fraud Office;**]**

(b) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F1321]or the Welsh Ministers**]** under section 453;

(c) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that rank.

[[F1322](d) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank.**]]**

[[F1323](3B) The reference in paragraph (ab) of subsection (3A) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State **[**[F1324]or the Welsh Ministers**]** under section 453.**]**

[[F1325](3C) In relation to a detained property investigation these are appropriate officers—

(a) a constable;

(b) an SFO officer;

(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F1326]or the Welsh Ministers**]** under section 453;

(d) an officer of Revenue and Customs.

(3D) In relation to a detained property investigation these are senior appropriate officers—

(a) a police officer who is not below the rank of inspector;

(b) the Director of the Serious Fraud Office;

(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F1327]or the Welsh Ministers**]** under section 453;

(d) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to the police rank of inspector.

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(3E) In relation to a frozen funds investigation these are appropriate officers—

(a) a constable;

(b) an SFO officer;

(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F1328]or the Welsh Ministers**]** under section 453;

(d) an officer of Revenue and Customs.

(3F) In relation to a frozen funds investigation these are senior appropriate officers—

(a) a police officer who is not below the rank of inspector;

(b) the Director of the Serious Fraud Office;

(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F1329]or the Welsh Ministers**]** under section 453;

(d) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to the police rank of inspector.**]**

(4) In relation to a money laundering investigation these are appropriate officers—

(a) an accredited financial investigator;

(b) a constable;

[[F1330](ba) an SFO officer;**]**

[[F1331](c) an officer of Revenue and Customs;**]**

[[F1332](d) an immigration officer.**]**

(5) For the purposes of section 342, in relation to a money laundering investigation a person authorised for the purposes of money laundering investigations by **[**[F1333]the **[**[F1334]Director General of the National Crime Agency**]]** is also an appropriate officer.

(6) In relation to a money laundering investigation these are senior appropriate officers—

(a) a police officer who is not below the rank of superintendent;

[[F1335](aa) the Director of the Serious Fraud Office;**]**

(b) **[**[F1336]an officer of Revenue and Customs**]** who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank;

[[F1337](ba) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank;**]**

(c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State **[**[F1338]or the Welsh Ministers**]** under section 453.

[[F1339](6A) In relation to an exploitation proceeds investigation **[**[F1340]—

(a)**]** , **[**[F1341]a National Crime Agency officer**]** is an appropriate officer.**]**

[[F1342](b) a **[**[F1343]senior National Crime Agency officer**]** is a senior appropriate officer.**]**

[F1344](7) . . . . . .

[[F1345](8) For the purposes of this Part a **[**[F1346]senior National Crime Agency officer**]** is—

(a) the **[**[F1347]Director General of the National Crime Agency**]**; or

(b) any **[**[F1348]other National Crime Agency officer**]** authorised by the Director General (whether generally or specifically) for this purpose.**]**

Status: *Point in time view as at 05/01/2023.*
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[[F1349](9) For the purposes of this Part—

(a) "Financial Conduct Authority officer" means a member of staff of the Financial Conduct Authority;

(b) "senior Financial Conduct Authority officer" means a Financial Conduct Authority officer who is not below such grade as is designated by the Treasury for those purposes.**]**

Textual Amendments

F1304 S. 378(1)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(2)**; S.I. 2013/1682, art. 3(v)

F1305 S. 378(1)(ca) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 25(2)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F1306 S. 378(1)(d) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 18(a)**

F1307 S. 378(1)(e) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(5)(a)**, 61(2) (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(f)

F1308 S. 378(2)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(3)**; S.I. 2013/1682, art. 3(v)

F1309 S. 378(2)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 25(3)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F1310 Words in s. 378(2)(c) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 18(b)**

F1311 S. 378(2)(ca) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(5)(b)**, 61(2) (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(f)

F1312 Words in s. 378(2)(d) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(h)**

F1313 S. 378(3)(3ZA) substituted for s. 378(3) (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 19(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F1314 S. 378(3)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(4)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F1315 S. 378(3ZA)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(5)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

F1316 S. 378(3A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 13**; S.I. 2008/755, art. 17(1)(d)(ii)

F1317 S. 378(3A)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 25(4)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F1318 S. 378(3A)(c) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(5)(c)**, 61(2) (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(f)

F1319 S. 378(3AA) inserted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 27(2)**; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1320 S. 378(3AA)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 25(5)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F1321 Words in s. 378(3AA)(b) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(i)**

F1322 S. 378(3AA)(d) inserted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 29**; S.I. 2015/964, art. 2(f); S.I. 2017/4, art. 2

F1323 S. 378(3B) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 80(8)**, 94(1); S.I. 2008/755, art. 17(1)(g)

F1324 Words in s. 378(3B) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(j)**

F1325 S. 378(3C)-(3F) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 59**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1326 Words in s. 378(3C)(c) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(i)**

F1327 Words in s. 378(3D)(c) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(j)**

F1328 Words in s. 378(3E)(c) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(k)**

F1329 Words in s. 378(3F)(c) inserted (E.W.) (20.7.2018) by The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (S.I. 2018/768), regs. 1(2), **2(l)**

F1330 S. 378(4)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 25(6)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F1331 S. 378(4)(c) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 18(c)**

F1332 S. 378(4)(d) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(5)(d)**, 61(2) (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(f)

F1333 Words in s. 378(5) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 175**; S.I. 2006/378, art. 4(1), Sch. para. 10

F1334 Words in s. 378(5) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(5)**; S.I. 2013/1682, art. 3(v)

F1335 S. 378(6)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 25(7)**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

F1336 Words in s. 378(6)(b) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 18(b)**

F1337 S. 378(6)(ba) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(5)(e)**, 61(2) (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(f)

F1338 Words in s. 378(6)(c) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(k)**

F1339 S. 378(6A) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 19 para. 18** (with s. 180); S.I. 2010/816, art. 2, Sch. para. 18

F1340 Word in s. 378(6A) inserted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 27(3)(a)**; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1341 Words in s. 378(6A) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(6)** ; S.I. 2013/1682, art. 3(v)

F1342 S. 378(6A)(b) inserted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 27(3)(b)**; S.I. 2015/964, art. 2(e); S.I. 2017/4, art. 2

F1343 Words in s. 378(6A)(b) substituted (1.6.2015 for E.W., 1.2.2017 in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 30**; S.I. 2015/964, art. 2(f); S.I. 2017/4, art. 2

F1344 S. 378(7) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 116(6), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1345 S. 378(8) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 116(7)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

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F1346 Words in s. 378(8) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(7)(a)**; S.I. 2013/1682, art. 3(v)

F1347 Words in s. 378(8)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(7)(b)**; S.I. 2013/1682, art. 3(v)

F1348 Words in s. 378(8)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 144(7)(c)**; S.I. 2013/1682, art. 3(v)

F1349 S. 378(9) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(6)**, 58(1)(6); S.I. 2018/78, reg. 3(f); S.I. 2021/724, reg. 2(1)(i)

Modifications etc. (not altering text)

C176 S. 378(1)(b) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 6**

C177 S. 378(2)(d) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 12**

C178 S. 378(3A)(ab) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 7**

C179 S. 378(3AA)(b) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 13**

C180 S. 378(3C)(c) modified by S.I. 2018/196, Sch. para. 7A (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(e)**)

C181 S. 378(3D)(c) modified by S.I. 2018/196, Sch. para. 13A (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(3)(b)**)

C182 S. 378(3E)(c) modified by S.I. 2018/196, Sch. para. 7B (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(2)(e)**)

C183 S. 378(3F)(c) modified by S.I. 2018/196, Sch. para. 13B (as inserted (E.W.) (20.7.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (S.I. 2018/767), arts. 1(2), **2(3)(b)**)

C184 S. 378(4)(a) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 8**

C185 S. 378(6)(c) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 14**

Commencement Information

I333 S. 378 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

379 Miscellaneous

"Document", "excluded material" and "premises" have the same meanings as in the Police and Criminal Evidence Act 1984 (c. 60) or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

Commencement Information

I334 S. 379 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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CHAPTER 3

SCOTLAND

Production orders

380 Production orders

(1) The sheriff may, on an application made to him by the appropriate person, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making a production order in relation to [F1350]... a civil recovery investigation **[**[F1351], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**, the sheriff shall act in the exercise of his civil jurisdiction.

(3) The application for a production order must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1352], a civil recovery investigation **]** or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation **[**[F1353], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**.

(4) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought in relation to material, or material of a description, specified in the application;

(c) a person specified in the application appears to be in possession or control of the material.

(5) A production order is an order either—

(a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to a proper person for him to take away, or

(b) requiring that person to give a proper person access to the material,

within the period stated in the order.

(6) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances.

Textual Amendments

F1350 Words in s. 380(2) omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 14(2)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1351 Words in s. 380(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 60**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1352 Words in s. 380(3)(a) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 14(3)**; S.I. 2015/964, art. 2(d) (with art. 3)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1353 Words in s. 380(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 60**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Modifications etc. (not altering text)

C186 S. 380(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(3)**, (4)

C187 S. 380(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(3)**(4), 14(3), (4)

Commencement Information

I335 S. 380 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

381 Requirements for making of production order

(1) These are the requirements for the making of a production order.

(2) There must be reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;

(b) **[**[F1354]in the case of a civil recovery investigation—

(i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;**]**

[[F1355](ba) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(bb) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;**]**

[[F1356](bc) in the case of a detained property investigation into the derivation of property, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(bd) in the case of a detained property investigation into the intended use of property, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;

(be) in the case of a frozen funds investigation into the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a "frozen account"), the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(bf) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;**]**

(c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to—

(a) the benefit likely to accrue to the investigation if the material is obtained,

(b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Textual Amendments

F1354 S. 381(2)(b) substituted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 15**; S.I. 2015/964, art. 2(d) (with art. 3)

F1355 S. 381(2)(ba)(bb) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), **ss. 75(5)**, 94(3); S.S.I. 2009/224, art. 2(1)(a)

F1356 S. 381(2)(bc)-(bf) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 61**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Commencement Information

I336 S. 381 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

382 Order to grant entry

(1) This section applies if a sheriff makes a production order requiring a person to give a proper person access to material on any premises.

(2) The sheriff may, on an application made to him by the appropriate person and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to the appropriate person to be entitled to grant entry to the premises to allow a proper person to enter the premises to obtain access to the material.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C188 S. 382(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(3)**, (4)

C189 S. 382(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(3)**(4), 14(3), (4)

Commencement Information

I337 S. 382 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

383 Further provisions

(1) A production order does not require a person to produce, or give access to, any items subject to legal privilege.

(2) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

(3) A proper person may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(4) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.

(5) But if a proper person has reasonable grounds for believing that—

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Modifications etc. (not altering text)

C190 S. 383(1) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(6)**

C191 S. 383(1)(2) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(6)**

C192 S. 383(1) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, 4(6), **14(6)**, 24(6)

C193 S. 383(1)(2) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(6)**

C194 S. 383(2) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(6)**

C195 S. 383(2) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, 4(6), **14(6)**, 24(6)

C196 S. 383(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(3)**, (4)

C197 S. 383(3) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(3)**(4), 14(3)(4)

C198 S. 383(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(3)**, (4)

Status: *Point in time view as at 05/01/2023.*
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C199 S. 383(5) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(3)**(4), 14(3)(4)

Commencement Information

I338 S. 383 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

384 Computer information

(1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material to a proper person for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

(3) If the order is an order requiring a person to give a proper person access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

Modifications etc. (not altering text)

C200 S. 384 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(3)**, (4)

C201 S. 384 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(3)**(4), 14(3)(4)

Commencement Information

I339 S. 384 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

385 Government departments

(1) A production order may be made in relation to material in the possession or control of an authorised government department.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) If an order contains such a requirement—
  (a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;
  (b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

(4) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 380(5)) the person on whom it is served must report the reasons for the failure to—
  (a) the sheriff in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(b) the sheriff exercising a civil jurisdiction in the case of an order made for the purposes of a civil recovery investigation **[**[F1357], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**.

(5) In this section, "authorised government department" includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44) and the Scottish Administration.

Textual Amendments

F1357 Words in s. 385(4)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 62**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Modifications etc. (not altering text)

C202 S. 385 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **23(7)**, 24(7)

C203 S. 385 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **14(7)**

C204 S. 385 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **4(7)**, 14(7)

C205 S. 385 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **24(7)**

Commencement Information

I340 S. 385 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

386 Supplementary

(1) An application for a production order or an order to grant entry may be made ex parte to a sheriff in chambers.

(2) Provision may be made by rules of court as to the discharge and variation of production orders and orders to grant entry.

(3) Rules of court under subsection (2) relating to production orders and orders to grant entry—

(a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46) be made by act of adjournal;

(b) made in a civil recovery investigation **[**[F1358], a detained cash investigation, a detained property investigation or a frozen funds investigation**]** shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) be made by act of sederunt.

(4) An application to discharge or vary a production order or an order to grant entry may be made to the sheriff by—

(a) the person who applied for the order;

(b) any person affected by the order.

(5) The sheriff may—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) discharge the order;
(b) vary the order.

Textual Amendments

F1358 Words in s. 386(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 63**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Commencement Information

I341 S. 386 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Search warrants

387 Search warrants

(1) The sheriff may, on an application made to him by the appropriate person, issue a search warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.

(2) In issuing a search warrant in relation to [F1359]... a civil recovery investigation **[**[F1360], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**, the sheriff shall act in the exercise of his civil jurisdiction.

(3) The application for a search warrant must state that—
(a) a person specified in the application is subject to a confiscation investigation **[**[F1361], a civil recovery investigation**]** or a money laundering investigation, or
(b) property specified in the application is subject to a civil recovery investigation **[**[F1362], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**.

(4) A search warrant is a warrant authorising a proper person—
(a) to enter and search the premises specified in the application for the warrant, and
(b) to seize and retain any material specified in the warrant which is found there and which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

[[F1363](4A) A proper person may, if necessary, use reasonable force in executing a search warrant.**]**

(5) The requirements for the issue of a search warrant are—
(a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
(b) that section 388 is satisfied in relation to the warrant.

(6) An application for a search warrant may be made ex parte to a sheriff in chambers.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1359 Words in s. 387(2) omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 16(2)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1360 Words in s. 387(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 64**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1361 Words in s. 387(3)(a) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 16(3)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1362 Words in s. 387(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 64**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1363 S. 387(4A) inserted (28.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 86**, 94(3); S.S.I. 2008/152, art. 2

Modifications etc. (not altering text)

C206 S. 387(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **16(2)**

C207 S. 387(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **6(2)**, 16(2)

Commencement Information

I342 S. 387 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

388 Requirements where production order not available

(1) This section is satisfied in relation to a search warrant if—

(a) subsection (2) applies, and

(b) either the first or the second set of conditions is complied with.

(2) This subsection applies if there are reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;

[F1364(b) in the case of a civil recovery investigation—

(i) the person specified in the application for the warrant holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property specified in the application for the warrant is recoverable property or associated property;]

[F1365(ba) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;

(bb) in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;]

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[[F1366](bc) in the case of a detained property investigation into the derivation of property, the property specified in the application for the warrant, or a part of it, is recoverable property;

(bd) in the case of a detained property investigation into the intended use of property, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;

(be) in the case of a frozen funds investigation into the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a "frozen account"), the property specified in the application for the warrant, or a part of it, is recoverable property;

(bf) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;**]**

(c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.

(3) The first set of conditions is that there are reasonable grounds for believing that—

(a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought,

(b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).

(4) The reasons are—

(a) that it is not practicable to communicate with any person against whom the production order could be made;

(b) that it is not practicable to communicate with any person who would be required to comply with an order to grant access to the material or to grant entry to the premises on which the material is situated;

(c) that the investigation might be seriously prejudiced unless a proper person is able to secure immediate access to the material.

(5) The second set of conditions is that—

(a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7) **[**[F1367], (7A), (7B) **[**[F1368], (7C), (7D), (7E), (7F)**]]** or (8),

(b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) any one or more of the requirements in subsection (9) is met.

(6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct **[**[F1369]or of realisable property available for satisfying a confiscation order made in respect of him**]** or any question as to the extent or whereabouts of his benefit from his criminal conduct, and

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(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

[[F1370](a) relates to the person or property specified in the application or to any of the questions listed in subsection (7ZA), and**]**

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

[[F1371](7ZA) Those questions are—

(a) where a person is specified in the application, any question as to—

(i) what property the person holds or has held,

(ii) whether the property is or has been recoverable property or associated property, or

(iii) the nature, extent or whereabouts of the property, and

(b) where property is specified in the application, any question as to—

(i) whether the property is or has been recoverable property or associated property,

(ii) who holds it or has held it,

(iii) whether a person who appears to hold or to have held it holds or has held other property,

(iv) whether the other property is or has been recoverable property or associated property, or

(v) the nature, extent or whereabouts of the specified property or the other property.**]**

[[F1372](7A) In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7B) In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.**]**

[[F1373](7C) In the case of a detained property investigation into the derivation of property, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

Status: *Point in time view as at 05/01/2023.*
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(7D) In the case of a detained property investigation into the intended use of property, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7E) In the case of a frozen funds investigation into the derivation of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7F) In the case of a frozen funds investigation into the intended use of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.**]**

(8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

(a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(9) The requirements are—

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that entry to the premises will not be granted unless a warrant is produced;

(c) that the investigation might be seriously prejudiced unless a proper person arriving at the premises is able to secure immediate entry to them.

Textual Amendments

F1364 S. 388(2)(b) substituted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 17(2)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1365 S. 388(2)(ba)(bb) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), **ss. 76(5)**, 94(3); S.S.I. 2009/224, art. 2(1)(b)

F1366 S. 388(2)(bc)-(bf) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 65(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Status: *Point in time view as at 05/01/2023.*
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F1367 Words in s. 388(5)(a) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), s. 94(3), **Sch. 10 para. 18**; S.S.I. 2009/224, art. 2(1)(d)(ii)

F1368 Words in s. 388(5)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 65(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1369 Words in s. 388(6)(a) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 38(3)**, 88(2)(b); S.S.I. 2016/11, reg. 2(h)

F1370 S. 388(7)(a) substituted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 17(3)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1371 S. 388(7ZA) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 17(4)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1372 S. 388(7A)(7B) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), **ss. 76(6)**, 94(3); S.S.I. 2009/224, art. 2(1)(b)

F1373 S. 388(7C)-(7F) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 65(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Commencement Information

I343 S. 388 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

389 Further provisions: general

A search warrant does not confer the right to seize any items subject to legal privilege.

Modifications etc. (not altering text)

C208 S. 389 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **25(5)**, 26(5)

C209 S. 389 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **26(5)**

C210 S. 389 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **16(3)**

C211 S. 389 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **6(3)**, 16(3)

Commencement Information

I344 S. 389 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

390 Further provisions: confiscation, civil recovery[F1374, detained cash][F1375, detained property, frozen funds] and money laundering

(1) This section applies to search warrants sought for the purposes of confiscation investigations, civil recovery investigations**[**F1376, detained cash investigations**][**F1377, detained property investigations, frozen funds investigations**]** or money laundering investigations.

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(2) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.

(3) A warrant authorises the person executing it to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the proper person believes relates to any matter relevant to the investigation, to be produced in a form—

(a) in which it can be taken away, and

(b) in which it is visible and legible.

(4) Copies may be taken of any material seized under a warrant.

(5) A warrant issued in relation to a civil recovery investigation**[**[F1378], a detained cash investigation, a detained property investigation or a frozen funds investigation**]** may be issued subject to conditions.

(6) A warrant issued in relation to a civil recovery investigation**[**[F1379], a detained cash investigation, a detained property investigation or a frozen funds investigation**]** may include provision authorising the person executing it to do other things which—

(a) are specified in the warrant, and

(b) need to be done in order to give effect to it.

(7) Material seized under a warrant issued in relation to a civil recovery investigation**[**[F1380], a detained cash investigation, a detained property investigation or a frozen funds investigation **]** may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.

(8) But if the Scottish Ministers have reasonable grounds for believing that—

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Textual Amendments

F1374 Words in s. 390 heading inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), s. 94(3), **Sch. 10 para. 19(2)**; S.S.I. 2009/224, art. 2(1)(d)(ii)

F1375 Words in s. 390 heading inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 66(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1376 Words in s. 390(1) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), s. 94(3), **Sch. 10 para. 19(3)**; S.S.I. 2009/224, art. 2(1)(d)(ii)

F1377 Words in s. 390(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 66(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1378 Words in s. 390(5) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 66(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

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F1379 Words in s. 390(6) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 66(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1380 Words in s. 390(7) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 66(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Modifications etc. (not altering text)

C212 S. 390(3) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **6(5)**, 16(5)

C213 S. 390(3) applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **25(8)**, 26(8)

C214 S. 390(4) excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **25(10)**, 26(10)

C215 S. 390(4) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **6(7)**, 16(7)

Commencement Information

I345 S. 390 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Disclosure orders

391 Disclosure orders

(1) The High Court of Justiciary, on an application made to it by the Lord Advocate in relation to confiscation investigations **[**[F1381]or money laundering investigations**]**, or the Court of Session, on an application made to it by the Scottish Ministers in relation to civil recovery investigations, may make a disclosure order if it is satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for a disclosure order may be made in relation to a **[**[F1382]detained cash investigation**][**[F1383], a detained property investigation or a frozen funds investigation**]**[F1384]....

(3) The application for a disclosure order must state that—

(a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation, or

[[F1385](aa) a person specified in the application is subject to a money laundering investigation and the order is sought for the purposes of the investigation, or**]**

(b) **[**[F1386]a person specified in the application or**]** property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.

(4) A disclosure order is an order authorising the Lord Advocate or the Scottish Ministers to give to any person the Lord Advocate considers or the Scottish Ministers consider has relevant information, notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following—

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(a) answer questions, either at a time specified in the notice or at once, at a place so specified;

(b) provide information specified in the notice, by a time and in a manner so specified;

(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(5) Relevant information is information (whether or not contained in a document) which the Lord Advocate considers or the Scottish Ministers consider to be relevant to the investigation.

(6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

Textual Amendments

F1381 Words in s. 391(1) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 8(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(b)

F1382 Words in s. 391(2) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), s. 94(3), **Sch. 10 para. 20**; S.S.I. 2009/224, art. 2(1)(d)(ii)

F1383 Words in s. 391(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 67**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1384 Words in s. 391(2) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), ss. 8(2)(b), 58(1)(6); S.I. 2018/78, reg. 3(b)

F1385 S. 391(3)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 8(2)(c)**, 58(1)(6); S.I. 2018/78, reg. 3(b)

F1386 Words in s. 391(3)(b) inserted (1.6.2015 for E.W.S.) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 18**; S.I. 2015/964, art. 2(d) (with art. 3)

Commencement Information

I346 S. 391 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

392 Requirements for making of disclosure order

(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;

[[F1387](aa) in the case of a money laundering investigation, the person specified in the application for the order has committed a money laundering offence;**]**

[[F1388](b) in the case of a civil recovery investigation—

(i) the person specified in the application for the order holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property specified in the application for the order is recoverable property or associated property;**]**

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(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Textual Amendments

F1387 S. 392(2)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 8(3)**, 58(1)(6); S.I. 2018/78, reg. 3(b)

F1388 S. 392(2)(b) substituted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 19**; S.I. 2015/964, art. 2(d) (with art. 3)

Commencement Information

I347 S. 392 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

393 Offences

(1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—

(a) imprisonment for a term not exceeding six months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he—

(a) makes a statement which he knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Modifications etc. (not altering text)

C216 S. 393 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(6)-(8)**, 18(6)(7), 27(2)(6)(7), 28(2)(7) (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), **2(9)**(10))

C217 S. 393 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(1)**(2), 18(2)

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I348 S. 393 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

394 Statements

(1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.

(2) But subsection (1) does not apply—

(a) in the case of proceedings under Part 3,

(b) on a prosecution for an offence under section 393(1) or (3),

(c) on a prosecution for perjury, or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

Modifications etc. (not altering text)

C218 S. 394 restricted (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **18(6)**, (8)

C219 S. 394 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(1)**(3)(4), 18(3)(4)

C220 S. 394 restricted (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **8(8)**, 18(6)(8)

C221 S. 394 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **18(3)**, (4)

Commencement Information

I349 S. 394 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

395 Further provisions

(1) A disclosure order does not confer the right to require a person to answer any question, provide any information or produce any document which he would be entitled to refuse to answer, provide or produce on grounds of legal privilege.

(2) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

(3) The Lord Advocate and the Scottish Ministers may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

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(4) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(5) But if the Lord Advocate has, or the Scottish Ministers have, reasonable grounds for believing that—

(a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Modifications etc. (not altering text)

C222 S. 395 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **27(5)** (as amended (1.4.2008) by S.I. 2008/298, arts. 1(1), 2(9))

C223 S. 395 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **27(6)**, (7)

Commencement Information

I350 S. 395 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

396 Supplementary

(1) An application for a disclosure order may be made ex parte to—

(a) in the case of an order made in a confiscation investigation **[**[F1389]or a money laundering investigation**]**, a judge of the High Court of Justiciary;

(b) in the case of an order made in a civil recovery investigation, a judge of the Court of Session,

in chambers.

(2) Provision may be made by rules of court as to the discharge and variation of disclosure orders.

(3) Rules of court under subsection (2) relating to disclosure orders—

(a) made in a confiscation investigation **[**[F1390]or a money laundering investigation**]** shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46) be made by act of adjournal;

(b) made in a civil recovery investigation shall, without prejudice to section 5 of the Court of Session Act 1988 (c. 36), be made by act of sederunt.

(4) An application to discharge or vary a disclosure order may be made to a judge of the court which made the order by—

(a) the Lord Advocate or the Scottish Ministers;

(b) any person affected by the order.

(5) The court may—

(a) discharge the order;

(b) vary the order.

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Textual Amendments

F1389 Words in s. 396(1)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 8(4)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(b)

F1390 Words in s. 396(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 8(4)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(b)

Commencement Information

I351 S. 396 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1391 Unexplained wealth orders

Textual Amendments

F1391 Ss. 396A-396I and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 4**, 58(1)(6); S.I. 2018/78, reg. 3(a)

396A Unexplained wealth orders

(1) The Court of Session may, on an application made by the Scottish Ministers, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order must—

(a) specify or describe the property in respect of which the order is sought, and

(b) specify the person whom the Scottish Ministers think holds the property ("the respondent") (and the person specified may include a person outside the United Kingdom).

F1392 **[** (2A) In a case where the respondent is not an individual, the application may also specify a person who is a responsible officer of the respondent (and a person specified may include a person outside the United Kingdom).**]**

(3) An unexplained wealth order is an order requiring the respondent **[**F1393 or any responsible officer specified in the order (a "specified responsible officer")**]** to provide a statement—

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,

(b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),

(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify—

(a) the form and manner in which the statement is to be given,

(b) the person to whom it is to be given, and

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(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent **[**[F1394]or any specified responsible officer**]** to provide the statement mentioned in subsection (3), also **[**[F1395]require them**]** to produce documents of a kind specified or described in the order.

(6) The respondent **[**[F1396]or any specified responsible officer**]** must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

[F1397]**[** (7) For the purposes of this Chapter, each of the following is a "responsible officer" of the respondent (in a case where the respondent is not an individual)—

(a) any director of the respondent, including any person occupying the position of a director, by whatever name called;

(b) any member of a body of the respondent equivalent to a board of directors;

(c) any other manager, secretary or similar officer of the respondent;

(d) where the respondent is a partnership, a partner or member of the partnership;

(e) any person in accordance with whose directions or instructions the board of directors or equivalent body of the respondent are accustomed to act.**]**

Textual Amendments

F1392 S. 396A(2A) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(3)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1393 Words in s. 396A(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(4)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1394 Words in s. 396A(5) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(5)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1395 Words in s. 396A(5) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(5)(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1396 Words in s. 396A(6) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(6)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1397 S. 396A(7) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(7)**, 69(1); S.I. 2022/519, regs. 1(3), 2

396B Requirements for making of unexplained wealth order

(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The Court of Session must be satisfied that there is reasonable cause to believe that—

(a) the respondent holds the property, and

(b) the value of the property is greater than £50,000.

(3) The Court of Session must be satisfied that there are reasonable grounds for suspecting **[**[F1398]—

(a)**]** that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property**[**[F1399], or

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(b) that the property has been obtained through unlawful conduct (within the meaning given by section 242).**]**

(4) The Court of Session must be satisfied that—

(a) the respondent is a politically exposed person, or

(b) there are reasonable grounds for suspecting that—

(i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or

(ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of subsection (2)(a)—

(a) whether or not there are other persons who also hold the property;

(b) whether the property was obtained by the respondent before or after the coming into force of this section.

(6) For the purposes of subsection (3)—

(a) regard is to be had to any heritable security, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;

(b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In subsection (4)(a), "politically exposed person" means a person who is—

(a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than **[**[F1400]—

(i) the United Kingdom, or

(ii) an EEA state,**]**

(b) a family member of a person within paragraph (a),

(c) known to be a close associate of a person within that paragraph, or

(d) otherwise connected with a person within that paragraph.

(8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining—

(a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),

(b) whether a person is a family member (see point (10) of that Article), and

(c) whether a person is known to be a close associate of another (see point (11) of that Article).

(9) For the purposes of this section—

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(a) a person is involved in serious crime in a part of the United Kingdom or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);

(b) section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies in determining whether a person is connected with another.

(10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

Textual Amendments

F1398 Word in s. 396B(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 48(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1399 S. 396B(3)(b) and word inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 48(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1400 S. 396B(7)(a)(i)(ii) substituted for words (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(10)**; 2020 c. 1, Sch. 5 para. 1(1)

396C Effect of order: cases of non-compliance

(1) This section applies in a case where **[**[F1401]the respondent and the specified responsible officer (if any), between them, fail**]**, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5, unless the contrary is shown.

(3) The presumption in subsection (2) applies in relation to property—

(a) only so far as relating to the respondent's interest in the property, and

(b) only if the value of that interest is greater than the sum specified in section 396B(2)(b).

It is for the court hearing the proceedings under Part 5 in relation to which reliance is placed on the presumption to determine the matters in this subsection.

(4) The "response period" is whatever period the court specifies under section 396A(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).

(5) For the purposes of subsection (1)—

(a) a respondent **[**[F1402]or a specified responsible officer**]** who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 396D);

(b) where an unexplained wealth order imposes more than one requirement, [F1403]... **[**[F1404]the respondent and the specified responsible officer (if any) are**]** to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

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(6) Subsections (7) and (8) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—

(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 396B), or

(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(7) In a case within subsection (6)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(8) In a case within subsection (6)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 396B.

(9) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

Textual Amendments

F1401 Words in s. 396C(1) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(8)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1402 Words in s. 396C(5)(a) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(8)(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1403 Words in s. 396C(5)(b) omitted (15.5.2022) by virtue of Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(8)(c)(i)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1404 Words in s. 396C(5)(b) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(8)(c)(ii)**, 69(1); S.I. 2022/519, regs. 1(3), 2

396D Effect of order: cases of compliance or purported compliance

(1) This section applies in a case where **[**[F1405]the respondent and the specified responsible officer (if any) between them comply, or purport to comply, with all of the**]** requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made before the end of the response period (as defined by section 396C(4)).

(2) If an interim freezing order has effect in relation to the property (see section 396J), the Scottish Ministers must—

(a) consider whether the Lord Advocate should be given an opportunity to determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property, and

(b) determine whether they consider that any proceedings under Part 5 (civil recovery of the proceeds of unlawful conduct) or this Chapter ought to be taken by them in relation to the property.

(3) If the Scottish Ministers consider that the Lord Advocate should be given an opportunity to make a determination as mentioned in subsection (2)(a), the Lord Advocate must determine what enforcement or investigatory proceedings, if any, the

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Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.

(4) A determination under subsection (2)(b) or (3) must be made within the period of 60 days starting with the day of compliance **[**[F1406], or that period as it may be extended by virtue of section 396DA or 396DB (the "determination period")**]**.

(5) If the determinations under subsections (2)(b) and (3) are that no further proceedings under Part 5 or this Chapter and no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Scottish Ministers must notify the Court of Session of the nature of the determinations as soon as reasonably practicable (and in any event before the end of the **[**[F1407]determination period**]**).

(6) If there is no interim freezing order in effect in relation to the property—

(a) the Scottish Ministers may (at any time) determine whether they consider that any proceedings under Part 5 or this Chapter ought to be taken by them in relation to the property, and

(b) the Lord Advocate may (at any time) determine what, if any, enforcement or investigatory proceedings the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.

(7) A determination under this section to take no further proceedings under Part 5 or this Chapter or no further enforcement or investigatory proceedings in relation to any property does not prevent any such proceedings being taken subsequently (whether as a result of new information or otherwise) in relation to the property.

(8) For the purposes of this section—

[F1408](a) . . . . . .

(b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days), and

(c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs **[**[F1409](b) and (c)**]** references to compliance include purported compliance.

(9) In this section "enforcement or investigatory proceedings" means any proceedings in relation to property taken under—

(a) Part 3 (confiscation proceedings in Scotland), or

(b) this Chapter.

Textual Amendments

F1405 Words in s. 396D(1) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(9)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1406 Words in s. 396D(4) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 50(2)(a)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1407 Words in s. 396D(5) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 50(2)(b)**, 69(1); S.I. 2022/519, regs. 1(3), 2

F1408 S. 396D(8)(a) omitted (15.5.2022) by virtue of Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(9)(b)(i)**, 69(1); S.I. 2022/519, regs. 1(3), 2

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F1409 Words in s. 396D(8) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(9)(b)(ii)**, 69(1); S.I. 2022/519, regs. 1(3), 2

[F1410 396DA Extension of period for making determination where interim freezing order has been made

(1) The Court of Session may, on an application made by the Scottish Ministers or the Lord Advocate, extend the determination period if satisfied that—
  (a) the applicant is working diligently and expeditiously towards making a determination under section 396D(2)(b) or (3) (as the case may be),
  (b) further time is needed to make that determination, and
  (c) it is reasonable in all the circumstances for the period to be extended.

(2) The application must be made before the determination period would otherwise end.

(3) An extension of the determination period must end no later than the end of the period of 63 days beginning with the day after that on which the period would otherwise end.

(4) Where the period is extended under subsection (1), it may be further extended by the Court of Session (and subsections (2) and (3) apply in relation to any further extension as they apply in relation to the first one).

(5) But the determination period as extended must not exceed the period of 186 days starting with the day of compliance (within the meaning given by section 396D(8)(b)).

Textual Amendments

F1410 Ss. 396DA, 396DB inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 50(3)**, 69(1); S.I. 2022/519, regs. 1(3), 2

396DB Extension of period pending determination of proceedings etc

(1) Subsection (2) applies where—
  (a) an application is made to the Court of Session under section 396DA for the extension (or further extension) of the determination period, and
  (b) the period would (apart from that subsection) end before the Court determines the application or it is otherwise disposed of.

(2) The determination period is extended from the time when it would otherwise end until—
  (a) the Court determines the application or it is otherwise disposed of, or
  (b) if earlier, the end of the period of 31 days beginning with the day after that on which the period would otherwise have ended.

(3) Subsection (4) applies where—
  (a) proceedings on an appeal in respect of a decision on an application under section 396DA have been brought, and
  (b) the determination period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.

(4) The determination period is extended from the time when it would otherwise end until—

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(a) the proceedings are finally determined or otherwise disposed of, or
(b) if earlier, the end of the period mentioned in subsection (2)(b).

(5) Subsection (6) applies where—
(a) an application is made to the Court under section 396DA for an extension of the determination period,
(b) the Court refuses to grant the application, and
(c) the period would (apart from that subsection) end before the end of the 5 day period.

(6) The determination period is extended from the time when it would otherwise end until—
(a) the end of the 5 day period, or
(b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.

(7) The "5 day period" is the period of 5 working days beginning with the day on which the Court refuses to grant the application; and for these purposes "working day" means a day other than—
(a) a Saturday or a Sunday, or
(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.

(8) The restriction on the overall extension of the determination period mentioned in section 396DA(5) applies to an extension of the period in accordance with any provision of this section as it applies to an extension under an order of the Court.**]**

Textual Amendments

F1410 Ss. 396DA, 396DB inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 50(3)**, 69(1); S.I. 2022/519, regs. 1(3), 2

396E Offence

(1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person—
(a) makes a statement that the person knows to be false or misleading in a material particular, or
(b) recklessly makes a statement that is false or misleading in a material particular.

(2) A person guilty of an offence under this section is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both, or
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

396F Statements

(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

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(2) Subsection (1) does not apply—
- (a) in the case of proceedings under Part 3,
- (b) on a prosecution for an offence under section 396E,
- (c) on a prosecution for perjury, or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

396G Disclosure of information, copying of documents, etc

(1) An unexplained wealth order does not confer the right to require a person to answer any question, provide any information or produce any document which the person would be entitled to refuse to answer, provide or produce on grounds of legal privilege.

(2) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(3) The Scottish Ministers may take copies of any documents produced by the respondent **[**[F1411]or any specified responsible officer**]** in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 341 in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the Scottish Ministers have reasonable grounds to believe that the documents—
- (a) may need to be produced for the purposes of any legal proceedings, and
- (b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Textual Amendments

F1411 Words in s. 396G(3) inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 46(10)**, 69(1); S.I. 2022/519, regs. 1(3), 2

396H Holding of property: trusts and company arrangements etc

(1) This section applies for the purposes of sections 396A and 396B.

(2) The cases in which a person (P) is to be taken to "hold" property include those where—
- (a) P has effective control over the property;
- (b) P is the trustee of a settlement in which the property is comprised;
- (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

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(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—
  (a) exercises,
  (b) is able to exercise, or
  (c) is entitled to acquire,
  direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.

(6) For further provision about how to construe references to the holding of property, see section 414.

396I Supplementary

(1) An application for an unexplained wealth order may be made without notice.

(2) Provision may be made by rules of court as to the discharge and variation of unexplained wealth orders.

(3) An application to discharge or vary an unexplained wealth order may be made to the Court of Session by—
  (a) the Scottish Ministers, or
  (b) any person affected by the order.

(4) The Court of Session may—
  (a) discharge the order;
  (b) vary the order.**]**

[F1412 Unexplained wealth orders: interim freezing of property

Textual Amendments

F1412 Ss. 396J-396S inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 5**, 58(1)(6); S.I. 2018/78, reg. 3(a)

396J Application for interim freezing order

(1) This section applies where the Court of Session makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 396L).

Status: *Point in time view as at 05/01/2023.*
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(4) An interim freezing order—
- (a) may be made only on the application of the Scottish Ministers,
- (b) must be made in the same proceedings as those in which the unexplained wealth order is made, and
- (c) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

396K Variation and recall of interim freezing order

(1) The Court of Session may at any time vary or recall an interim freezing order.

(2) The Court of Session must recall an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.

(3) The first case is where—
- (a) the applicable 48 hour period has ended, and
- (b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where—
- (a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned, and
- (b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.

(5) The third case is where the court has received a notification in relation to the property concerned under section 396D(5) (notification of no further proceedings).

(6) References in this section to the "applicable 48 hour period" are to be read as follows—
- (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by the unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the **[**[F1413]determination period (see section 396D(4))**]** ends;
- (b) in any other case, it is the period of 48 hours beginning with the day after the day on which the response period ends.

(7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of—
- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday, or
- (d) any other day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.

(8) Section 396D(8) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(9) Before exercising power under this section to vary or recall an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(10) Subsection (9) does not apply where the court is acting as required by subsection (2).

(11) In this section—

"relevant application" means an application for—

(a) a restraint order under section 120,

(b) a prohibitory property order under section 255A, or

(c) an interim administration order under section 256;

"response period" has the meaning given by section 396C(4).

Textual Amendments

F1413 Words in s. 396K(6)(a) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 50(4)**, 69(1); S.I. 2022/519, regs. 1(3), 2

396L Exclusions

(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

(a) to meet the person's reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Chapter.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

396M Restrictions on proceedings and remedies

(1) While an interim freezing order has effect the Court of Session may sist any action, execution or other legal process in respect of the property to which the order applies.

(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 interim freezing order has been applied for or made in respect of the property, it may—

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(a) sist the proceedings, or
(b) allow them to continue on any terms it thinks fit.

(3) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

396N Arrestment of property affected by interim freezing order

(1) On the application of the Scottish Ministers the Court of Session may, in relation to moveable property to which an interim freezing order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under subsection (1) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(3) A warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of subsection (5), the Scottish Ministers must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

396O Inhibition of property affected by interim freezing order

(1) On the application of the Scottish Ministers, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in an interim freezing order.

(2) The property is heritable property situated in Scotland to which the interim freezing order applies (whether generally or to such of it as is specified in the application).

(3) The warrant for inhibition—
(a) has effect as if granted on the dependence of an action for debt by the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly, and
(b) has the effect of letters of inhibition and must forthwith be registered by the Scottish Ministers in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

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(6) If an inhibition ceases to have effect to any extent by virtue of subsection (5), the Scottish Ministers must—
  (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
  (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

396P Receivers in connection with interim freezing orders

(1) This section applies where the Court of Session makes an interim freezing order on an application by the Scottish Ministers.

(2) The Court of Session may, on an application by the Scottish Ministers, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the Scottish Ministers to obtain a recovery order in respect of the property.

(5) In their application the Scottish Ministers must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the Scottish Ministers.

(7) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the Scottish Ministers (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the Scottish Ministers).

396Q Powers of receivers appointed under section 396P

(1) If the Court of Session appoints a receiver under section 396P, the court may act under this section on the application of the Scottish Ministers.

(2) The court may by order authorise or require the receiver—
  (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the receiver is appointed;
  (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed—
  (a) to bring the property to a place in Scotland specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);
  (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.

Status: *Point in time view as at 05/01/2023.*
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(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place in Scotland specified by the receiver or to place them in the custody of the receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(7) Subsection (8) applies in a case where—
  (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 396P, but
  (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of his or her appointment.

(8) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.

(9) But subsection (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

396R Supervision of section 396P receiver and variations

(1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a receiver appointed under section 396P—
  (a) the receiver;
  (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
  (c) a person affected by an action taken by the receiver;
  (d) a person who may be affected by an action proposed to be taken by the receiver.

(2) Before it gives directions under subsection (1), the court must give an opportunity to be heard to—
  (a) the receiver;
  (b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;
  (c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or recall—
  (a) the appointment of a receiver under section 396P,
  (b) an order under section 396Q, or
  (c) directions under this section.

(4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—
  (a) the receiver;

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(b) the parties to the proceedings for the appointment of the receiver, for the order under section 396Q or (as the case may be) for the directions under this section;

(c) the parties to the proceedings for the interim freezing order concerned;

(d) any person who may be affected by the court's decision.

396S Compensation

(1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.

(2) The application must be made within the period of three months beginning with the recall of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the Scottish Ministers in applying for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the Scottish Ministers, and

(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.**]**

[F1414 Unexplained wealth orders: enforcement abroad

Textual Amendments

F1414 Ss. 396T, 396U and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 6**, 58(1)(6); S.I. 2018/78, reg. 3(a)

396T Enforcement abroad: Scottish Ministers

(1) This section applies if—

(a) the Court of Session makes an unexplained wealth order in respect of any property,

(b) it appears to the Scottish Ministers that the risk mentioned in section 396J(2) applies in relation to the property, and

(c) the Scottish Ministers believe that the property is in a country outside the United Kingdom (the receiving country).

(2) The Scottish Ministers may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State may forward the request for assistance to the government of the receiving country.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) A request for assistance under this section is a request to the government of the receiving country—
  (a) to secure that any person is prohibited from dealing with the property;
  (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

396U Enforcement abroad: receiver

(1) This section applies if—
  (a) an interim freezing order has effect in relation to property, and
  (b) the receiver appointed under section 396P in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).

(2) The receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State must forward the request for assistance to the government of the receiving country.

(4) A request for assistance under this section is a request to the government of the receiving country—
  (a) to secure that any person is prohibited from dealing with the property;
  (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.**]**

[F1415 Unexplained wealth orders: expenses of proceedings

Textual Amendments
F1415 S. 396V and cross-heading inserted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), **ss. 53**, 69(1); S.I. 2022/519, regs. 1(3), 2 (with reg. 3)

396V Expenses orders

(1) This section applies in the following cases—
  (a) the Scottish Ministers have made an application for an unexplained wealth order under section 396A;
  (b) an application has been made for the determination period to be extended under section 396DA;
  (c) an application has been made to discharge or vary an unexplained wealth order;
  (d) the Scottish Ministers have made an application for an interim freezing order under section 396J;
  (e) an application has been made to vary or recall an interim freezing order;
  (f) an application has been made in the circumstances referred to in section 396M to—
    (i) sist an action, execution or other legal process, or
    (ii) sist proceedings in respect of property or allow them to continue;

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(g) the Scottish Ministers have made an application under section 396N (arrestment of property affected by interim freezing order);

(h) the Scottish Ministers have made an application under section 396O (inhibition of property affected by interim freezing order);

(i) the Scottish Ministers have made an application for an order for the appointment of a receiver under section 396P;

(j) the Scottish Ministers have made an application for an order under section 396Q (powers of receiver);

(k) an application has been made for directions to a receiver under section 396R;

(l) an application has been made to vary or recall—

(i) the appointment of a receiver under section 396P,

(ii) an order under section 396Q or

(iii) directions under section 396R;

(m) an application has been made for compensation under section 396S;

(n) the Court of Session has of its own motion exercised a power to do anything an application mentioned in paragraphs (a) to (m) may be made for;

(o) an application has been made for permission to appeal in relation to anything mentioned in paragraphs (a) to (n).

(2) The court may not make an order that any expenses of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by the Scottish Ministers or the Lord Advocate to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—

(a) the Scottish Ministers or the Lord Advocate acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate, or

(b) the Scottish Ministers or the Lord Advocate acted dishonestly or improperly in the course of the proceedings.**]**

Customer information orders

397 Customer information orders

(1) The sheriff may, on an application made to him by the appropriate person, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.

[[F1416](1A) No application for a customer information order may be made in relation to a detained cash investigation **[**[F1417], a detained property investigation or a frozen funds investigation**].]**

(2) In making a customer information order in relation to [F1418]... a civil recovery investigation the sheriff shall act in the exercise of his civil jurisdiction.

(3) The application for a customer information order must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1419], a civil recovery investigation**]** or a money laundering investigation, [F1420]...

[F1420](b) . . . . . .

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(4) The application must also state that—
  (a) the order is sought for the purposes of the investigation;
  (b) the order is sought against the financial institution or financial institutions specified in the application.

(5) An application for a customer information order may specify—
  (a) all financial institutions,
  (b) a particular description, or particular descriptions, of financial institutions, or
  (c) a particular financial institution or particular financial institutions.

(6) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by the appropriate person, provide any such customer information as it has relating to the person specified in the application.

(7) A financial institution which is required to provide information under a customer information order must provide the information to a proper person in such manner, and at or by such time, as that person requires.

(8) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

Textual Amendments

F1416 S. 397(1A) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), s. 94(3), **Sch. 10 para. 21**; S.S.I. 2009/224, art. 2(1)(d)(ii)

F1417 Words in s. 397(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 68**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1418 Words in s. 397(2) omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 20(2)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1419 Words in s. 397(3) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 20(3)(a)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1420 S. 397(3)(b) and word omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 20(3)(b)**; S.I. 2015/964, art. 2(d) (with art. 3)

Commencement Information

I352 S. 397 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

398 Meaning of customer information

(1) "Customer information", in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to—
  (a) the matters specified in subsection (2) if the person is an individual;

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(b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.

(2) The matters referred to in subsection (1)(a) are—

(a) the account number or numbers;
(b) the person's full name;
(c) his date of birth;
(d) his most recent address and any previous addresses;
(e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
(f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
(g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;
(h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.

(3) The matters referred to in subsection (1)(b) are—

(a) the account number or numbers;
(b) the person's full name;
(c) a description of any business which the person carries on;
(d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under **[**[F1421]the Companies Act 2006**]** or corresponding legislation of any country or territory outside the United Kingdom;
(e) any number assigned to it for the purposes of value added tax in the United Kingdom;
(f) its registered office, and any previous registered offices, under **[**[F1422]the Companies Act 2006 (or corresponding earlier legislation)**]** or anything similar under corresponding legislation of any country or territory outside the United Kingdom;
(g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000 (c. 12) or anything similar under corresponding legislation of any country or territory outside Great Britain;
(h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;
(i) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
(j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

(4) The Scottish Ministers may by order provide for information of a description specified in the order—

(a) to be customer information, or
(b) no longer to be customer information.

Status: *Point in time view as at 05/01/2023.*
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(5) Money laundering is an act which—

(a) constitutes an offence under section 327, 328 or 329 of this Act or section 18 of the Terrorism Act 2000 (c. 11), or

[[F1423](aa) constitutes an offence specified in section 415(1A) of this Act,**]**

(b) would constitute an offence specified in paragraph (a)**[**[F1424]or (aa)**]** if done in the United Kingdom.

Textual Amendments

F1421 Words in s. 398(3)(d) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 196(3)(a)** (with art. 10)

F1422 Words in s. 398(3)(f) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 196(3)(b)** (with art. 10)

F1423 S. 398(5)(aa) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 107(3)(a)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)

F1424 Words in s. 398(5)(b) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 107(3)(b)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)

Modifications etc. (not altering text)

C224 S. 398 modified (11.6.2006) by Crime (International Co-operation) Act 2003 (c. 32), **ss. 37(6)**, 94(3); S.S.I. 2006/281, art. 2

C225 S. 398 modified (31.7.2017) by The Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730), regs. 1(1), **44(9)(a)** (with reg. 3)

C226 S. 398 modified (31.12.2020) by 2003 c. 32, s. 37(6) (as substituted by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 3(3)** (with Sch. 3 para. 3(4)); S.I. 2020/1662, reg. 2(dd))

Commencement Information

I353 S. 398 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

399 Requirements for making of customer information order

(1) These are the requirements for the making of a customer information order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

[[F1425](3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application—

(a) holds recoverable property or associated property, or

(b) has, at any time, held property that was recoverable property or associated property at the time.**]**

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

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(5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Textual Amendments

F1425 S. 399(3A) substituted for s. 399(3) (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 21**; S.I. 2015/964, art. 2(d) (with art. 3)

Commencement Information

I354 S. 399 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

400 Offences

(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A financial institution commits an offence if, in purported compliance with a customer information order, it—

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to a fine.

Modifications etc. (not altering text)

C227 S. 400 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **10(2)**, 20(2), 29(1)(2), 30(1)(2)

C228 S. 400 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **20(2)**

C229 S. 400 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **30(1)**, (2)

C230 S. 400 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **29(1)**, (2)

Commencement Information

I355 S. 400 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

401 Statements

(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply—
- (a) in the case of proceedings under Part 3,
- (b) on a prosecution for an offence under section 400(1) or (3), or
- (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—
- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Modifications etc. (not altering text)

C231 S. 401 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **10(3)**, 20(3)

C232 S. 401 applied (with modifications) (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **20(3)**

Commencement Information

I356 S. 401 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

402 Further provisions

A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

Modifications etc. (not altering text)

C233 S. 402 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **29(1)**(4), 30(1)(4)

C234 S. 402 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **30(1)**, (4)

Commencement Information

I357 S. 402 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

403 Supplementary

(1) An application for a customer information order may be made ex parte to a sheriff in chambers.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(2) Provision may be made by rules of court as to the discharge and variation of customer information orders.

(3) Rules of court under subsection (2) relating to customer information orders—

(a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by act of adjournal;

(b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58), be made by act of sederunt.

(4) An application to discharge or vary a customer information order may be made to the sheriff by—

(a) the person who applied for the order;

(b) any person affected by the order.

(5) The sheriff may—

(a) discharge the order;

(b) vary the order.

Commencement Information

I358 S. 403 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Account monitoring orders

404 Account monitoring orders

(1) The sheriff may, on an application made to him by the appropriate person, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

[[F1426](1A) No application for an account monitoring order may be made in relation to a detained cash investigation **[**[F1427], a detained property investigation or a frozen funds investigation**].]**

(2) In making an account monitoring order in relation to [F1428]... a civil recovery investigation, the sheriff shall act in the exercise of his civil jurisdiction.

(3) The application for an account monitoring order must state that—

(a) a person specified in the application is subject to a confiscation investigation **[**[F1429], a civil recovery investigation**]** or a money laundering investigation, [F1430]...

[F1430](b) . . . . . .

(4) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(6) The application for an account monitoring order may specify information relating to—
  (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
  (b) a particular description, or particular descriptions, of accounts so held, or
  (c) a particular account, or particular accounts, so held.

(7) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the proper person in the manner, and at or by the time or times, stated in the order.

(8) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Textual Amendments

F1426 S. 404(1A) inserted (18.6.2009) by Serious Crime Act 2007 (c. 27), s. 94(3), **Sch. 10 para. 22**; S.S.I. 2009/224, art. 2(1)(d)(ii)

F1427 Words in s. 404(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 69**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1428 Words in s. 404(2) omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 22(2)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1429 Words in s. 404(3) inserted (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 22(3)(a)**; S.I. 2015/964, art. 2(d) (with art. 3)

F1430 S. 404(3)(b) and word omitted (1.6.2015) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 22(3)(b)**; S.I. 2015/964, art. 2(d) (with art. 3)

Modifications etc. (not altering text)

C235 S. 404(7) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **12(3)**, 22(3)

C236 S. 404(7) modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **22(3)**

Commencement Information

I359 S. 404 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

405 Requirements for making of account monitoring order

(1) These are the requirements for the making of an account monitoring order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[[F1431](3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.**]**

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Textual Amendments

F1431 S. 405(3A) substituted for s. 405(3) (1.6.2015) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 23**; S.I. 2015/964, art. 2(d) (with art. 3)

Commencement Information

I360 S. 405 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

406 Statements

(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply—

(a) in the case of proceedings under Part 3;

(b) in the case of proceedings for contempt of court, or

(c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Modifications etc. (not altering text)

C237 S. 406 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **22(5)**

C238 S. 406 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **12(5)**, 22(5)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I361 S. 406 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

407 Further provisions

An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Modifications etc. (not altering text)

C239 S. 407 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **32(6)**

C240 S. 407 modified (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **31(6)**, 32(6)

Commencement Information

I362 S. 407 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

408 Supplementary

(1) An application for an account monitoring order may be made ex parte to a sheriff in chambers.

(2) Provision may be made by rules of court as to the discharge and variation of account monitoring orders.

(3) Rules of court under subsection (2) relating to account monitoring orders—

(a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by act of adjournal;

(b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58), be made by act of sederunt.

(4) An application to discharge or vary an account monitoring order may be made to the sheriff by—

(a) the person who applied for the order;

(b) any person affected by the order.

(5) The sheriff may—

(a) discharge the order;

(b) vary the order.

Commencement Information

I363 S. 408 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

[F1432 Evidence overseas

Textual Amendments

F1432 Ss. 408A, 408B and cross-heading inserted (22.11.2014 for specified purposes, 1.6.2015 for S. in so far as not already in force) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 19 para. 28**; S.I. 2014/3098, art. 3; S.I. 2015/964, art. 2(e)

408A Evidence overseas

(1) This section applies if a person or property is subject to a civil recovery investigation **[**F1433, a detained cash investigation, a detained property investigation or a frozen funds investigation**]**.

(2) A judge of the Court of Session may request assistance under this section if—

(a) an application is made by an appropriate person or a person subject to the investigation, and

(b) the judge thinks that there is relevant evidence in a country or territory outside the United Kingdom.

(3) An appropriate person may request assistance under this section if the person thinks that there is relevant evidence in a country or territory outside the United Kingdom.

(4) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.

(5) Relevant evidence is—

(a) in relation to an application or request made for the purposes of a civil recovery investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 341(2)(a) to (d);

(b) in relation to an application or request made for the purposes of a detained cash investigation, evidence as to a matter described in section 341(3A)(a) or (b).

F1434 **[** (c) in relation to an application or request made for the purposes of a detained property investigation, evidence as to a matter described in section 341(3B)(a) or (b);

(d) in relation to an application or request made for the purposes of a frozen funds investigation, evidence as to a matter described in section 341(3C)(a) or (b);**]**

(6) A request for assistance under this section may be sent—

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,

(b) to the government of the country or territory concerned, or

(c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.

(7) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).

(8) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(9) In a case of urgency, a request for assistance under this section may be sent to—

(a) the International Criminal Police Organisation, [F1435]...

[F1435](b) . . . . . .

for forwarding to the court, tribunal, government or authority mentioned in subsection (6).

(10) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

(11) "Evidence" includes documents, information in any other form and material.

Textual Amendments

F1433 Words in s. 408A(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 70(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1434 S. 408A(5)(c)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 70(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

F1435 S. 408A(9)(b) and preceding word omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(11)**; 2020 c. 1, Sch. 5 para. 1(1)

408B Evidence overseas: restrictions on use

(1) This section applies to evidence obtained by means of a request for assistance under section 408A.

(2) The evidence must not be used for any purpose other than—

(a) for the purposes of the investigation for which it was obtained, or

(b) for the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.

(3) Those proceedings are—

(a) if the request was made for the purposes of a civil recovery investigation, proceedings under Chapter 2 of Part 5 of this Act arising out of the investigation;

(b) if the request was made for the purposes of a detained cash investigation, proceedings under Chapter 3 of Part 5 of this Act arising out of the investigation.

[F1436][(c) if the request was made for the purposes of a detained property investigation, proceedings under Chapter 3A of Part 5 of this Act arising out of the investigation;

(d) if the request was made for the purposes of a frozen funds investigation, proceedings under Chapter 3B of Part 5 of this Act arising out of the investigation;]

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

(5) The evidence may be received in evidence without being sworn to by anyone, so far as that may be done without unfairness to any party.**]**

Textual Amendments

F1436 S. 408B(3)(c)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 71**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Officers of Revenue and Customs

[F1437] 408C Restriction on exercise of certain powers conferred on officers of Revenue and Customs

. . . . . .

Textual Amendments

F1437 S. 408C omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(d)**, 58(4)(6)

General

409 Jurisdiction of sheriff

(1) A sheriff may grant a production order, search warrant, customer information order or account monitoring order under this Act in relation to property situated in any area of Scotland notwithstanding that it is outside the area of that sheriff.

(2) Any such order or warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.

(3) This section is without prejudice to any existing rule of law or to any other provision of this Act.

Modifications etc. (not altering text)

C241 S. 409 modified (11.6.2006) by Crime (International Co-operation) Act 2003 (c. 32), **ss. 41(5)**, 94(3); S.S.I. 2006/281, art. 2

C242 S. 409 modified (11.6.2006) by Crime (International Co-operation) Act 2003 (c. 32), **ss. 38(5)**, 41(5), 94(3); S.S.I. 2006/281, art. 2

C243 S. 409 modified (19.10.2009) by Crime (International Co-operation) Act 2003 (c. 32), **ss. 22(6)**, 94(1); S.I. 2009/2605, art. 2(b)

C244 S. 409 modified (31.7.2017) by The Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730), regs. 1(1), **39(10)**, 44(9)(b), 45(8) (with reg. 3)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I364 S. 409 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

410 Code of practice

(1) The Scottish Ministers must prepare a code of practice as to the exercise by proper persons of functions they have under this Chapter.

(2) After preparing a draft of the code the Scottish Ministers—
- (a) must publish the draft;
- (b) must consider any representations made to them about the draft;
- (c) may amend the draft accordingly.

(3) After the Scottish Ministers have proceeded under subsection (2) they must lay the code before the Scottish Parliament.

(4) When they have done so, the Scottish Ministers may bring the code into operation on such day as they may appoint by order.

(5) A proper person must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.

(6) If a proper person fails to comply with any provision of a code of practice issued under this section he is not by reason only of that failure liable in any criminal or civil proceedings.

(7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any questions in the proceedings.

(8) The Scottish Ministers may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

Commencement Information

I365 S. 410 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

411 Performance of functions of Scottish Ministers by constables in Scotland

(1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.

(2) The specified functions are the functions conferred on the Scottish Ministers by—
- (a) section 380(1) (production orders),
- (b) section 382(2) (entry orders),
- (c) section 386(4) (supplementary to production and entry orders),
- (d) section 387(1) (search warrants),
- (e) section 391(1) (disclosure orders),

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(f) section 396(4) (supplementary to disclosure orders),
(g) section 397(1) (customer information orders),
(h) section 403(4) (supplementary to customer information orders),
(i) section 404(1) (account monitoring orders),
(j) section 408(4) (supplementary to account monitoring orders).

Commencement Information

I366 S. 411 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

412 Interpretation

In this Chapter, unless the context otherwise requires—

"appropriate person" means—

(a) the procurator fiscal, in relation to a confiscation investigation or a money laundering investigation,
(b) the Scottish Ministers, in relation to a civil recovery investigation **[**[F1438], a detained cash investigation, a detained property investigation or a frozen funds investigation**]**;

references to a "constable" include references to **[**[F1439]an officer of Revenue and Customs**]**[[F1440]and to an immigration officer**]**;

"legal privilege" means protection in legal proceedings from disclosure, by virtue of any rule of law relating to the confidentiality of communications; and "items subject to legal privilege" are—

(a) communications between a professional legal adviser and his client, or
(b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would be so protected.

"premises" include any place and, in particular, include—

(a) any vehicle, vessel, aircraft or hovercraft;
(b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971 (c. 61) and any tent or movable structure;

"proper person" means—

(a) a constable, in relation to a confiscation investigation or a money laundering investigation;
(b) the Scottish Ministers or a person named by them, in relation to a civil recovery investigation **[**[F1438], a detained cash investigation, a detained property investigation or a frozen funds investigation**]** .

Textual Amendments

F1438 Words in s. 412 substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 72**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(i)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1439 Words in s. 412 substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 20**
F1440 Words in s. 412 inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 38** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(k)

Commencement Information
I367 S. 412 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

CHAPTER 4

[[F1441]SUPPLEMENTARY AND] INTERPRETATION

Textual Amendments
F1441 Words in Pt. 8 Ch. 4 title inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 73**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Modifications etc. (not altering text)
C245 Pt. 8 Ch. 4: power to modify conferred (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 47**, 61(2); S.I. 2015/813, art. 2(b)

[[F1442]412A Power to vary monetary amounts

(1) In order to take account of changes in the value of money, the Secretary of State may by regulations substitute another sum for the sum for the time being specified in—
  (a) section 362B(2)(b) (minimum value of property for purposes of making unexplained wealth order in England and Wales or Northern Ireland), and
  (b) section 396B(2)(b) (minimum value of property for purposes of making unexplained wealth order in Scotland).

(2) The Secretary of State must consult the Department of Justice in Northern Ireland and the Scottish Ministers before making regulations under subsection (1).]

Textual Amendments
F1442 Words in s. 412A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 74**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

413 Criminal conduct

(1) Criminal conduct is conduct which—
  (a) constitutes an offence in any part of the United Kingdom, or
  (b) would constitute an offence in any part of the United Kingdom if it occurred there.

(2) A person benefits from conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct.

Status: *Point in time view as at 05/01/2023.*
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(3) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(4) If a person benefits from conduct his benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct.

(5) It is immaterial—

(a) whether conduct occurred before or after the passing of this Act, and

(b) whether property or a pecuniary advantage constituting a benefit from conduct was obtained before or after the passing of this Act.

Commencement Information

I368 S. 413 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

414 Property

(1) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(2) "Recoverable property" and "associated property" have the same meanings as in Part 5.

(3) The following rules apply in relation to property—

[[F1443](za) property is held by a person if he holds an interest in it;**]**

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

Textual Amendments

F1443 S. 414(3)(za) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 75**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Commencement Information

I369 S. 414 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

415 Money laundering offences

(1) An offence under section 327, 328 or 329 is a money laundering offence.

[[F1444](1A) Each of the following is a money laundering offence—

(a) an offence under section 93A, 93B or 93C of the Criminal Justice Act 1988;

(b) an offence under section 49, 50 or 51 of the Drug Trafficking Act 1994;

(c) an offence under section 37 or 38 of the Criminal Law (Consolidation) (Scotland) Act 1995;

(d) an offence under article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996.**]**

(2) Each of the following is a money laundering offence—

(a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);

(b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).

Textual Amendments

F1444 S. 415(1A) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 107(4)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)

Modifications etc. (not altering text)

C246 S. 415(2)(a) modified (E.W.N.I.) (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 44(b)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

Commencement Information

I370 S. 415 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

416 Other interpretative provisions

(1) These expressions are to be construed in accordance with these provisions of this Part—

civil recovery investigation: section 341(2) and (3)
confiscation investigation: section 341(1)
[[F1445]detained cash investigation: section 341(3A)**]**
[[F1446]detained property investigation: section 341(3B)
frozen funds investigation: section 341(3C)**]**
money laundering investigation: section 341(4)

(2) In the application of this Part to England and Wales and Northern Ireland, these expressions are to be construed in accordance with these provisions of this Part—

account information: section 370(4)
account monitoring order: section 370(6)
appropriate officer: section 378
customer information: section 364
customer information order: section 363(5)
disclosure order: section 357(4)

Status: *Point in time view as at 05/01/2023.*
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document: section 379
[[F1447]enforcement authority: section 362A(7)**]**
[[F1447]interim freezing order: section 362J(3)**]**
order to grant entry: section 347(3)
production order: section 345(4)
[[F1448]relevant authority: section 357(7) to (9)
relevant Director: section 352(5A)**]**
search and seizure warrant: section 352(4)
senior appropriate officer: section 378.
[[F1449]senior **[**[F1450]National Crime Agency officer**]**: section 378(8).**]**
[[F1447]unexplained wealth order: section 362A(3)**]**

(3) In the application of this Part to Scotland, these expressions are to be construed in accordance with these provisions of this Part—
account information: section 404(5)
account monitoring order: section 404(7)
customer information: section 398
customer information order: section 397(6)
disclosure order: section 391(4)
[[F1451]interim freezing order: section 396J(3)**]**
production order: section 380(5)
proper person: section 412
search warrant: section 387(4).
[[F1451]unexplained wealth order: section 396A(3)**]**

[[F1452](3A) The expressions "realisable property" and "confiscation order"—
(a) in the application of this Part to England and Wales, have the same meanings as in Part 2;
(b) in the application of this Part to Scotland, have the same meanings as in Part 3;
(c) in the application of this Part to Northern Ireland, have the same meanings as in Part 4.**]**

[[F1453](3B) In relation to an order in England and Wales or Northern Ireland that is an interim freezing order or an unexplained wealth order, references to the enforcement authority are to the enforcement authority that is seeking, or (as the case may be) has obtained, the order.**]**

(4) "Financial institution" means a person carrying on a business in the regulated sector.

(5) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 9 or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under—
(a) a customer information order, or
(b) an account monitoring order,
to provide information which relates to a time when the person was a financial institution.

(6) References to a business in the regulated sector must be construed in accordance with Schedule 9.

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(7) "Recovery order", **[**[F1454]" property freezing order "**]** "interim receiving order" and "interim administration order" have the same meanings as in Part 5.

[[F1455](7ZA) "Settlement" has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005.**]**

[[F1456](7A) "Unlawful conduct" has the meaning given by section 241.**]**

(8) References to notice in writing include references to notice given by electronic means.

(9) This section and sections 413 to 415 apply for the purposes of this Part.

Textual Amendments

F1445 Words in s. 416(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 24(2)**; S.I. 2008/755, art. 17(1)(d)(ii)

F1446 Words in s. 416(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 76(2)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1447 Words in s. 416(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 76(3)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1448 Words in s. 416(2) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 117(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1449 Words in s. 416(2) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 117(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1450 Words in s. 416(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 145**; S.I. 2013/1682, art. 3(v)

F1451 Words in s. 416(3) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 76(4)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1452 S. 416(3A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 56**; S.I. 2015/820, reg. 3(q)(v)

F1453 S. 416(3B) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 76(5)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1454 Words in s. 416(7) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 76(6)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1455 S. 416(7ZA) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 76(7)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1456 S. 416(7A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 10 para. 24(3)**; S.I. 2008/755, art. 17(1)(d)(ii)

Commencement Information

I371 S. 416 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
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PART 9

INSOLVENCY ETC.

Bankruptcy in England and Wales

417 Modifications of the 1986 Act

(1) This section applies if a person is **[**[F1457]made**]** bankrupt in England and Wales.

(2) **[**[F1458]The following property is excluded from the person's estate for the purposes of Part 9 of the 1986 Act—

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging the person bankrupt;

(b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;

(c) property in respect of which an order under section 50, 128(3) or 198 is in force;

(d) property in respect of which an order under section 67A, 131A or 215A is in force.**]**

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging the person bankrupt.

(4) If in the case of a debtor an interim receiver stands at any time appointed under section 286 of the 1986 Act and any property of the debtor is then subject to a restraint order made under section 41, 120 or 190 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.

Textual Amendments

F1457 Word in s. 417(1) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F1458 S. 417(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 79**; S.I. 2015/983, arts. 2(2)(e), 3(p); S.I. 2016/147, art. 3(i)

Commencement Information

I372 S. 417 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

418 Restriction of powers

(1) If a person is **[**[F1459]made**]** bankrupt in England and Wales the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).

(2) These are the powers—

Status: *Point in time view as at 05/01/2023.*
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(a) the powers conferred on a court by sections 41 to **[**[F1460]67B, the powers conferred on an appropriate officer by section 47C**]** and the powers of a receiver appointed under section 48 **[**[F1461]or 50 **]** ;

(b) the powers conferred on a court by sections 120 to 136 and Schedule 3 **[**[F1462], the powers conferred on an appropriate officer by section 127C**]** and the powers of an administrator appointed under section 125 or 128(3);

(c) the powers conferred on a court by sections 190 to **[**[F1463]215B, the powers conferred on an appropriate officer by section 195C**]** and the powers of a receiver appointed under section 196 **[**[F1464]or 198**]** .

(3) This is the property—

(a) property which is for the time being comprised in the bankrupt's estate for the purposes of Part 9 of the 1986 Act;

(b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the 1986 Act (after-acquired property, tools, tenancies etc);

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the 1986 Act;

(d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 **[**[F1465]or 198**]** of this Act after the amount required to be paid under the confiscation order has been fully paid;

(e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.

[[F1466](f) in a case where a confiscation order has been made under section 6, 92 or 156 of this Act, any sums remaining in the hands of an appropriate officer after the amount required to be paid under the confiscation order has been fully paid under section 67D(2)(c), 131D(2)(c) or 215D(2)(c).**]**

(4) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).

(5) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with these modifications—

(a) for the reference in subsection (3)(a) to the bankrupt's estate for the purposes of Part 9 of that Act substitute a reference to the property of the bankrupt for the purposes of the 1914 Act;

(b) omit subsection (3)(b);

(c) for the reference in subsection (3)(c) to section 280(2)(c) of the 1986 Act substitute a reference to section 26(2) of the 1914 Act;

(d) for the reference in subsection (4) to the 1986 Act substitute a reference to the 1914 Act.

Textual Amendments

F1459 Word in s. 418(1) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

Status: *Point in time view as at 05/01/2023.*
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F1460 Words in s. 418(2)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 80(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(q)

F1461 Words in s. 418(2)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 70(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1462 Words in s. 418(2)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 80(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(q)

F1463 Words in s. 418(2)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 80(2)(c)**; S.I. 2016/147, art. 3(i)

F1464 Words in s. 418(2)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 70(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1465 Words in s. 418(3)(d) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 70(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1466 S. 418(3)(f) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 80(3)**; S.I. 2015/983, arts. 2(2)(e), 3(q); S.I. 2016/147, art. 3(i)

Commencement Information

I373 S. 418 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

419 Tainted gifts

(1) This section applies if a person who is **[**[F1467]made**]** bankrupt in England and Wales has made a tainted gift (whether directly or indirectly).

(2) No order may be made under section 339, 340 or 423 of the 1986 Act (avoidance of certain transactions) in respect of the making of the gift at any time when—

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, [F1468]...

[[F1469](aa) such property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,**]**

(b) there is in force in respect of such property an order under section 50, [F1470]... 128(3), **[**[F1471]or 198**]**.**[**[F1472], or

(c) there is in force in respect of such property an order under section 67A, 131A or 215A.**]**

(3) Any order made under section 339, 340 or 423 of the 1986 Act after an order mentioned in **[**[F1473]subsection (2)(a), (b) or (c)**]** is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.

(4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

(5) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with the substitution for a reference to section 339, 340 or 423 of the 1986 Act of a reference to section 27, 42 or 44 of the 1914 Act.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1467 Word in s. 419(1) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F1468 Word in s. 419(2)(a) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(f)

F1469 S. 419(2)(aa) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 81(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(r); S.I. 2016/147, art. 3(i)

F1470 Word in s. 419(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 71(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1471 Words in s. 419(2)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 71(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1472 S. 419(2)(c) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 81(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(r); S.I. 2016/147, art. 3(i)

F1473 Words in s. 419(3) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 81(3)**; S.I. 2015/983, arts. 2(2)(e), 3(r)

Commencement Information

I374 S. 419 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Sequestration in Scotland

420 [F1474Modifications of the 2016 Act]

(1) This section applies if an award of sequestration is made in Scotland.

[F1475(2) The following property is excluded from the debtor's estate for the purposes of the [F1476]2016] Act—

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the award of sequestration;

(b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;

(c) property in respect of which an order under section 50, 128(3) or 198 is in force;

(d) property in respect of which an order under section 67A, 131A or 215A is in force.]

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the award of sequestration.

(4) It shall not be competent to submit a claim in relation to a confiscation order to the [F1477]trustee in the sequestration] in accordance with section [F1478]122 of the 2016] Act; and the reference here to a confiscation order is to any confiscation order that has been or may be made against the debtor under Part 2, 3 or 4 of this Act.

(5) If at any time in the period before the award of sequestration is made an interim trustee stands appointed under section [F1479]54(1) of the 2016] Act and any property in the

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debtor's estate is at that time subject to a restraint order made under section 41, 120 or 190, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order.

Textual Amendments

F1474 S. 420 title substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(8)**

F1475 S. 420(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 82**; S.I. 2015/983, arts. 2(2)(e), 3(s); S.I. 2016/147, art. 3(i)

F1476 Word in s. 420(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(7)(a)**

F1477 Words in s. 420(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(7)(b)(i)**

F1478 Words in s. 420(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(7)(b)(ii)**

F1479 Words in s. 420(5) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(7)(c)**

Commencement Information

I375 S. 420 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

421 Restriction of powers

(1) If an award of sequestration is made in Scotland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).

(2) These are the powers—

(a) the powers conferred on a court by sections 41 to **[**[F1480]67B, the powers conferred on an appropriate officer by section 47C**]** and the powers of a receiver appointed under section 48 **[**[F1481]or 50**]** ;

(b) the powers conferred on a court by sections 120 to 136 and Schedule 3 **[**[F1482], the powers conferred on an appropriate officer by section 127C**]** and the powers of an administrator appointed under section 125 or 128(3);

(c) the powers conferred on a court by sections 190 to **[**[F1483]215B, the powers conferred on an appropriate officer by section 195C**]** and the powers of a receiver appointed under section 196 **[**[F1484]or 198**]** .

(3) This is the property—

(a) property which is for the time being comprised in the whole estate of the debtor within the meaning of section **[**[F1485]79 of the 2016**]** Act;

(b) any income of the debtor which has been ordered under section **[**[F1486]90 or 95**]** of that Act to be paid to the **[**[F1487]trustee in the sequestration**]** ;

(c) any estate which under section **[**[F1488]79(4) or 86(4) and (5)**]** of that Act vests in the **[**[F1489]trustee in the sequestration**]** ;

(d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 **[**[F1490]or 198**]** of this Act after the amount required to be paid under the confiscation order has been fully paid;

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(e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.

[[F1491](f) in a case where a confiscation order has been made under section 6, 92 or 156 of this Act, any sums remaining in the hands of an appropriate officer after the amount required to be paid under the confiscation order has been fully paid under section 67D(2)(c), 131D(2)(c) or 215D(2)(c).**]**

(4) But nothing in the **[**[F1492]2016**]** Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).

[F1493](5) . . . . . .

[F1493](6) . . . . . .

Textual Amendments

F1480 Words in s. 421(2)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(t)

F1481 Words in s. 421(2)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 73(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1482 Words in s. 421(2)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(t)

F1483 Words in s. 421(2)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(2)(c)**; S.I. 2016/147, art. 3(i)

F1484 Words in s. 421(2)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 73(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1485 Words in s. 421(3)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(a)**

F1486 Words in s. 421(3)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(b)(i)**

F1487 Words in s. 421(3)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(b)(ii)**

F1488 Words in s. 421(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(c)(i)**

F1489 Words in s. 421(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(c)(ii)**

F1490 Words in s. 421(3)(d) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 73(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1491 S. 421(3)(f) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(3)**; S.I. 2015/983, arts. 2(2)(e), 3(t); S.I. 2016/147, art. 3(i)

F1492 Word in s. 421(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(d)**

F1493 S. 421(5)(6) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(e)**

Commencement Information

I376 S. 421 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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422 Tainted gifts

(1) This section applies if a person whose estate is sequestrated in Scotland has made a tainted gift (whether directly or indirectly).

(2) No decree may be granted under the Bankruptcy Act 1621 (c. 18) or section **[**[F1494]98 or 99 of the 2016**]** Act (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when—

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, [F1495]...

[[F1496](aa) such property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,**]**

(b) there is in force in respect of such property an order under section 50, [F1497]... 128(3) **[**[F1498]or 198**]**.**[**[F1499], or

(c) there is in force in respect of such property an order under section 67A, 131A or 215A.**]**

(3) Any decree made under the Bankruptcy Act 1621 (c. 18) or section **[**[F1500]98 or 99 of the 2016**]** Act, or otherwise, after an order mentioned in **[**[F1501]subsection (2)(a), (b) or (c)**]** is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.

(4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

Textual Amendments

F1494 Words in s. 422(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(10)**

F1495 Word in s. 422(2)(a) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(f)

F1496 S. 422(2)(aa) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 84(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(u); S.I. 2016/147, art. 3(i)

F1497 Word in s. 422(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 74(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1498 Words in s. 422(2)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 74(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1499 S. 422(2)(c) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 84(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(u); S.I. 2016/147, art. 3(i)

F1500 Words in s. 422(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(10)**

F1501 Words in s. 422(3) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 84(3)**; S.I. 2015/983, arts. 2(2)(e), 3(u)

Commencement Information

I377 S. 422 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
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Bankruptcy in Northern Ireland

423 Modifications of the 1989 Order

(1) This section applies if a person is adjudged bankrupt in Northern Ireland.

[[F1502](2) The following property is excluded from the person's estate for the purposes of Part 9 of the 1989 Order—

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging the person bankrupt;

(b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;

(c) property in respect of which an order under section 50, 128(3) or 198 is in force;

(d) property in respect of which an order under section 67A, 131A or 215A is in force.**]**

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging the person bankrupt.

(4) If in the case of a debtor an interim receiver stands at any time appointed under Article 259 of the 1989 Order and any property of the debtor is then subject to a restraint order made under section 41, 120 or 190, the powers conferred on the receiver by virtue of that Order do not apply to property then subject to the restraint order.

Textual Amendments

F1502 S. 423(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 85**; S.I. 2015/983, arts. 2(2)(e), 3(v); S.I. 2016/147, art. 3(i)

Commencement Information

I378 S. 423 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

424 Restriction of powers

(1) If a person is adjudged bankrupt in Northern Ireland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).

(2) These are the powers—

(a) the powers conferred on a court by sections 41 to **[**[F1503]67B, the powers conferred on an appropriate officer by section 47C**]** and the powers of a receiver appointed under section 48 **[**[F1504]or 50 **]**;

(b) the powers conferred on a court by sections 120 to 136 and Schedule 3**[**[F1505], the powers conferred on an appropriate officer by section 127C**]** and the powers of an administrator appointed under section 125 or 128(3);

(c) the powers conferred on a court by sections 190 to **[**[F1506]215B, the powers conferred on an appropriate officer by section 195C**]** and the powers of a receiver appointed under section 196 **[**[F1507]or 198**]**.

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(3) This is the property—

(a) property which is for the time being comprised in the bankrupt's estate for the purposes of Part 9 of the 1989 Order;

(b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under Article 280 or 281 of the 1989 Order (after-acquired property etc);

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of the 1989 Order;

(d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 **[**[F1508]or 198**]** of this Act after the amount required to be paid under the confiscation order has been fully paid;

(e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.

[[F1509](f) in a case where a confiscation order has been made under section 6, 92 or 156 of this Act, any sums remaining in the hands of an appropriate officer after the amount required to be paid under the confiscation order has been fully paid under section 67D(2)(c), 131D(2)(c) or 215D(2)(c).**]**

(4) But nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (2).

(5) In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1 October 1991 (when the 1989 Order came into force) this section has effect with these modifications—

(a) for the reference in subsection (3)(a) to the bankrupt's estate for the purposes of Part 9 of that Order substitute a reference to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

(b) omit subsection (3)(b);

(c) for the reference in subsection (3)(c) to Article 254(2)(c) of the 1989 Order substitute a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (S.I. 1980/561 (N.I. 4));

(d) for the reference in subsection (4) to the 1989 Order substitute a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980.

Textual Amendments

F1503 Words in s. 424(2)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 86(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(w)

F1504 Words in s. 424(2)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 76(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1505 Words in s. 424(2)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 86(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(w)

F1506 Words in s. 424(2)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 86(2)(c)**; S.I. 2016/147, art. 3(i)

F1507 Words in s. 424(2)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 76(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

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F1508 Words in s. 424(3)(d) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 76(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1509 S. 424(3)(f) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 86(3)**; S.I. 2015/983, arts. 2(2)(e), 3(w); S.I. 2016/147, art. 3(i)

Commencement Information

I379 S. 424 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

425 Tainted gifts

(1) This section applies if a person who is adjudged bankrupt in Northern Ireland has made a tainted gift (whether directly or indirectly).

(2) No order may be made under Article 312, 313 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when—

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or

[[F1510](aa) such property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,**]**

(b) there is in force in respect of such property an order under section 50, [F1511]... 128(3) **[**[F1512]or 198 **].[**[F1513], or

(c) there is in force in respect of such property an order under section 67A, 131A or 215A.**]**

(3) Any order made under Article 312, 313 or 367 of the 1989 Order after an order mentioned in **[**[F1514]subsection (2)(a), (b) or (c)**]** is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.

(4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

(5) In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1 October 1991 (when the 1989 Order came into force) this section has effect with these modifications—

(a) for a reference to Article 312 of the 1989 Order substitute a reference to section 12 of the Bankruptcy Amendment Act (Northern Ireland) 1929 (c. 1 (N.I.));

(b) for a reference to Article 367 of the 1989 Order substitute a reference to section 10 of the Conveyancing Act (Ireland) 1634 (c. 3).

Textual Amendments

F1510 S. 425(2)(aa) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 87(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(x); S.I. 2016/147, art. 3(i)

F1511 Word in s. 425(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 77(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1512 Words in s. 425(2)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 77(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
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F1513 S. 425(2)(c) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 87(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(x); S.I. 2016/147, art. 3(i)

F1514 Words in s. 425(3) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 87(3)**; S.I. 2015/983, arts. 2(2)(e), 3(x)

Commencement Information

I380 S. 425 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Winding up in England and Wales and Scotland

426 Winding up under the 1986 Act

(1) In this section "company" means any company which may be wound up under the 1986 Act.

[[F1515](2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the relevant time;

(b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;

(c) property in respect of which an order under section 50, 128(3) or 198 is in force;

(d) property in respect of which an order under section 67A, 131A or 215A is in force.**]**

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time.

(4) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property—

(a) which is held by the company, and

(b) in relation to which the functions of the liquidator are exercisable.

(5) These are the powers—

(a) the powers conferred on a court by sections 41 to **[**[F1516]67B, the powers conferred on an appropriate officer by section 47C**]** and the powers of a receiver appointed under section 48 **[**[F1517]or 50 **]** ;

(b) the powers conferred on a court by sections 120 to 136 and Schedule 3 **[**[F1518], the powers conferred on an appropriate officer by section 127C**]** and the powers of an administrator appointed under section 125 or 128(3);

(c) the powers conferred on a court by sections 190 to **[**[F1519]215B, the powers conferred on an appropriate officer by section 195C**]** and the powers of a receiver appointed under section 196 **[**[F1520]or 198**]** .

(6) The powers must not be exercised—

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(a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(7) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).

(8) For the purposes of the application of Parts 4 and 5 of the 1986 Act (winding up) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order made under section 6, 92 or 156.

(9) The relevant time is—

(a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;

(c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.

(10) In a case where a winding up of a company commenced or is treated as having commenced before 29 December 1986, this section has effect with the following modifications—

(a) in subsections (1) and (7) for "the 1986 Act" substitute " the Companies Act 1985 ";

(b) in subsection (8) for "Parts 4 and 5 of the 1986 Act" substitute " Parts 20 and 21 of the Companies Act 1985 ".

Textual Amendments

F1515 S. 426(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 88(2)**; S.I. 2015/983, arts. 2(2)(e), 3(y); S.I. 2016/147, art. 3(i)

F1516 Words in s. 426(5)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 88(3)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(y)

F1517 Words in s. 426(5)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 78(3)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1518 Words in s. 426(5)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 88(3)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(y)

F1519 Words in s. 426(5)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 88(3)(c)**; S.I. 2016/147, art. 3(i)

F1520 Words in s. 426(5)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 78(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I381 S. 426 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

427 Tainted gifts

(1) In this section "company" means any company which may be wound up under the 1986 Act.

(2) This section applies if—

(a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, and

(b) it has made a tainted gift (whether directly or indirectly).

(3) No order may be made under section 238, 239 or 423 of the 1986 Act (avoidance of certain transactions) and no decree may be granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when—

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, [F1521]...

[[F1522](aa) such property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,**]**

(b) there is in force in respect of such property an order under section 50, [F1523]... 128(3) **[**[F1524]or 198**]**.**[**[F1525], or

(c) there is in force in respect of such property an order under section 67A, 131A or 215A.**]**

(4) Any order made under section 238, 239 or 423 of the 1986 Act or decree granted under section 242 or 243 of that Act, or otherwise, after an order mentioned in **[**[F1526]subsection (3)(a), (b) or (c)**]** is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.

(5) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

(6) In a case where the winding up of a company commenced or is treated as having commenced before 29 December 1986 this section has effect with the substitution—

(a) for references to section 239 of the 1986 Act of references to section 615 of the Companies Act 1985 (c. 6);

(b) for references to section 242 of the 1986 Act of references to section 615A of the Companies Act 1985;

(c) for references to section 243 of the 1986 Act of references to section 615B of the Companies Act 1985.

Textual Amendments

F1521 Word in s. 427(3)(a) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(f)

F1522 S. 427(3)(aa) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 89(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(z); S.I. 2016/147, art. 3(i)

F1523 Word in s. 427(3)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 79(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1524 Words in s. 427(3)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 79(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1525 S. 427(3)(c) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 89(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(z); S.I. 2016/147, art. 3(i)

F1526 Words in s. 427(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 89(3)**; S.I. 2015/983, arts. 2(2)(e), 3(z)

Commencement Information

I382 S. 427 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Winding up in Northern Ireland

428 Winding up under the 1989 Order

(1) In this section "company" means any company which may be wound up under the 1989 Order.

[[F1527](2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the relevant time;

(b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;

(c) property in respect of which an order under section 50, 128(3) or 198 is in force;

(d) property in respect of which an order under section 67A, 131A or 215A is in force.**]**

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time.

(4) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property—

(a) which is held by the company, and

(b) in relation to which the functions of the liquidator are exercisable.

(5) These are the powers—

(a) the powers conferred on a court by sections 41 to **[**[F1528]67B, the powers conferred on an appropriate officer by section 47C**]** and the powers of a receiver appointed under section 48 **[**[F1529]or 50**]** ;

(b) the powers conferred on a court by sections 120 to 136 and Schedule 3 **[**[F1530], the powers conferred on an appropriate officer by section 127C**]** and the powers of an administrator appointed under section 125 or 128(3);

(c) the powers conferred on a court by sections 190 to **[**[F1531]215B, the powers conferred on an appropriate officer by section 195C**]** and the powers of a receiver appointed under section 196 **[**[F1532]or 198 **]** .

(6) The powers must not be exercised—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors;

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(7) But nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).

(8) The relevant time is—

(a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;

(c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.

(9) In a case where a winding up of a company commenced or is treated as having commenced before 1 October 1991, this section has effect with the substitution for references to the 1989 Order of references to the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

Textual Amendments

F1527 S. 428(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 90(2)**; S.I. 2015/983, arts. 2(2)(e), 3(aa); S.I. 2016/147, art. 3(i)

F1528 Words in s. 428(5)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 90(3)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(aa)

F1529 Words in s. 428(5)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 80(3)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1530 Words in s. 428(5)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 90(3)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(aa)

F1531 Words in s. 428(5)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 90(3)(c)**; S.I. 2016/147, art. 3(i)

F1532 Words in s. 428(5)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 80(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I383 S. 428 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

429 Tainted gifts

(1) In this section "company" means any company which may be wound up under the 1989 Order.

(2) This section applies if—

(a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, and

(b) it has made a tainted gift (whether directly or indirectly).

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) No order may be made under Article 202, 203 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when—

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, [F1533]...

[[F1534](aa) such property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,**]**

(b) there is in force in respect of such property an order under section 50, [F1535]... 128(3) **[**[F1536]or 198**]**.**[**[F1537], or

(c) there is in force in respect of such property an order under section 67A, 131A or 215A.**]**

(4) Any order made under Article 202, 203 or 367 of the 1989 Order after an order mentioned in **[**[F1538]subsection (3)(a), (b) or (c)**]** is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.

(5) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

Textual Amendments

F1533 Word in s. 429(3)(a) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(f)

F1534 S. 429(3)(aa) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 91(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(bb); S.I. 2016/147, art. 3(i)

F1535 Word in s. 429(3)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 81(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1536 Words in s. 429(3)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 81(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1537 S. 429(3)(c) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 91(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(bb); S.I. 2016/147, art. 3(i)

F1538 Words in s. 429(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 91(3)**; S.I. 2015/983, arts. 2(2)(e), 3(bb)

Commencement Information

I384 S. 429 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Floating charges

430 Floating charges

(1) In this section "company" means a company which may be wound up under

(a) the 1986 Act, or

(b) the 1989 Order.

[[F1539](2) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to the following property—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the relevant time;

(b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;

(c) property in respect of which an order under section 50, 128(3) or 198 is in force;

(d) property in respect of which an order under section 67A, 131A or 215A is in force.**]**

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the appointment of the receiver.

(4) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property—

(a) which is held by the company, and

(b) in relation to which the functions of the receiver are exercisable.

(5) These are the powers—

(a) the powers conferred on a court by sections 41 to **[**[F1540]67B, the powers conferred on an appropriate officer by section 47C**]** and the powers of a receiver appointed under section 48 **[**[F1541]or 50 **]** ;

(b) the powers conferred on a court by sections 120 to 136 and Schedule 3 **[**[F1542], the powers conferred on an appropriate officer by section 127C**]** and the powers of an administrator appointed under section 125 or 128(3);

(c) the powers conferred on a court by sections 190 to **[**[F1543]215B, the powers conferred on an appropriate officer by section 195C**]** and the powers of a receiver appointed under section 196 **[**[F1544]or 198 **]** .

(6) The powers must not be exercised—

(a) so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company's creditors;

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property.

(7) But nothing in the 1986 Act or the 1989 Order must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).

(8) In this section "floating charge" includes a floating charge within the meaning of section 462 of the Companies Act 1985 (c. 6).

Textual Amendments

F1539 S. 430(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 92(2)**; S.I. 2015/983, arts. 2(2)(e), 3(cc); S.I. 2016/147, art. 3(i)

F1540 Words in s. 430(5)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 92(3)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(cc)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1541 Words in s. 430(5)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 82(3)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1542 Words in s. 430(5)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 92(3)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(cc)

F1543 Words in s. 430(5)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 92(3)(c)**; S.I. 2016/147, art. 3(i)

F1544 Words in s. 430(5)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 82(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I385 S. 430 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Limited liability partnerships

431 Limited liability partnerships

(1) In sections 426, 427 and 430 "company" includes a limited liability partnership which may be wound up under the 1986 Act.

(2) A reference in those sections to a company passing a resolution for its voluntary winding up is to be construed in relation to a limited liability partnership as a reference to the partnership making a determination for its voluntary winding up.

Commencement Information

I386 S. 431 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Insolvency practitioners

432 Insolvency practitioners

(1) Subsections (2) and (3) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because—

(a) it is for the time being subject to a restraint order made under section 41, 120 or 190, or

(b) it is for the time being subject to **[**[F1545]a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A **]** or an interim administration order made under section 256,

and at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.

(2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.

(3) He has a lien on the property or the proceeds of its sale—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) for such of his expenses as were incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal, and

(b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.

(4) Subsection (2) does not prejudice the generality of any provision of [F1546]... the 1986 Act, the 1989 Order**[**[F1547], the 2016 Act**]** or any other Act or Order which confers protection from liability on him.

(5) Subsection (7) applies if—

(a) property is subject to a restraint order made under section 41, 120 or 190,

(b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the restraint order, and

(c) he does not know (and has no reasonable grounds to believe) that the property is subject to the restraint order.

(6) Subsection (7) also applies if—

(a) property is subject to a restraint order made under section 41, 120 or 190,

(b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the restraint order, and

(c) the expenses are ones which (but for the effect of the restraint order) might have been met by taking possession of and realising property subject to it.

[[F1548](6A) Subsection (7) also applies if—

(a) property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,

(b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of the detained property, and

(c) the expenses are ones which (but for the effect of the detention of the property) might have been met by taking possession of and realising the property.**]**

(7) **[**[F1549]Whether or not the insolvency practitioner has seized or disposed of any property, the insolvency practitioner is entitled to payment of the expenses under—

(a) section 54(2), 55(3) or 67D(2) if the restraint order was made under section 41 or (as the case may be) the property was detained under or by virtue of section 44A, 47J, 47K, 47M or 47P,

(b) section 130(3), 131(3) or 131D(2) if the restraint order was made under section 120 or (as the case may be) the property was detained under or by virtue of section 122A, 127J, 127K, 127M or 127P, and

(c) section 202(2), 203(3) or 215D(2) if the restraint order was made under section 190 or (as the case may be) the property was detained under or by virtue of section 193A, 195J, 195K, 195M or 195P.**]**

(8) Subsection (10) applies if—

(a) property is subject to **[**[F1550]a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A**]** or an interim administration order made under section 256,

(b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the order, and

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(c) he does not know (and has no reasonable grounds to believe) that the property is subject to the order.

(9) Subsection (10) also applies if—

(a) property is subject to **[**[F1551]a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A**]** or an interim administration order made under section 256,

(b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the order, and

(c) the expenses are ones which (but for the effect of the order) might have been met by taking possession of and realising property subject to it.

(10) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under section 280.

Textual Amendments

F1545 Words in s. 432(1)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 23**; S.I. 2005/3136, art. 3(c)

F1546 Words in s. 432(4) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(11)(a)**

F1547 Words in s. 432(4) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(11)(b)**

F1548 S. 432(6A) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 93(2)**; S.I. 2015/983, arts. 2(2)(e), 3(dd); S.I. 2016/147, art. 3(i)

F1549 S. 432(7) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 93(3)**; S.I. 2015/983, arts. 2(2)(e), 3(dd); S.I. 2016/147, art. 3(i)

F1550 Words in s. 432(8)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 23**; S.I. 2005/3136, art. 3(c)

F1551 Words in s. 432(9)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 23**; S.I. 2005/3136, art. 3(c)

Commencement Information

I387 S. 432 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

433 Meaning of insolvency practitioner

(1) This section applies for the purposes of section 432.

(2) A person acts as an insolvency practitioner if he so acts within the meaning given by section 388 of the 1986 Act or Article 3 of the 1989 Order; but this is subject to subsections (3) to (5).

(3) The expression "person acting as an insolvency practitioner" includes the official receiver acting as receiver or manager of the property concerned.

(4) In applying section 388 of the 1986 Act under subsection (2) above—

(a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration;

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(b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored.

(5) In applying Article 3 of the 1989 Order under subsection (2) above, paragraph (5) (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored.

Commencement Information

I388 S. 433 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Interpretation

434 Interpretation

(1) The following paragraphs apply to references to Acts or Orders—

F1552(a) . . . . . .

(b) the 1914 Act is the Bankruptcy Act 1914 (c. 59);

F1553(c) . . . . . .

(d) the 1986 Act is the Insolvency Act 1986 (c. 45);

(e) the 1989 Order is the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

[F1554(f) the 2016 Act is the Bankruptcy (Scotland) Act 2016;**]**

(2) An award of sequestration is made on the date of sequestration within the meaning of section **[**F1555 22(7) of the 2016**]** Act.

(3) This section applies for the purposes of this Part.

Textual Amendments

F1552 S. 434(1)(a) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(12)(a)(i)**

F1553 S. 434(1)(c) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(12)(a)(i)**

F1554 S. 434(1)(f) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(12)(a)(ii)**

F1555 Words in s. 434(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(12)(b)**

Commencement Information

I389 S. 434 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
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PART 10

INFORMATION

England and Wales and Northern Ireland

[F1556 435 Use of information by certain [F1557 authorities]

(1) Information obtained by or on behalf of [F1558 a relevant authority] in connection with the exercise of any of [F1559 the authority's] functions under, or in relation to, Part 5 or 8 may be used by [F1560 the authority] in connection with his exercise of any of [F1559 the authority's] other functions (whether under, or in relation to, either Part, another Part of this Act or otherwise).

(2) Information obtained by or on behalf of [F1561 a relevant authority] in connection with the exercise of any of [F1562 the authority's] functions (whether under, or in relation to, this Act or otherwise) which are not functions under, or in relation to, Part 5 or 8 may be used by [F1563 the authority] in connection with his exercise of any of [F1562 the authority's] functions under, or in relation to, Part 5 or 8.

(3) This section applies to information obtained before the coming into force of the section as well as to information obtained after the coming into force of the section.

(4) In this section [F1564 "relevant authority"] means—

(a) the Director of Public Prosecutions;

(b) the Director of the Serious Fraud Office; F1565 ...

(c) the Director of Public Prosecutions for Northern Ireland.]

[F1566 (d) Her Majesty's Revenue and Customs; or

(e) the Financial Conduct Authority.]

Textual Amendments

F1556 S. 435 substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 131**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1557 Word in s. 435 heading substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(2)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1558 Words in s. 435(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(3)(a)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1559 Words in s. 435(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(3)(b)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1560 Words in s. 435(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(3)(c)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1561 Words in s. 435(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017

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(c. 22), s. 58(5)(6), **Sch. 5 para. 77(4)(a)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1562 Words in s. 435(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(4)(b)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1563 Words in s. 435(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(4)(c)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1564 Words in s. 435(4) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(5)(a)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1565 Word in s. 435(4)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(5)(b)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1566 S. 435(4)(d)(e) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 77(5)(c)** (with Sch. 5 para. 77(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

436 Disclosure of information to [F1567certain [F1568authorities]]

(1) Information which is held by or on behalf of a permitted person (whether it was obtained before or after the coming into force of **[**F1569subsection (10)**]**) may be disclosed to **[**F1570a relevant authority**]** for the purpose of the exercise by **[**F1571the authority**]** of **[**F1572the authority's**]** functions **[**F1573under, or in relation to, Part 5 or 8**]**.

(2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(3) But nothing in this section authorises the making of a disclosure—

(a) which contravenes **[**F1574the data protection legislation**]**;

(b) which is prohibited by **[**F1575any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016**]**.

(4) This section does not affect a power to disclose which exists apart from this section.

(5) These are permitted persons—

(a) a constable;

F1576(b) . . . . . .

(d) the Director of the Serious Fraud Office;

(e) the Commissioners of Inland Revenue;

(f) the Commissioners of Customs and Excise;

(g) the Director of Public Prosecutions;

F1577(ga) . . . . . .

(h) the Director of Public Prosecutions for Northern Ireland.

[F1578(i) the Financial Conduct Authority.**]**

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(6) The Secretary of State may by order designate as permitted persons other persons who exercise functions which he believes are of a public nature.

(7) But an order under subsection (6) must specify the functions in respect of which the designation is made.

[[F1579](7A) In relation to persons exercising functions in Northern Ireland, any reference in subsection (6) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.**]**

(8) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.

(9) The power to authorise a disclosure under subsection (8) may be delegated (either generally or for a specified purpose)—

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

(b) in the case of the Commissioners of Customs and Excise, to a customs officer.

[[F1580](10) In this section **[**[F1581]"relevant authority"**]** has the same meaning as in section 435.**]**

Textual Amendments

F1567 Words in s. 436 heading substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 132(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1568 Word in s. 436 heading substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 78(2)** (with Sch. 5 para. 78(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1569 Words in s. 436(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 132(3)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1570 Words in s. 436(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 78(3)(a)** (with Sch. 5 para. 78(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1571 Words in s. 436(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 78(3)(b)** (with Sch. 5 para. 78(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1572 Words in s. 436(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 78(3)(c)** (with Sch. 5 para. 78(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1573 Words in s. 436(1) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 132(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1574 Words in s. 436(3)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 81** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F1575 Words in s. 436(3)(b) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 12(2)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(g)(iii)

F1576 S. 436(5)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 132(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
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F1577 S. 436(5)(ga) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 132(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1578 S. 436(5)(i) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 78(4)** (with Sch. 5 para. 78(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1579 S. 436(7A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 69** (with arts. 28-31)

F1580 S. 436(10) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 132(5)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1581 Words in s. 436(10) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 78(5)** (with Sch. 5 para. 78(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Commencement Information

I390 S. 436 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I391 S. 436 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

437 Further disclosure

(1) Subsection (2) applies to information obtained under section 436 from the Commissioners of Inland Revenue or from the Commissioners of Customs and Excise or from a person acting on behalf of either of them.

(2) Such information must not be further disclosed except—

(a) for a purpose connected with the exercise of **[**[F1582]a relevant authority's**]** functions **[**[F1583]under, or in relation to, Part 5 or 8 **]**, and

(b) with the consent of the Commissioners concerned.

(3) Consent under subsection (2) may be given—

(a) in relation to a particular disclosure;

(b) in relation to disclosures made in circumstances specified or described in the consent.

(4) The power to consent to further disclosure under subsection (2)(b) may be delegated (either generally or for a specified purpose)—

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

(b) in the case of the Commissioners of Customs and Excise, to a customs officer.

(5) Subsection (6) applies to information obtained under section 436 from a permitted person other than the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or a person acting on behalf of either of them.

(6) A permitted person who discloses such information to **[**[F1584]a relevant authority**]** may make the disclosure subject to such conditions as to further disclosure by **[**[F1585]the authority**]** as the permitted person thinks appropriate; and the information must not be further disclosed in contravention of the conditions.

[[F1586](7) In this section **[**[F1587]"relevant authority"**]** has the same meaning as in section 435.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1582 Words in s. 437(2)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 79(2)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1583 Words in s. 437(2)(a) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 133(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1584 Words in s. 437(6) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 79(3)(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1585 Words in s. 437(6) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 79(3)(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1586 S. 437(7) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 133(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1587 Words in s. 437(7) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 79(4)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Commencement Information

I392 S. 437 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I393 S. 437 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

438 Disclosure of information by [F1588certain [F1589authorities]]

(1) Information obtained by or on behalf of **[**F1590a relevant authority**]** in connection with the exercise of any of **[**F1591the authority's**]** functions **[**F1592under, or in relation to, Part 5 or 8**]** may be disclosed by **[**F1593the authority**]** if the disclosure is for the purposes of any of the following—

(a) any criminal investigation which is being or may be carried out, whether in the United Kingdom or elsewhere;

(b) any criminal proceedings which have been or may be started, whether in the United Kingdom or elsewhere;

(c) the exercise of the **[**F1594authority's**]** functions **[**F1595under, or in relation to, Part 5 or 8**]**;

(d) the exercise by the prosecutor of functions under Parts 2, 3 and 4;

(e) the exercise by the Scottish Ministers of their functions under Part 5 **[**F1596or 8**]** ;

(f) the exercise by a customs officer **[**F1597, an accredited financial investigator**][**F1598, a constable or an SFO officer**]** of his functions under Chapter 3 **[**F1599, 3A or 3B**]** of Part 5;

[F1600(fa) the exercise of any functions of **[**F1601the National Crime Agency**][**F1602or another **[**F1603relevant authority**]]** under, or in relation to, Part 5 or 8;**]**

(g) safeguarding national security;

(h) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 447;

(i) the exercise of a designated function.

F1604(2) . . . . . .

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[F1604](3) . . . . . .

[F1604](4) . . . . . .

(5) If **[**[F1605]a relevant authority**]** makes a disclosure of information for a purpose specified in subsection (1) **[**[F1606]the authority**]** may make any further disclosure of the information by the person to whom **[**[F1606]the authority**]** discloses it subject to such conditions as **[**[F1606]the authority**]** thinks fit.

(6) Such a person must not further disclose the information in contravention of the conditions.

(7) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(8) But nothing in this section authorises the making of a disclosure—

(a) which contravenes **[**[F1607]the data protection legislation**]**;

(b) which is prohibited by **[**[F1608]any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016**]**.

[[F1609](8A) This section does not affect a power to disclose which exists apart from this section.

(8B) This section applies to information obtained before the coming into force of subsection (10) as well as to information obtained after the coming into force of that subsection.**]**

(9) A designated function is a function which the Secretary of State thinks is a function of a public nature and which he designates by order.

[[F1610](10) In this section **[**[F1611]"relevant authority"**]** has the same meaning as in section 435.**]**

Textual Amendments

F1588 Words in s. 438 heading substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 134(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1589 Word in s. 438 heading substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(2)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1590 Words in s. 438(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(a)(i)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1591 Words in s. 438(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(a)(ii)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1592 Words in s. 438(1) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 134(3)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1593 Words in s. 438(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(a)(iii)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1594 Word in s. 438(1)(c) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act

2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(b)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1595 Words in s. 438(1)(c) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 134(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1596 Words in s. 438(1)(e) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(c)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1597 Words in s. 438(1)(f) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 14**; S.I. 2008/755, art. 17(1)(f)

F1598 Words in s. 438(1)(f) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(d)(i)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1599 Words in s. 438(1)(f) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(d)(ii)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1600 S. 438(1)(fa) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 134(3)(c)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1601 Words in s. 438(1)(fa) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 146**; S.I. 2013/1682, art. 3(v)

F1602 Words in s. 438(1)(fa) substituted (27.3.2014) by The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 29**

F1603 Words in s. 438(1)(fa) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(3)(e)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1604 S. 438(2)-(4) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 134(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1605 Words in s. 438(5) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(4)(a)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1606 Words in s. 438(5) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(4)(b)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1607 Words in s. 438(8)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 82** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F1608 Words in s. 438(8)(b) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 12(3)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(g)(iii)

F1609 S. 438(8A)(8B) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 134(5)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1610 S. 438(10) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 134(6)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1611 Words in s. 438(10) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 80(5)** (with Sch. 5 para. 80(6)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I394 S. 438 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I395 S. 438 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

Scotland

439 Disclosure of information to Lord Advocate and to Scottish Ministers

(1) Information which is held by or on behalf of a permitted person (whether it was obtained before or after the coming into force of this section) may be disclosed to the Lord Advocate in connection with the exercise of any of his functions under Part 3 or to the Scottish Ministers in connection with the exercise of any of their functions under Part 5 **[**[F1612]or 8**]**.

(2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(3) But nothing in this section authorises the making of a disclosure—

(a) which contravenes **[**[F1613]the data protection legislation**]**;

(b) which is prohibited by **[**[F1614]any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016**]**.

(4) This section does not affect a power to disclose which exists apart from this section.

(5) These are permitted persons—

(a) a constable;

[[F1615](b) **[**[F1616]**[**[F1617]the National Crime Agency**]** but only so far as the information is held by it or on its behalf otherwise than in connection with its functions under this Act**]**;**]**

(d) the Director of the Serious Fraud Office;

(e) the Commissioners of Inland Revenue;

(f) the Commissioners of Customs and Excise;

[F1618](fa) . . . . . .

(g) the Director of Public Prosecutions;

(h) the Director of Public Prosecutions for Northern Ireland.

[[F1619](i) the Financial Conduct Authority.**]**

(6) The Scottish Ministers may by order designate as permitted persons other persons who exercise functions which they believe are of a public nature.

(7) But an order under subsection (6) must specify the functions in respect of which the designation is made.

(8) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.

(9) The power to authorise a disclosure under subsection (8) may be delegated (either generally or for a specified purpose)—

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

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(b) in the case of the Commissioners of Customs and Excise, to a customs officer.

Textual Amendments

F1612 Words in s. 439(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 81(2)** (with Sch. 5 para. 81(4)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1613 Words in s. 439(3)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 83** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F1614 Words in s. 439(3)(b) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 12(4)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(g)(iii)

F1615 S. 439(5)(b) substituted for s. 439(5)(b)(c) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 177**; S.I. 2006/378, art. 4(1), Sch. para. 10

F1616 Words in s. 439(5)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 135(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1617 Words in s. 439(5)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 147**; S.I. 2013/1682, art. 3(v)

F1618 S. 439(5)(fa) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 30**

F1619 S. 439(5)(i) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 81(3)** (with Sch. 5 para. 81(4)); S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

Commencement Information

I396 S. 439 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I397 S. 439 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

440 Further disclosure

(1) Subsection (2) applies to information obtained under section 439 from the Commissioners of Inland Revenue or from the Commissioners of Customs and Excise or from a person acting on behalf of either of them.

(2) Such information must not be further disclosed except—

(a) for a purpose connected with the exercise of the functions of the Lord Advocate under Part 3 and of the Scottish Ministers under Part 5, and

(b) with the consent of the Commissioners concerned.

(3) Consent under subsection (2) may be given—

(a) in relation to a particular disclosure;

(b) in relation to disclosures made in circumstances specified or described in the consent.

(4) The power to consent to further disclosure under subsection (2)(b) may be delegated (either generally or for a specified purpose)—

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;

(b) in the case of the Commissioners of Customs and Excise, to a customs officer.

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(5) Subsection (6) applies to information obtained under section 439 from a permitted person other than the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or a person acting on behalf of either of them.

(6) A permitted person who discloses such information to the Lord Advocate or to the Scottish Ministers may make the disclosure subject to such conditions as to further disclosure by the Lord Advocate or by the Scottish Ministers as the permitted person thinks appropriate; and the information must not be further disclosed in contravention of the conditions.

Commencement Information

I398 S. 440 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I399 S. 440 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

441 Disclosure of information by Lord Advocate and by Scottish Ministers

(1) Information obtained by or on behalf of the Lord Advocate in connection with the exercise of any of his functions under Chapter 3 **[**[F1620]or 3A**]** of Part 5 may be disclosed to the Scottish Ministers in connection with the exercise of any of their functions under that Part.

(2) Information obtained by or on behalf of the Lord Advocate in connection with the exercise of any of his functions under Part 3 or by or on behalf of the Scottish Ministers in connection with the exercise of any of their functions under Part 5 **[**[F1621]or 8**]** may be disclosed by him or by them if the disclosure is for the purposes of any of the following—

(a) any criminal investigation which is being or may be carried out whether in the United Kingdom or elsewhere;

(b) any criminal proceedings which have been or may be started, whether in the United Kingdom or elsewhere;

(c) the exercise of the functions of the Lord Advocate under Part 3;

(d) the exercise of the functions of the Scottish Ministers under Part 5 **[**[F1622]or 8**]**;

(e) the exercise by the prosecutor of functions under Parts 2, 3 and 4;

[[F1623](fa) the exercise of the **[**[F1624]functions of the Director of Public Prosecutions, [F1625]... the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland **][**[F1624]functions of a relevant authority, as defined by section 435(4),**]** under, or in relation to, Part 5 or 8;**]**

(g) the exercise by **[**[F1626]a customs officer or**]** a constable of his functions under Chapter 3 **[**[F1627], 3A or 3B**]** of Part 5;

(h) safeguarding national security;

(i) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 447;

(j) the exercise of a designated function.

(3) If the Lord Advocate makes a disclosure of information for a purpose specified in subsection (2) he may make any further disclosure of the information by the person to whom he discloses it subject to such conditions as he thinks fit.

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) If the Scottish Ministers make a disclosure of information for a purpose specified in subsection (2) they may make any further disclosure of the information by the person to whom they disclose it subject to such conditions as they think fit.

(5) A person mentioned in subsection (3) or (4) must not further disclose the information in contravention of the conditions.

(6) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(7) But nothing in this section authorises the making of a disclosure—

(a) which contravenes **[**[F1628]the data protection legislation**]**;

(b) which is prohibited by **[**[F1629]any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016**]**.

(8) This section does not affect a power to disclose which exists apart from this section.

(9) A designated function is a function which the Scottish Ministers think is a function of a public nature and which they designate by order.

Textual Amendments

F1620 Words in s. 441(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 82(2)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1621 Words in s. 441(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 82(3)(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1622 Words in s. 441(2)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 82(3)(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1623 S. 441(2)(fa) substituted for s. 441(2)(f) (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 136**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1624 Words in s. 441(2)(fa) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 82(3)(c)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1625 Words in s. 441(2)(fa) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 31**

F1626 Word in s. 441(2)(g) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 82(3)(d)(i)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1627 Words in s. 441(2)(g) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 82(3)(d)(ii)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(i)

F1628 Words in s. 441(7)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 84** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F1629 Words in s. 441(7)(b) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 12(5)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(g)(iii)

Commencement Information

I400 S. 441 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

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I401 S. 441 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

Overseas purposes

442 Restriction on disclosure for overseas purposes

(1) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restrictions on disclosure of information for overseas purposes) applies to a disclosure of information authorised by section 438(1)(a) or (b) or 441(2)(a) or (b).

(2) In the application of section 18 of the Anti-terrorism, Crime and Security Act 2001 by virtue of subsection (1) section 20 of that Act must be ignored and the following subsection is substituted for subsection (2) of section 18 of that Act—

"(2) In subsection (1) the reference, in relation to a direction, to a relevant disclosure is a reference to a disclosure which—

(a) is made for a purpose authorised by section 438(1)(a) or (b) or 441(2)(a) or (b) of the Proceeds of Crime Act 2002, and

(b) is of any such information as is described in the direction.".

Commencement Information

I402 S. 442 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I403 S. 442 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.**

[F1630 442A Data protection legislation

In this Part, "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

Textual Amendments

F1630 S. 442A inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 85** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

PART 11

CO-OPERATION

443 Enforcement in different parts of the United Kingdom

(1) Her Majesty may by Order in Council make provision—

(a) for an order made by a court under Part 2 to be enforced in Scotland or Northern Ireland;

(b) for an order made by a court under Part 3 to be enforced in England and Wales or Northern Ireland;

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(c) for an order made by a court under Part 4 to be enforced in England and Wales or Scotland;

[[F1631](ca) for an order made by a court under Part 7 in one part of the United Kingdom to be enforced in another part;**]**

(d) for an order made under Part 8 in one part of the United Kingdom to be enforced in another part;

(e) for a warrant issued under Part 8 in one part of the United Kingdom to be executed in another part.

(2) Her Majesty may by Order in Council make provision—

(a) for a function of a receiver appointed in pursuance of Part 2 to be exercisable in Scotland or Northern Ireland;

(b) for a function of an administrator appointed in pursuance of Part 3 to be exercisable in England and Wales or Northern Ireland;

(c) for a function of a receiver appointed in pursuance of Part 4 to be exercisable in England and Wales or Scotland.

(3) An Order under this section may include—

(a) provision conferring and imposing functions on the prosecutor **[**[F1632], **[**[F1633]the National Crime Agency or its officers**]** and the relevant Director**]**;

(b) provision about the registration of orders and warrants;

(c) provision allowing directions to be given in one part of the United Kingdom about the enforcement there of an order made or warrant issued in another part;

(d) provision about the authentication in one part of the United Kingdom of an order made or warrant issued in another part.

(4) An Order under this section may—

(a) amend an enactment;

(b) apply an enactment (with or without modifications).

[[F1634](5) In this section "relevant Director" has the meaning given by section 352(5A).**]**

Textual Amendments

F1631 S. 443(1)(ca) inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 83**; S.I. 2017/991, reg. 2(u)

F1632 Words in s. 443(3)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 137(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1633 Words in s. 443(3) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 148**; S.I. 2013/1682, art. 3(v)

F1634 S. 443(5) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 137(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I404 S. 443 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

444 External requests and orders

(1) Her Majesty may by Order in Council—

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(a) make provision for a prohibition on dealing with property which is the subject of an external request;

(b) make provision for the realisation of property for the purpose of giving effect to an external order.

(2) An Order under this section may include provision which (subject to any specified modifications) corresponds to any provision of Part 2, 3 or 4 or Part 5 except Chapter 3.

(3) An Order under this section may include—

[[F1635](a) provision about the functions of any of the listed persons in relation to external requests and orders;**]**

[[F1636](aa) provision creating offences in relation to external requests and orders which are equivalent to the offences created by section 453B;**]**

(b) provision about the registration of external orders;

(c) provision about the authentication of any judgment or order of an overseas court, and of any other document connected with such a judgment or order or any proceedings relating to it;

(d) provision about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in an overseas court);

(e) provision to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in the part of the United Kingdom where the request is being implemented or the order is being enforced.

[[F1637](4) For the purposes of subsection (3)(a) "the listed persons" are—

(a) the Secretary of State;

(b) the Lord Advocate;

(c) the Scottish Ministers;

[[F1638](ca) the Department of Justice in Northern Ireland;**]**

[[F1639](d) the National Crime Agency;**]**

(e) the Director of Public Prosecutions;

(f) the Director of Public Prosecutions for Northern Ireland; **[**[F1640]and**]**

(g) the Director of the Serious Fraud Office; [F1641]...

[F1641](h) . . . . . .**]**

Textual Amendments

F1635 S. 444(3)(a) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 108(2)**, 178(8); S.I. 2005/1521, art. 3(1)(d)

F1636 S. 444(3)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 24(2)**, 58(1)(6); S.I. 2018/78, reg. 3(i); S.I. 2021/724, reg. 2(1)(l)

F1637 S. 444(4) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 108(3)**, 178(8); S.I. 2005/1521, art. 3(1)(d)

F1638 S. 444(4)(ca) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 70** (with arts. 28-31)

F1639 S. 444(4)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 149**; S.I. 2013/1682, art. 3(v)

Status: *Point in time view as at 05/01/2023.*
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F1640 Word in s. 444(4)(f) inserted (27.3.2014) by The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 32(a)**

F1641 S. 444(4)(h) and word omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 32(b)**

Commencement Information

I405 S. 444 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

445 External investigations

(1) Her Majesty may by Order in Council make—

(a) provision to enable orders equivalent to those under Part 8 to be made, and warrants equivalent to those under Part 8 to be issued, for the purposes of an external investigation;

(b) provision creating offences in relation to external investigations which are equivalent to offences created by Part 8 **[**[F1642]and section 453B**]**.

(2) An Order under this section may include—

(a) provision corresponding to any provision of Part 8 (subject to any specified modifications);

(b) provision about the functions of the Secretary of State, the Lord Advocate, the Scottish Ministers, **[**[F1643]the Department of Justice in Northern Ireland,**][**[F1644]**[**[F1645]the National Crime Agency or its officers**]**, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, [F1646]...**]** the Director of the Serious Fraud Office, constables and customs officers;

(c) provision about evidence (including evidence required to establish whether an investigation is being carried out in a country or territory outside the United Kingdom).

[F1647](3) . . . . . .

Textual Amendments

F1642 Words in s. 445(1)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 24(3)**, 58(1)(6); S.I. 2018/78, reg. 3(i); S.I. 2021/724, reg. 2(1)(l)

F1643 Words in s. 445(2)(b) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 71** (with arts. 28-31)

F1644 Words in s. 445(2)(b) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 139**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1645 Words in s. 445(2)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 150**; S.I. 2013/1682, art. 3(v)

F1646 Words in s. 445(2)(b) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 33**

F1647 S. 445(3) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 84**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(j)

Status: *Point in time view as at 05/01/2023.*
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Commencement Information

I406 S. 445 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F1648 445A Sharing of beneficial ownership information

(1) The relevant Minister must prepare a report about the arrangements in place between—

(a) the government of the United Kingdom, and

(b) the government of each relevant territory,

for the sharing of beneficial ownership information.

(2) The report must include an assessment of the effectiveness of those arrangements, having regard to such international standards as appear to the relevant Minister to be relevant.

(3) The report—

(a) must be prepared before 1 July 2019, and

(b) must relate to the arrangements in place during the period of 18 months from 1 July 2017 to 31 December 2018.

(4) The relevant Minister must—

(a) publish the report, and

(b) lay a copy of it before Parliament.

(5) The reference in subsection (1) to arrangements in place for the sharing of beneficial ownership information between the government of the United Kingdom and the government of a relevant territory is to such arrangements as are set out in an exchange of notes—

(a) for the provision of beneficial ownership information about a person incorporated in a part of the United Kingdom to a law enforcement authority of the relevant territory at the request of the authority, and

(b) for the provision of beneficial ownership information about a person incorporated in a relevant territory to a law enforcement authority of the United Kingdom at the request of the authority.

(6) In this section—

"beneficial ownership information" means information in relation to the beneficial ownership of persons incorporated in a part of the United Kingdom or (as the case may be) in a relevant territory;

"exchange of notes" means written documentation signed on behalf of the government of the United Kingdom and the government of a relevant territory setting out details of the agreement reached in respect of the arrangements for the matters mentioned in subsection (5)(a) and (b);

"relevant Minister" means the Secretary of State or the Minister for the Cabinet Office;

"relevant territory" means any of the Channel Islands, the Isle of Man or any British overseas territory.]

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Textual Amendments

F1648 S. 445A inserted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 9**, 58(4)(6)

446 Rules of court

Rules of court may make such provision as is necessary or expedient to give effect to an Order in Council made under this Part (including provision about the exercise of functions of a judge conferred or imposed by the Order).

Commencement Information

I407 S. 446 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

447 Interpretation

(1) An external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request.

(2) An external order is an order which—

(a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and

(b) is for the recovery of specified property or a specified sum of money.

(3) An external investigation is an investigation by an overseas authority into—

(a) whether property has been obtained as a result of or in connection with criminal conduct, [F1649]...

[[F1650](aa) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or**]**

(b) whether a money laundering offence has been committed.

(4) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(5) Property is obtained by a person if he obtains an interest in it.

(6) References to an interest, in relation to property other than land, include references to a right (including a right to possession).

[[F1651](6A) A person who obtains a pecuniary advantage as a result of or in connection with conduct is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(6B) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.**]**

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(7) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.

(8) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(9) A money laundering offence is conduct carried out in a country or territory outside the United Kingdom and which if carried out in the United Kingdom would constitute any of the following offences—

(a) an offence under section 327, 328 or 329;

(b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);

(c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a).

(10) An overseas court is a court of a country or territory outside the United Kingdom.

(11) An overseas authority is an authority which has responsibility in a country or territory outside the United Kingdom—

(a) for making a request to an authority in another country or territory (including the United Kingdom) to prohibit dealing with relevant property,

(b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct, or

(c) for carrying out an investigation into whether a money laundering offence has been committed.

(12) This section applies for the purposes of this Part.

Textual Amendments

F1649 Word in s. 447(3)(a) repealed (E.W.) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 17 Pt. 2**; S.I. 2005/1521, art. 3(1)(ee)

F1650 S. 447(3)(aa) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 108(4)**, 178(8); S.I. 2005/1521, art. 3(1)(d)

F1651 S. 447(6A)(6B) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 39**, 88(1); S.I. 2015/820, reg. 3(l)

Modifications etc. (not altering text)

C247 S. 447(9)(b) modified (E.W.N.I.) (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 44(c)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

Commencement Information

I408 S. 447 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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PART 12

MISCELLANEOUS AND GENERAL

Miscellaneous

448 Tax

Schedule 10 contains provisions about tax.

Commencement Information

I409 S. 448 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

449 [F1652NCA officers]: pseudonyms

(1) This section applies to a [F1653National Crime Agency officer] if—

(a) he is [F1654assigned][F1655to do anything on behalf of the National Crime Agency] for the purposes of this Act, and

(b) it is necessary or expedient for the purpose of doing the thing for the [F1656National Crime Agency officer] to identify himself by name.

(2) [F1657An authorised person] may direct that such a [F1658National Crime Agency officer] may for that purpose identify himself by means of a pseudonym.

(3) For the purposes of any proceedings or application under this Act a certificate signed by [F1659an authorised person] which sufficiently identifies the [F1660National Crime Agency officer] by reference to the pseudonym is conclusive evidence that that [F1660National Crime Agency officer] is authorised to use the pseudonym.

(4) In any proceedings or application under this Act a [F1660National Crime Agency officer] in respect of whom a direction under this section is in force must not be asked (and if asked is not required to answer) any question which is likely to reveal his true identity.

F1661(5) . . . . . .

[F1662(6) In this section "authorised person" means [F1663an NCA officer] authorised by [F1664the Director General of the NCA] for the purposes of this section.]

Textual Amendments

F1652 Words in s. 449 title substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(2)**; S.I. 2013/1682, art. 3(v)

F1653 Words in s. 449(1) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(3)(a)**; S.I. 2013/1682, art. 3(v)

F1654 Words in s. 449(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 140(3)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1655 Words in s. 449(1)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(3)(b)**; S.I. 2013/1682, art. 3(v)

F1656 Words in s. 449(1)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(3)(c)**; S.I. 2013/1682, art. 3(v)

F1657 Words in s. 449(2) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 140(4)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1658 Words in s. 449(2) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(4)**; S.I. 2013/1682, art. 3(v)

F1659 Words in s. 449(3) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 140(5)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1660 Words in s. 449(3)(4) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(5)**; S.I. 2013/1682, art. 3(v)

F1661 S. 449(5) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 140(7), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1662 S. 449(6) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 140(8)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1663 Words in s. 449(6) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(6)(a)**; S.I. 2013/1682, art. 3(v)

F1664 Words in s. 449(6) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 151(6)(b)**; S.I. 2013/1682, art. 3(v)

Commencement Information

I410 S. 449 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1665 449A Staff of relevant Directors: pseudonyms

(1) This section applies to a member of the staff of the relevant Director if—

(a) the member is to exercise a function as a member of that staff under, or in relation to, Part 5 or 8; and

(b) it is necessary or expedient for the purpose of exercising that function for the member of staff to identify himself by name.

(2) The relevant Director may direct that such a member of staff may for that purpose identify himself by means of a pseudonym.

(3) For the purposes of any proceedings or application under this Act, a certificate signed by the relevant Director which sufficiently identifies the member of staff by reference to the pseudonym is conclusive evidence that that member of staff is authorised to use the pseudonym.

(4) In any proceedings or application under this Act a member of the staff of the relevant Director in respect of whom a direction under this section is in force must not be asked (and if asked is not required to answer) any question which is likely to reveal his true identity.

(5) The relevant Director may not delegate the exercise of his functions under this section or otherwise authorise another person to exercise those functions on his behalf.

(6) In this section "relevant Director" has the meaning given by section 352(5A).]

Textual Amendments

F1665 S. 449A inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 118**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

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450 Pseudonyms: Scotland

(1) This section applies to—

(a) any person named by the Scottish Ministers for the purpose of a civil recovery investigation **[**[F1666], a detained cash investigation, a detained property investigation or a frozen funds investigation**]** under Part 8, or

(b) any person authorised by the Scottish Ministers for the purpose of such a civil recovery investigation to receive relevant information under section 391,

if it is necessary or expedient for the person to identify himself by name for that purpose.

(2) The Scottish Ministers may direct that such a person may for that purpose identify himself by means of a pseudonym.

(3) For the purposes of any proceedings or application under this Act, a certificate signed by the Scottish Ministers which sufficiently identifies the person by reference to the pseudonym is conclusive evidence that the person is authorised to use the pseudonym.

(4) In any proceedings or application under this Act a person in respect of whom a direction under this section is in force must not be asked (and if asked is not required to answer) any question which is likely to reveal his true identity.

Textual Amendments

F1666 Words in s. 450(1)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 85**; S.I. 2018/78, reg. 5(3)(a)(i)(ii); S.I. 2021/724, reg. 4(j)

Commencement Information

I411 S. 450 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

451 [[F1667]Revenue and Customs prosecutions]

(1) Proceedings for a specified offence may be started **[**[F1668]by **[**[F1669]the Director of Public Prosecutions**]** or by order of the Commissioners for Her Majesty's Revenue and Customs**]** (the Commissioners).

[[F1670](2) Where proceedings under subsection (1) are instituted by the Commissioners, the proceedings must be brought in the name of an officer of Revenue and Customs.**]**

[F1671](3) . . . . . .

(4) If the Commissioners investigate, or propose to investigate, any matter to help them to decide—

(a) whether there are grounds for believing that a specified offence has been committed, or

(b) whether a person is to be prosecuted for such an offence,

the matter must be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979 (c. 2).

(5) This section—

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(a) does not prevent any person (including a **[**[F1672]officer of Revenue and Customs**]**) who has power to arrest, detain or prosecute a person for a specified offence from doing so;

(b) does not prevent a court from dealing with a person brought before it following his arrest by a **[**[F1672]officer of Revenue and Customs**]** for a specified offence, even if the proceedings were not started by an order under subsection (1).

(6) The following are specified offences—

(a) an offence under Part 7;

(b) an offence under section 342;

(c) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b);

(d) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b).

(7) This section does not apply to proceedings on indictment in Scotland.

Textual Amendments

F1667 S. 451 heading substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 99(e)**; S.I. 2005/1126, art. 2(2)(h)

F1668 Words in s. 451(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 99(a)**; S.I. 2005/1126, art. 2(2)(h)

F1669 Words in s. 451(1) substituted (27.3.2014) by The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 34**

F1670 S. 451(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 99(b)**; S.I. 2005/1126, art. 2(2)(h)

F1671 S. 451(3) repealed (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), Sch. 4 para. 99(c), **Sch. 5**; S.I. 2005/1126, art. 2(2)(h)(i)

F1672 Words in s. 451(5) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 99(d)**; S.I. 2005/1126, art. 2(2)(h)

Modifications etc. (not altering text)

C248 S. 451(6)(c) modified (E.W.N.I.) (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 44(d)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

Commencement Information

I412 S. 451 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

452 Crown servants

(1) The Secretary of State may by regulations provide that any of the following provisions apply to persons in the public service of the Crown.

(2) The provisions are—

(a) the provisions of Part 7;

(b) section 342.

[[F1673](3) In relation to Northern Ireland, the power to make regulations under subsection (1) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary

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of State) in relation to persons in the public service of the Crown in right of Her Majesty's Government in Northern Ireland.**]**

Textual Amendments

F1673 S. 452(3) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 72** (with arts. 28-31)

Commencement Information

I413 S. 452 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

453 References to financial investigators

(1) The Secretary of State may by order provide that a specified reference in this Act to an accredited financial investigator is a reference to such an investigator who falls within a specified description.

[[F1674](1A) The Welsh Ministers may by order provide that a specified reference in this Act to an accredited financial investigator includes a reference to a person exercising a function of the Welsh Revenue Authority who falls within a specified description.**]**

(2) A description may **[**[F1675], in particular, **]** be framed by reference to a grade designated by a specified person **[**[F1676]or by reference to particular types of training undertaken**]**.

Textual Amendments

F1674 S. 453(1A) inserted (25.1.2018) by Tax Collection and Management (Wales) Act 2016 (anaw 6), ss. 186(1)(4), 194(2); S.I. 2018/33, **art. 2(j)**

F1675 Words in s. 453(2) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 81(1)(a)**, 94(1); S.I. 2008/755, art. 17(1)(g)

F1676 Words in s. 453(2) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 81(1)(b)**, 94(1); S.I. 2008/755, art. 17(1)(g)

Commencement Information

I414 S. 453 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[[F1677]453A Certain offences in relation to financial investigators

(1) A person commits an offence if he assaults an accredited financial investigator who is acting in the exercise of a relevant power.

(2) A person commits an offence if he resists or wilfully obstructs an accredited financial investigator who is acting in the exercise of a relevant power.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction—
   (a) to imprisonment for a term not exceeding 51 weeks; or
   (b) to a fine not exceeding level 5 on the standard scale;
   or to both.

(4) A person guilty of an offence under subsection (2) is liable on summary conviction—

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(a) to imprisonment for a term not exceeding 51 weeks; or
(b) to a fine not exceeding level 3 on the standard scale;

or to both.

(5) In this section "relevant power" means a power exercisable under—

F1678 **[** (a) sections 47C to 47F or 195C to 195F (powers to seize and search for realisable property);**]**
(b) section 289 (powers to search for cash);
(c) section 294 (powers to seize cash);
(d) section 295(1) (power to detain seized cash);
F1679 **[** (da) section 303C (powers to search for a listed asset);
(db) section 303J (powers to seize property);
(dc) section 303K (powers to detain seized property);**]** or
(e) a search and seizure warrant issued under section 352.

(6) In the application of this section to England and Wales in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), and in the application of this section to Northern Ireland—
(a) the reference to 51 weeks in subsection (3)(a) is to be read as a reference to 6 months; and
(b) the reference to 51 weeks in subsection (4)(a) is to be read as a reference to 1 month.**]**

Textual Amendments

F1677 S. 453A inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 81(2)**, 94(1); S.I. 2008/755, art. 17(1)(g)

F1678 S. 453A(5)(a) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 94**; S.I. 2015/983, arts. 2(2)(e), 3(ee); S.I. 2016/147, art. 3(i)

F1679 S. 453A(5)(da)-(dc) inserted (27.4.2017 for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 86**; S.I. 2018/78, reg. 5(2); S.I. 2021/724, reg. 4(j)

[F1680 453K Certain offences in relation to SFO officers

(1) A person commits an offence if the person assaults an SFO officer who is acting in the exercise of a relevant power.

(2) A person commits an offence if the person resists or wilfully obstructs an SFO officer who is acting in the exercise of a relevant power.

(3) A person guilty of an offence under subsection (1) is liable—
(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine, or to both;
(b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(4) A person guilty of an offence under subsection (2) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 3 on the standard scale, or to both;
- (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 1 month, or to a fine not exceeding level 3 on the standard scale, or to both.

(5) In this section "relevant power" means a power exercisable under any of the following—
- (a) sections 47C to 47F or 195C to 195F (powers to seize and search for realisable property);
- (b) section 289 (powers to search for cash);
- (c) section 294 (power to seize cash);
- (d) section 295(1) (power to detain seized cash);
- (e) section 303C (powers to search for a listed asset);
- (f) section 303J (powers to seize property);
- (g) section 303K (powers to detain seized property);
- (h) a search and seizure warrant issued under section 352.

(6) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales)—
- (a) the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months;
- (b) the reference in subsection (4)(a) to 51 weeks is to be read as a reference to 1 month.**]**

Textual Amendments

F1680 S. 453B inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. for specified purposes, 28.6.2021 for N.I. in so far as not already in force, 28.6.2021 for E.W. for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 23**, 58(1)(6); S.I. 2018/78, reg. 3(h); S.I. 2021/724, reg. 2(1)(k)(2)(b)

[F1681 453C Obstruction offence in relation to immigration officers

(1) A person commits an offence if the person resists or wilfully obstructs an immigration officer who is acting in the exercise of a relevant power.

(2) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding level 3 on the standard scale, or to both;
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 3 on the standard scale, or to both;
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 1 month, to a fine not exceeding level 3 on the standard scale, or to both.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) In this section "relevant power" means a power exercisable under—

(a) sections 47C to 47F, 127C to 127F or 195C to 195F (powers to seize and search for realisable property);

(b) section 289 as applied by section 24 of the UK Borders Act 2007 (powers to search for cash);

(c) section 294 as so applied (powers to seize cash);

(d) section 295(1) as so applied (power to detain seized cash);

(e) section 303C as so applied (powers to search for a listed asset);

(f) section 303J as so applied (powers to seize property);

(g) section 303K as so applied (powers to detain seized property);

(h) a search and seizure warrant issued under section 352; or

(i) a search and seizure warrant issued under section 387.

(4) The power conferred by subsection (5) of section 28A of the Immigration Act 1971 (arrest without warrant) applies in relation to an offence under this section as it applies in relation to an offence under section 26(1)(g) of that Act (and subsections (6) to (9), (10) and (11) of section 28A of that Act apply accordingly).

(5) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) the reference in subsection (2)(a) to 51 weeks is to be read as a reference to 1 month.**]**

Textual Amendments

F1681 S. 453C inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 28.6.2021 for N.I. in so far as not already in force, 28.6.2021 for E.W.S. for specified purposes) by Criminal Finances Act 2017 (c. 22), **ss. 25**, 58(1)(6); S.I. 2018/78, reg. 3(j); S.I. 2021/724, reg. 2(1)(m)(2)(c)

454 Customs officers

For the purposes of this Act a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).

[F1682 454A Serious Fraud Office

For the purposes of this Act "SFO officer" means a member of staff of the Serious Fraud Office.**]**

Textual Amendments

F1682 S. 454A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 26**; S.I. 2018/78, reg. 3(aa); S.I. 2021/724, reg. 3(b)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

455 Enactment

In this Act (except in section 460(1)) a reference to an enactment includes a reference to—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation.

General

456 Amendments

Schedule 11 contains miscellaneous and consequential amendments.

Commencement Information

I415 S. 456 in force at 30.12.2002 for specified purposes by S.I. 2002/3015, **art. 2**, Sch.

I416 S. 456 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I417 S. 456 in force at 24.3.2003 for specified purposes by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.**

I418 S. 456 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.**

457 Repeals and revocations

Schedule 12 contains repeals and revocations.

Commencement Information

I419 S. 457 in force at 30.12.2002 for specified purposes by S.I. 2002/3015, **art. 2**, Sch.

I420 S. 457 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I421 S. 457 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.**

I422 S. 457 in force at 24.3.2003 for specified purposes by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.**

458 Commencement

(1) The preceding provisions of this Act (except the provisions specified in subsection (3) **[**[F1683]or (4)**]**) come into force in accordance with provision made by the Secretary of State by order.

(2) But no order may be made **[**[F1684]by the Secretary of State**]** which includes provision for the commencement of Part 5, 8 or 10 unless the Secretary of State has consulted the Scottish Ministers.

(3) The following provisions come into force in accordance with provision made by the Scottish Ministers by order after consultation with the Secretary of State—

(a) Part 3;

(b) this Part, to the extent that it relates to Part 3.

[[F1685](4) Any provision of this Act which provides for the repeal of any provision of the Proceeds of Crime (Northern Ireland) Order 1996 comes into force in accordance with provision made by the Department of Justice in Northern Ireland by order.**]**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Subordinate Legislation Made

P1 S. 458(1) power partly exercised: 30.12.2002 appointed for specified provisions and certain purposes by {S.I. 2002/3015}, art. 2; 30.12.2002 appointed for specified provisions and certain purposes by {S.I. 2002/3145}, art. 2; 13.1.2003 appointed for specified provisions by {S.I. 2002/3055}, art. 2

Textual Amendments

F1683 Words in s. 458(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 73(a)** (with arts. 28-31)

F1684 Words in s. 458(2) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 73(b)** (with arts. 28-31)

F1685 S. 458(4) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 73(c)** (with arts. 28-31)

459 Orders and regulations

(1) References in this section to subordinate legislation are to—

(a) any Order in Council under this Act;

(b) any order under this Act (other than one falling to be made by a court);

(c) any regulations under this Act.

(2) Subordinate legislation—

(a) may make different provision for different purposes;

(b) may include supplementary, incidental, saving or transitional provisions.

(3) Any power to make subordinate legislation is exercisable by statutory instrument **[**[F1686]**(**[F1687]other than—

(a) the power of the Advocate General for Northern Ireland to make an order under section 377A(5), and

(b) any power of the Department of Justice in Northern Ireland to make subordinate legislation,

which are**]** exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)))**]**.

[[F1688](3A) Subsection (3) does not apply to the power of the Scottish Ministers to make an order under section 118(2B) **[**[F1689]or regulations under section 131ZA(7)**].]**

(4) A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if it contains subordinate legislation other than—

(a) an order under section **[**[F1690]35(2C),**][**[F1691]41(5A),**][**[F1692]41A(5), 47S(4),**][**[F1693]67(7A),**]** 75(7) or (8), **[**[F1694]190A(5), 195S(4),**]**[F1695]... 282, 292(4), **[**[F1696]302(7B),**]** 309,**[**[F1697]339A(7),**]** 364(4), 377(4) **[**[F1698], 377A(5) **]**, 436(6), 438(9) or 458;

[[F1699](aza) regulations under section 303B(2), 303G(5), 303W(10), 303Y(2), 303Z8(2) or 303Z18(10);**]**

[[F1700](azb) regulations under section 340(14)(c) or (14A)(b),**]**

[[F1701](aa) an order made by the Welsh Ministers under section 453(1A);**]**

(b) subordinate legislation made by the Scottish Ministers;

(c) an Order in Council made under section 443 which makes provision only in relation to Scotland.

Status: *Point in time view as at 05/01/2023.*
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[[F1702](4A) A statutory instrument containing an order under section 453(1A) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.**]**

(5) A statutory instrument is subject to annulment in pursuance of a resolution of the Scottish Parliament if it contains—

(a) subordinate legislation made by the Scottish Ministers other than **[**[F1703]regulations under section 131ZA(7) or**]** an order under section **[**[F1704]118(2B),**]** 142(6) or (7), 293(4), **[**[F1705]303H(4),**]** 398(4), 410(4), 439(6), 441(9) or 458;

(b) an Order in Council made under section 443 which makes provision only in relation to Scotland.

(6) No order may be made—

(a) by the Secretary of State under section **[**[F1706]35(2C),**][**[F1707]41(5A),**][**[F1708]41A(5), 47S(4),**][**[F1709]67(7A),**]** 75(7) or (8), **[**[F1710]190A(5), 195S(4),**]**[F1711]... 282, 292(4), **[**[F1712]302(7B),**]** 309,**[**[F1713]339A(7),**]** 364(4), 377(4), 436(6) or 438(9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;

[[F1714](aa) by the Attorney General or the Advocate General for Northern Ireland under section 377A(5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;**]**

(b) by the Scottish Ministers under section **[**[F1715]118(2B),**]** 142(6) or (7), 293(4), **[**[F1716]303H(4),**]** 398(4), 410(4), 439(6) or 441(9) unless a draft of the order has been laid before and approved by a resolution of the Scottish Parliament.

[[F1717](6ZA) No regulations may be made by the Scottish Ministers under section 131ZA(7) unless a draft of the regulations has been laid before and approved by a resolution of the Scottish Parliament.

(6ZB) No regulations may be made by the Secretary of State under section 303B(2), 303G(5), 303W(10), 303Y(2), 303Z8(2) or 303Z18(10) unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.**]**

[[F1718](6ZC) No regulations may be made by the Treasury or the Secretary of State under section 340(14)(c) or (14A)(b) unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.**]**

[[F1719](6A) If a draft of an order under section 302(7B) **[**[F1720]or of regulations under section 303W(10) or 303Z18(10)**][**[F1721]or of regulations under section 340(14)(c) or (14A)(b)**]** would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it shall proceed in that House as if it were not a hybrid instrument.**]**

(7) The Scottish Ministers must lay before the Scottish Parliament a copy of every statutory instrument containing an Order in Council made under section 444 or 445.

[[F1722](7A) Subordinate legislation made by the Department of Justice in Northern Ireland is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954) other than an order under section **[**[F1723]185(2B),**][**[F1724]195T(5),**][**[F1725]215(7A),**]** 223(7) or (8), 282, 293A(4), 302(7B), **[**[F1726]303I(4),**]** 377ZA(4), 436(6) or 458 **[**[F1727]or regulations under section 303W(10) or 303Z18(10)**]** .

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(7B) No order shall be made by the Department of Justice under section **[**[F1728]185(2B),**]**[[F1729]195T(5),**]**[[F1730]215(7A),**]** 223(7) or (8), 282, 293A(4), 302(7B), **[**[F1731]303I(4),**]** 377ZA(4) or 436(6) unless a draft of it has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

[F1732]**[** (7BA) No regulations may be made by the Department of Justice under section 303W(10) or 303Z18(10) unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.**]**

(7C) The Department of Justice must lay before the Northern Ireland Assembly a copy of every statutory instrument containing an Order in Council under section 444 or 445.

(7D) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsections (7B) **[**[F1733], (7BA)**]** and (7C) in relation to the laying of a draft or copy as it applies in relation to the laying of a statutory document under an enactment.**]**

[[F1734](8) In this section references to the Advocate General for Northern Ireland are to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as references to the Attorney General for Northern Ireland.**]**

Textual Amendments

F1686 Words in s. 459(3) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 119(2)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1687 Words in s. 459(3) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 74(2)** (with arts. 28-31)

F1688 S. 459(3A) inserted (S.) (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 19(2)(a)**, 88(2)(a); S.S.I. 2016/11, reg. 2(d) (with reg. 3)

F1689 Words in s. 459(3A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1690 Word in s. 459(4)(a) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 57(2)(a)**; S.I. 2015/820, reg. 3(q)(v)

F1691 Word in s. 459(4)(a) inserted (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 46(7)(a)**, 61(2); S.I. 2015/813, art. 2(a)(iii)

F1692 Words in s. 459(4)(a) inserted (22.11.2014) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 95(2)(a)**; S.I. 2014/3101, art. 2(e)

F1693 Word in s. 459(4)(a) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 57(2)(b)**; S.I. 2015/820, reg. 3(q)(v)

F1694 Words in s. 459(4)(a) inserted (22.11.2014) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 95(2)(b)**; S.I. 2014/3101, art. 2(e)

F1695 Words in s. 459(4)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 74(3)** (with arts. 28-31)

F1696 Word in s. 459(4)(a) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 15(2)**; S.I. 2008/755, art. 17(1)(f)

F1697 Word in s. 459(4)(a) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(7)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1698 Word in s. 459(4)(a) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 119(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1699 S. 459(4)(aza) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in

force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(3)**; S.I. 2017/991, reg. 2(v); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1700 S. 459(4)(azb) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(7)(a)**, 49(2)(b)

F1701 S. 459(4)(aa) inserted (25.1.2018) by Tax Collection and Management (Wales) Act 2016 (anaw 6), ss. 186(5)(a), 194(2); S.I. 2018/33, **art. 2(j)**

F1702 S. 459(4A) inserted (25.1.2018) by Tax Collection and Management (Wales) Act 2016 (anaw 6), ss. 186(5)(b), 194(2); S.I. 2018/33, **art. 2(j)**

F1703 Words in s. 459(5)(a) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(4)(a)**; S.I. 2017/991, reg. 2(v); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1704 Word in s. 459(5)(a) inserted (S.) (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 19(2)(b)**, 88(2)(a); S.S.I. 2016/11, reg. 2(d) (with reg. 3)

F1705 Word in s. 459(5)(a) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(4)(b)**; S.I. 2017/991, reg. 2(v); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1706 Word in s. 459(6)(a) inserted (E.W.) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 10(2)**, 88(1); S.I. 2015/820, reg. 3(g)

F1707 Word in s. 459(6)(a) inserted (20.3.2015) by Crime and Courts Act 2013 (c. 22), **ss. 46(7)(b)**, 61(2); S.I. 2015/813, art. 2(a)(iii)

F1708 Words in s. 459(6)(a) inserted (22.11.2014) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 95(3)(a)**; S.I. 2014/3101, art. 2(e)

F1709 Word in s. 459(6)(a) inserted (E.W.) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 14(5)**, 88(1); S.I. 2015/820, reg. 3(j)

F1710 Words in s. 459(6)(a) inserted (22.11.2014) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 95(3)(b)**; S.I. 2014/3101, art. 2(e)

F1711 Words in s. 459(6)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 74(3)** (with arts. 28-31)

F1712 Word in s. 459(6)(a) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 15(3)**; S.I. 2008/755, art. 17(1)(f)

F1713 Word in s. 459(6)(a) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 103(7)**, 178(8); S.I. 2005/1521, art. 3(1)(c)

F1714 S. 459(6)(aa) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 119(4)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1715 Word in s. 459(6)(b) inserted (S.) (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 19(2)(c)**, 88(2)(a); S.S.I. 2016/11, reg. 2(d) (with reg. 3)

F1716 Word in s. 459(6)(b) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(5)**; S.I. 2017/991, reg. 2(v); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1717 S. 459(6ZA)(6ZB) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(6)**; S.I. 2017/991, reg. 2(v); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1718 S. 459(6ZC) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(7)(b)**, 49(2)(b)

F1719 S. 459(6A) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 15(4)**; S.I. 2008/755, art. 17(1)(f)

F1720 Words in s. 459(6A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(7)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1721 Words in s. 459(6A) inserted (29.6.2021) by Financial Services Act 2021 (c. 22), **ss. 32(7)(c)**, 49(2)(b)

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F1722 S. 459(7A)-(7D) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 74(4)** (with arts. 28-31)

F1723 Word in s. 459(7A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 57(3)(a)**; S.I. 2015/820, reg. 3(q)(v)

F1724 Word in s. 459(7A) inserted by 2009 c. 26, **s. 57(5)(a)** (as inserted (22.11.2014) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(n) (with arts. 24-28)); S.I. 2014/3101, **art. 2(b)**

F1725 Word in s. 459(7A) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 57(3)(b)**; S.I. 2015/820, reg. 3(q)(v)

F1726 Word in s. 459(7A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(8)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1727 Words in s. 459(7A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(8)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1728 Word in s. 459(7B) inserted (N.I.) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 32(2)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(f)

F1729 Word in s. 459(7B) inserted by 2009 c. 26, **s. 57(5)(b)** (as inserted (22.11.2014) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), **arts. 1(2)**, 18(2)(n) (with arts. 24-28)); S.I. 2014/3101, **art. 2(b)**

F1730 Word in s. 459(7B) inserted (N.I.) (1.6.2015) by Serious Crime Act 2015 (c. 9), **ss. 36(5)**, 88(3)(a); S.R. 2015/190, reg. 3(1)(j)

F1731 Word in s. 459(7B) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(9)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1732 S. 459(7BA) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(10)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1733 Word in s. 459(7D) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 87(11)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F1734 S. 459(8) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 119(5)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

460 Finance

(1) The following are to be paid out of money provided by Parliament—

(a) any expenditure incurred by any Minister of the Crown under this Act;

(b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

(2) Any sums received by the Secretary of State in consequence of this Act are to be paid into the Consolidated Fund.

[[F1735](3) Subject to anything in this Act—

(a) any sums received by the Director of Public Prosecutions [F1736]... or the Director of the Serious Fraud Office in consequence of this Act are to be paid into the Consolidated Fund; **[**[F1737]and**]**

(b) any sums received by the Director of Public Prosecutions for Northern Ireland in consequence of this Act are to be paid to the **[**[F1738]Department of Justice in Northern Ireland**][**[F1739], and

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(c) any sums received by the Financial Conduct Authority in consequence of this Act are to be paid into the Consolidated Fund.**]]**

Textual Amendments

F1735 S. 460(3) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 141**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1736 Words in s. 460(3)(a) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 35**

F1737 Word in s. 460(3)(a) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 88(a)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(j)

F1738 Words in s. 460(3)(b) substituted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 75** (with arts. 28-31)

F1739 S. 460(3)(c) and word inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 88(b)**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(j)

461 Extent

(1) Part 2 extends to England and Wales only.

(2) In Part 8, Chapter 2 extends to England and Wales and Northern Ireland only.

(3) These provisions extend to Scotland only—
  (a) Part 3;
  (b) in Part 8, Chapter 3.

(4) Part 4 extends to Northern Ireland only.

(5) The amendments in Schedule 11 have the same extent as the provisions amended.

(6) The repeals and revocations in Schedule 12 have the same extent as the provisions repealed or revoked.

462 Short title

This Act may be cited as the Proceeds of Crime Act 2002.

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SCHEDULES

SCHEDULE 1

Section 1

ASSETS RECOVERY AGENCY

F1740 ...

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

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F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F1740 . . . . . .

Textual Amendments

F1740 Sch. 1 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 142, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

SCHEDULE 2

Section 75

LIFESTYLE OFFENCES: ENGLAND AND WALES

Drug trafficking

1 (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)—

(a) section 4(2) or (3) (unlawful production or supply of controlled drugs);

(b) section 5(3) (possession of controlled drug with intent to supply);

(c) section 8 (permitting certain activities relating to controlled drugs);

(d) section 20 (assisting in or inducing the commission outside the UK of an offence punishable under a corresponding law).

(2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 (c. 2) if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971—

(a) section 50(2) or (3) (improper importation of goods);

(b) section 68(2) (exploration of prohibited or restricted goods);

(c) section 170 (fraudulent evasion).

(3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 (c. 5)—

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(a) section 12 (manufacture or supply of a substance for the time being specified in Schedule 2 to that Act);
(b) section 19 (using a ship for illicit traffic in controlled drugs).

Commencement Information
I423 Sch. 2 para. 1 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F1741 1A An offence under any of the following provisions of the Psychoactive Substances Act 2016—
(a) section 4 (producing a psychoactive substance);
(b) section 5 (supplying, or offering to supply, a psychoactive substance);
(c) section 7 (possession of psychoactive substance with intent to supply);
(d) section 8 (importing or exporting a psychoactive substance).]

Textual Amendments
F1741 Sch. 2 para. 1A inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 2(2)**; S.I. 2016/553, reg. 2

Textual Amendments
F1741 Sch. 2 para. 1A inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 2(2)**; S.I. 2016/553, reg. 2

Commencement Information
I423 Sch. 2 para. 1 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Money laundering

2 An offence under either of the following provisions of this Act—
(a) section 327 (concealing etc criminal property);
(b) section 328 (assisting another to retain criminal property).

Commencement Information
I424 Sch. 2 para. 2 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Directing terrorism

3 An offence under section 56 of the Terrorism Act 2000 (c. 11) (directing the activities of a terrorist organisation).

Commencement Information
I425 Sch. 2 para. 3 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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Slavery etc

[[F1742]3A An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).**]**

Textual Amendments

F1742 Sch. 2 para. 3A inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), **ss. 7(2)**, 61(1); S.I. 2015/1476, reg. 2(a)

People trafficking

[[F1743]4 (1) An offence under section 25 **[**[F1744]or 25A**]** of the Immigration Act 1971 (c. 77) (assisting unlawful immigration etc.).

[F1745](2) . . . . . .

[F1745](3) . . . . . .

[[F1746](4) An offence under section 2 of the Modern Slavery Act 2015 (human trafficking).**]]**

Textual Amendments

F1743 Sch. 2 para. 4 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 7 para. 31** (with s. 159); S.I. 2003/1, art. 2, Sch.

F1744 Words in Sch. 2 para. 4(1) substituted (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), **Sch. 1 para. 1(3)** (with Sch. 1 para. 1(5))

F1745 Sch. 2 para. 4(2)(3) omitted (31.7.2015) by virtue of Modern Slavery Act 2015 (c. 30), **ss. 7(3)(a)**, 61(1); S.I. 2015/1476, reg. 2(a) (with regs. 3, 8)

F1746 Sch. 2 para. 4(4) inserted (31.7.2015) by Modern Slavery Act 2015 (c. 30), **ss. 7(3)(b)**, 61(1); S.I. 2015/1476, reg. 2(a) (with regs. 3, 8)

Commencement Information

I426 Sch. 2 para. 4 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Arms trafficking

5 (1) An offence under either of the following provisions of the Customs and Excise Management Act 1979 if it is committed in connection with a firearm or ammunition—

(a) section 68(2) (exportation of prohibited goods);

(b) section 170 (fraudulent evasion).

(2) An offence under section 3(1) of the Firearms Act 1968 (c. 27) (dealing in firearms or ammunition by way of trade or business).

(3) In this paragraph "firearm" and "ammunition" have the same meanings as in section 57 of the Firearms Act 1968 (c. 27).

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Commencement Information
I427 Sch. 2 para. 5 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Counterfeiting

6 An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45)—
(a) section 14 (making counterfeit notes or coins);
(b) section 15 (passing etc counterfeit notes or coins);
(c) section 16 (having counterfeit notes or coins);
(d) section 17 (making or possessing materials or equipment for counterfeiting).

Commencement Information
I428 Sch. 2 para. 6 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Intellectual property

7 (1) An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)—
(a) section 107(1) (making or dealing in an article which infringes copyright);
(b) section 107(2) (making or possessing an article designed or adapted for making a copy of a copyright work);
(c) section 198(1) (making or dealing in an illicit recording);
(d) section 297A (making or dealing in unauthorised decoders).

(2) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (c. 26) (unauthorised use etc of trade mark).

Commencement Information
I429 Sch. 2 para. 7 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Prostitution and child sex

[[F1747] 8(1) An offence under section 33 or 34 of the Sexual Offences Act 1956 (keeping or letting premises for use as a brothel).

(2) An offence under any of the following provisions of the Sexual Offences Act 2003—
(a) section 14 (arranging or facilitating commission of a child sex offence);
(b) section 48 (causing or inciting **[**[F1748]sexual exploitation of a child**]**);
(c) section 49 (controlling a child **[**[F1749]in relation to sexual exploitation**]**);
(d) section 50 (arranging or facilitating **[**[F1750]sexual exploitation of a child**]**);
(e) section 52 (causing or inciting prostitution for gain);
(f) section 53 (controlling prostitution for gain).**]**

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1747 Sch. 2 para. 8 substituted (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 6 para. 46(3)**; S.I. 2004/874, art. 2

F1748 Words in Sch. 2 para. 8(2)(b) substituted (3.5.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 58(2)**; S.I. 2015/820, reg. 2(r)(v)

F1749 Words in Sch. 2 para. 8(2)(c) substituted (3.5.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 58(3)**; S.I. 2015/820, reg. 2(r)(v)

F1750 Words in Sch. 2 para. 8(2)(d) substituted (3.5.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 58(4)**; S.I. 2015/820, reg. 2(r)(v)

Commencement Information

I430 Sch. 2 para. 8 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Blackmail

9 An offence under section 21 of the Theft Act 1968 (c. 60) (blackmail).

Commencement Information

I431 Sch. 2 para. 9 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F1751]9A An offence under section 12(1) or (2) of the Gangmasters (Licensing) Act 2004 (acting as a gangmaster other than under the authority of a licence, possession of false documents etc).**]**

Textual Amendments

F1751 Sch. 2 para. 9A inserted (1.10.2006) by Gangmasters (Licensing) Act 2004 (c. 11), **ss. 14(4)**, 29(1); S.I. 2006/2406, art. 2(e)

Textual Amendments

F1751 Sch. 2 para. 9A inserted (1.10.2006) by Gangmasters (Licensing) Act 2004 (c. 11), **ss. 14(4)**, 29(1); S.I. 2006/2406, art. 2(e)

Commencement Information

I431 Sch. 2 para. 9 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Inchoate offences

10 (1) An offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule.

[[F1752](1A) An offence under section 44 of the Serious Crime Act 2007 of doing an act capable of encouraging or assisting the commission of an offence specified in this Schedule.**]**

(2) An offence of aiding, abetting, counselling or procuring the commission of such an offence.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1752 Sch. 2 para. 10(1A) inserted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 62** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

Commencement Information

I432 Sch. 2 para. 10 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

SCHEDULE 3

Section 137

ADMINISTRATORS: FURTHER PROVISION

General

1 In this Schedule, unless otherwise expressly provided—

(a) references to an administrator are to an administrator appointed under section 125 or 128(3);

(b) references to realisable property are to the realisable property in respect of which the administrator is appointed.

Commencement Information

I433 Sch. 3 para. 1 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Appointment etc

2 (1) If the office of administrator is vacant, for whatever reason, the court must appoint a new administrator.

(2) Any property vested in the previous administrator by virtue of paragraph 5(4) vests in the new administrator.

(3) Any order under section 125 or 128(7) in relation to the previous administrator applies in relation to the new administrator when he gives written notice of his appointment to the person subject to the order.

(4) The administration of property by an administrator must be treated as continuous despite any temporary vacancy in that office.

(5) The appointment of an administrator is subject to such conditions as to caution as the accountant of court may impose.

(6) The premium of any bond of caution or other security required by such conditions must be treated as part of the administrator's expenses in the exercise of his functions.

Commencement Information

I434 Sch. 3 para. 2 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

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Functions

3 (1) An administrator—
(a) may, if appointed under section 125, and
(b) must, if appointed under section 128(3),
as soon as practicable take possession of the realisable property and of the documents mentioned in sub-paragraph (2).

(2) Those documents are any document which—
(a) is in the possession or control of the person ("A") in whom the property is vested (or would be vested but for an order made under paragraph 5(4)), and
(b) relates to the property or to A's assets, business or financial affairs.

(3) An administrator is entitled to have access to, and to copy, any document relating to the property or to A's assets, business or financial affairs and not falling within sub-paragraph (2)(a).

(4) An administrator may bring, defend or continue any legal proceedings relating to the property.

(5) An administrator may borrow money so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property.

(6) An administrator may, if he considers that it would be beneficial for the management or realisation of the property—
(a) carry on any business of A;
(b) exercise any right of A as holder of securities in a company;
(c) grant a lease of the property or take on lease any other property;
(d) enter into any contract, or execute any deed, as regards the property or as regards A's business.

(7) An administrator may, where any right, option or other power forms part of A's estate, make payments or incur liabilities with a view to—
(a) obtaining property which is the subject of, or
(b) maintaining,
the right, option or power.

(8) An administrator may effect or maintain insurance policies as regards the property on A's business.

(9) An administrator may, if appointed under section 128(3), complete any uncompleted title which A has to any heritable estate; but completion of title in A's name does not validate by accretion any unperfected right in favour of any person other than the administrator.

(10) An administrator may sell, purchase or exchange property or discharge any security for an obligation due to A; but it is incompetent for the administrator or an associate of his (within the meaning of section **[**[F1753]229 of the Bankruptcy (Scotland) Act 2016**]**) to purchase any of A's property in pursuance of this sub-paragraph.

(11) An administrator may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor.

Status: *Point in time view as at 05/01/2023.*
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(12) An administrator may discharge any of his functions through agents or employees, but is personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator on a determination by the accountant of court.

(13) An administrator may take such professional advice as he considers necessary in connection with the exercise of his functions.

(14) An administrator may at any time apply to the court for directions as regards the exercise of his functions.

(15) An administrator may exercise any power specifically conferred on him by the court, whether conferred on his appointment or subsequently.

(16) An administrator may—

(a) enter any premises;

(b) search for or inspect anything authorised by the court;

(c) make or obtain a copy, photograph or other record of anything so authorised;

(d) remove anything which the administrator is required or authorised to take possession of in pursuance of an order of the court.

(17) An administrator may do anything incidental to the powers and duties listed in the previous provisions of this paragraph.

Textual Amendments

F1753 Words in Sch. 3 para. 3(10) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(13)**

Commencement Information

I435 Sch. 3 para. 3 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Consent of accountant of court

4 An administrator proposing to exercise any power conferred by paragraph 3(4) to (17) must first obtain the consent of the accountant of court.

Commencement Information

I436 Sch. 3 para. 4 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Dealings in good faith with administrator

5 (1) A person dealing with an administrator in good faith and for value is not concerned to enquire whether the administrator is acting within the powers mentioned in paragraph 3.

(2) Sub-paragraph (1) does not apply where the administrator or an associate purchases property in contravention of paragraph 3(10).

(3) The validity of any title is not challengeable by reason only of the administrator having acted outwith the powers mentioned in paragraph 3.

Status: *Point in time view as at 05/01/2023.*
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(4) The exercise of a power mentioned in paragraph 3(4) to (11) must be in A's name except where and in so far as an order made by the court under this sub-paragraph vests the property in the administrator (or in a previous administrator).

(5) The court may make an order under sub-paragraph (4) on the application of the administrator or on its own motion.

Commencement Information

I437 Sch. 3 para. 5 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Money received by administrator

6 (1) All money received by an administrator in the exercise of his functions must be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 5(4)) of the holder of the property realised, in **[**[F1754]a bank or building society**]**.

(2) But the administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Scottish Ministers by regulations.

[[F1755](3) In sub-paragraph (1)—

(a) "bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;

(b) "building society" has the same meaning as in the Building Societies Act 1986.

(4) In sub-paragraph (3)(a) "authorised deposit-taker" means—

(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;

(b) a person who—

(i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and

(ii) accepts deposits;

[F1756](c) . . . . . .

(5) A reference in sub-paragraph (4) to a person [F1757]... with permission to accept deposits does not include a person [F1757]... with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.**]**

Textual Amendments

F1754 Words in Sch. 3 para. 6(1) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 30(2)**, 58(2)(6); S.S.I. 2017/456, reg. 2(b)

F1755 Sch. 3 para. 6(3)-(5) substituted for Sch. 3 para. 6(3) (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 30(3)**, 58(2)(6); S.S.I. 2017/456, reg. 2(b)

F1756 Sch. 3 para. 6(4)(c) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(12)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1757 Words in Sch. 3 para. 6(5) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(12)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I438 Sch. 3 para. 6 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Effect of appointment of administrator on diligence

7 (1) An arrestment or **[**[F1758]attachment**]** of realisable property executed on or after the appointment of an administrator does not create a preference for the arrester or **[**[F1759]attacher**]** .

(2) Any realisable property so arrested or **[**[F1760]attached**]** , or (if the property has been sold) the proceeds of sale, must be handed over to the administrator.

(3) A poinding of the ground in respect of realisable property on or after such appointment is ineffectual in a question with the administrator except for the interest mentioned in sub-paragraph (4).

(4) That interest is—

(a) interest on the debt of a secured creditor for the current half-yearly term, and

(b) arrears of interest on that debt for one year immediately before the commencement of that term.

(5) On and after such appointment no other person may raise or insist in an adjudication against realisable property or be confirmed as executor-creditor on that property.

(6) An inhibition on realisable property which takes effect on or after such appointment does not create a preference for the inhibitor in a question with the administrator.

(7) This paragraph is without prejudice to sections 123 and 124.

(8) In this paragraph, the reference to an administrator is to an administrator appointed under section 128(3).

Textual Amendments

F1758 Words in Sch. 3 para. 7(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1 para. 29(2)(a)(i)**

F1759 Words in Sch. 3 para. 7(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1 para. 29(a)(ii)**

F1760 Words in Sch. 3 para. 7(2) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1 para. 29(b)**

Commencement Information

I439 Sch. 3 para. 7 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Supervision

8 (1) If the accountant of court reports to the court that an administrator has failed to perform any duty imposed on him, the court may, after giving the administrator an opportunity to be heard as regards the matter—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) remove him from office,
(b) censure him, or
(c) make such other order as it thinks fit.

(2) Section 6 of the Judicial Factors (Scotland) Act 1889 (c. 39) (supervision of judicial factors) does not apply in relation to an administrator.

Commencement Information
I440 Sch. 3 para. 8 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Accounts and remuneration

9 (1) Not later than two weeks after the issuing of any determination by the accountant of court as to the remuneration and expenses payable to the administrator, the administrator or the Lord Advocate may appeal against it to the court.

(2) The amount of remuneration payable to the administrator must be determined on the basis of the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.

(3) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

Commencement Information
I441 Sch. 3 para. 9 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Discharge of administrator

10 (1) After an administrator has lodged his final accounts under paragraph 9(1), he may apply to the accountant of court to be discharged from office.

(2) A discharge, if granted, frees the administrator from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising his functions as administrator.

Commencement Information
I442 Sch. 3 para. 10 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

SCHEDULE 4

Section 142

LIFESTYLE OFFENCES: SCOTLAND

Money laundering

1 An offence under either of the following provisions of this Act—
(a) section 327 (concealing etc. criminal property);

Status: *Point in time view as at 05/01/2023.*
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(b) section 328 (assisting another person to retain criminal property).

Commencement Information

I443 Sch. 4 para. 1 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Drug trafficking

2 (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)—

(a) section 4(2) or (3) (unlawful production or supply of controlled drugs);
(b) section 5(3) (possession of controlled drug with intent to supply);
(c) section 8 (permitting certain activities relating to controlled drugs);
(d) section 20 (assisting in or inducing the commission outside the UK of an offence punishable under a corresponding law).

(2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 (c. 2) if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971—

(a) section 50(2) or (3) (improper importation of goods);
(b) section 68(2) ([F1761exportation] of prohibited or restricted goods);
(c) section 170 (fraudulent evasion).

(3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 (c. 5)—

(a) section 12 (manufacture or supply of a substance for the time being specified in Schedule 2 to that Act);
(b) section 19 (using a ship for illicit traffic in controlled drugs).

Textual Amendments

F1761 Word in Sch. 4 para. 2(2)(b) substituted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(a)**

Commencement Information

I444 Sch. 4 para. 2 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

[F1762 2A An offence under any of the following provisions of the Psychoactive Substances Act 2016—

(a) section 4 (producing a psychoactive substance);
(b) section 5 (supplying, or offering to supply, a psychoactive substance);
(c) section 7 (possession of psychoactive substance with intent to supply);
(d) section 8 (importing or exporting a psychoactive substance).]

Textual Amendments

F1762 Sch. 4 para. 2A inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 2(3)**; S.I. 2016/553, reg. 2

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1761 Word in Sch. 4 para. 2(2)(b) substituted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(a)**

F1762 Sch. 4 para. 2A inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 2(3)**; S.I. 2016/553, reg. 2

Commencement Information

I444 Sch. 4 para. 2 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Directing terrorism

3 An offence under section 56 of the Terrorism Act 2000 (c. 11) (directing the activities of a terrorist organisation).

Commencement Information

I445 Sch. 4 para. 3 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

People trafficking

[[F1763]4 (1) An offence under section 25 **[**[F1764]or 25A**]** of the Immigration Act 1971 (assisting unlawful immigration etc.).

(2) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).

(3) An offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015).

(4) An offence to which section 5 of the Human Trafficking and Exploitation (Scotland) Act 2015 (offences aggravated by connection with human trafficking activity) applies.**]**

Textual Amendments

F1763 Sch. 4 para. 4 substituted (S.) (31.5.2016) by Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12), **ss. 15(a)**, 45(2) (with s. 44); S.S.I. 2016/128, reg. 2, sch.

F1764 Words in Sch. 4 para. 4(1) substituted (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), **Sch. 1 para. 1(3)** (with Sch. 1 para. 1(5))

Commencement Information

I446 Sch. 4 para. 4 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Slavery, servitude and forced or compulsory labour

[[F1765]4A An offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour).**]**

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1765 Sch. 4 para. 4A inserted (S.) (31.5.2016) by Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12), **ss. 15(b)**, 45(2) (with s. 44); S.S.I. 2016/128, reg. 2, sch.

Arms trafficking

5 (1) An offence under either of the following provisions of the Customs and Excise Management Act 1979 if it is committed in connection with a firearm or ammunition—

(a) section 68(2) (exportation of prohibited goods);

(b) section 170 (fraudulent evasion).

(2) An offence under section 3(1) of the Firearms Act 1968 (c. 27)(dealing in firearms or ammunition by way of trade or business).

(3) In this paragraph "firearm" and "ammunition" have the same meanings as in section 57 of the Firearms Act 1968 (c. 27).

Commencement Information

I447 Sch. 4 para. 5 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Counterfeiting

6 An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45)—

(a) section 14 (making counterfeit notes or coins);

(b) section 15 (passing etc counterfeit notes or coins);

(c) section 16 (having counterfeit notes or coins);

(d) section 17 (making or possessing materials or equipment for counterfeiting).

Commencement Information

I448 Sch. 4 para. 6 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Intellectual property

7 (1) An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)—

(a) section 107(1) (making or dealing in an article which infringes copyright);

(b) section 107(2) (making or possessing an article designed or adapted for making a copy of a copyright work);

(c) section 198(1) (making or dealing in an illicit recording);

[[F1766](ca) section 296ZB(1) or (2) (devices and services designed to circumvent technological measures);**]**

(d) section 297A (making or dealing in unauthorised decoders).

Status: *Point in time view as at 05/01/2023.*
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(2) An offence under section 92(1), (2), or (3) of the Trade Marks Act 1994 (c. 26) (unauthorised use etc of trade mark).

Textual Amendments

F1766 Sch. 4 para. 7(1)(ca) inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(b)**

Commencement Information

I449 Sch. 4 para. 7 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Pimps and brothels

8 An offence under either of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)—

(a) section 11(1) (living on earnings of prostitution or soliciting for immoral purposes);

[[F1767](aa) section 11(4) (aiding, abetting or compelling prostitution for gain);**]**

(b) section 11(5) (running of brothels).

Textual Amendments

F1767 Sch. 4 para. 8(aa) inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(c)**

Commencement Information

I450 Sch. 4 para. 8 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Traffic in prostitution etc.

[[F1768]8A. An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.).**]**

Textual Amendments

F1768 Sch. 4 para. 8A inserted (30.11.2003) by Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003 (S.S.I. 2003/594), arts. 1(1), **3**

Blackmail

9 An offence of blackmail or extortion.

Commencement Information

I451 Sch. 4 para. 9 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
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[F1769 Gangmasters]

[F1770 9A An offence under section 12(1) or (2) of the Gangmasters (Licensing) Act 2004 (acting as a gangmaster other than under the authority of a licence, possession of false documents etc).]

Textual Amendments

F1769 Sch. 4 para. 9A cross-heading inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(d)**

F1770 Sch. 4 para. 9A inserted (1.10.2006) by Gangmasters (Licensing) Act 2004 (c. 11), **ss. 14(4)**, 29(1); S.I. 2006/2406, art. 2(e)

Consumer credit

[F1771 9AA. An offence under section 23(1) of the Financial Services and Markets Act 2000 (contravention of the general prohibition) if it concerns the carrying on, or purported carrying on, of a credit-related regulated activity (as defined by section 23(1B) of that Act).]

Textual Amendments

F1771 Sch. 4 para. 9AA inserted (S.) (27.6.2014) by The Proceeds of Crime Act 2002 (Amendment of Schedule 4) (Scotland) Order 2014 (S.S.I. 2014/187), arts. 1, **3** (with art. 2)

F1772 ...

F1772 9B. . . . . .

Textual Amendments

F1772 Sch. 4 para. 9B and heading omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 8**

Distribution of obscene material

[F1773 9C. An offence under section 51(2) of the Civic Government (Scotland) Act 1982 (obscene material).

Textual Amendments

F1773 Sch. 4 paras. 9B-9F inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(e)**

Unclassified video recordings

9D. An offence under either of the following provisions of the Video Recordings Act 1984—

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(a) section 9(1) (supplying video recording of unclassified work);
(b) section 10(1) (possession of video recording of unclassified work for the purposes of supply).

Textual Amendments
F1773 Sch. 4 paras. 9B-9F inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(e)**

Private security industry

9E. An offence under section 5(1) of the Private Security Industry Act 2001 (using an unlicensed security operative).

Textual Amendments
F1773 Sch. 4 paras. 9B-9F inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(e)**

Serious organised crime

9F. (1) An offence under either of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010—
(a) section 28(1) (involvement in serious organised crime);
(b) section 30(1) or (2) (directing serious organised crime).

(2) An offence to which section 29(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (offences aggravated by connection with serious organised crime) applies.**]**

Textual Amendments
F1773 Sch. 4 paras. 9B-9F inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(e)**

Inchoate offences

10 (1) An offence of **[**[F1774]attempting,**]** conspiring or inciting the commission of an offence specified in this Schedule.

(2) An offence of aiding, abetting, counselling or procuring the commission of such an offence.

Textual Amendments
F1774 Word in Sch. 4 para. 10(1) inserted (with application in accordance with art. 2 of the amending S.S.I.) by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (S.S.I. 2011/231), arts. 1, **4(f)**

Commencement Information
I452 Sch. 4 para. 10 in force at 24.3.2003 by S.S.I. 2003/210, **art. 2(1)(a)**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 5

Section 223

LIFESTYLE OFFENCES: NORTHERN IRELAND

Drug trafficking

1 (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)—

(a) section 4(2) or (3) (unlawful production or supply of controlled drugs);
(b) section 5(3) (possession of controlled drug with intent to supply);
(c) section 8 (permitting certain activities relating to controlled drugs);
(d) section 20 (assisting in or inducing the commission outside the UK of an offence punishable under a corresponding law).

(2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 (c. 2) if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971—

(a) section 50(2) or (3) (improper importation of goods);
(b) section 68(2) (exportation of prohibited or restricted goods);
(c) section 170 (fraudulent evasion).

(3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 (c. 5)—

(a) section 12 (manufacture or supply of a substance for the time being specified in Schedule 2 to that Act);
(b) section 19 (using a ship for illicit traffic in controlled drugs).

Commencement Information

I453 Sch. 5 para. 1 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[F1775 1A An offence under any of the following provisions of the Psychoactive Substances Act 2016—

(a) section 4 (producing a psychoactive substance);
(b) section 5 (supplying, or offering to supply, a psychoactive substance);
(c) section 7 (possession of psychoactive substance with intent to supply);
(d) section 8 (importing or exporting a psychoactive substance).]

Textual Amendments

F1775 Sch. 5 para. 1A inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 2(4)**; S.I. 2016/553, reg. 2

Textual Amendments

F1775 Sch. 5 para. 1A inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 2(4)**; S.I. 2016/553, reg. 2

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information
I453 Sch. 5 para. 1 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Money laundering

2 An offence under either of the following provisions of this Act—
(a) section 327 (concealing etc. criminal property);
(b) section 328 (assisting another to retain criminal property).

Commencement Information
I454 Sch. 5 para. 2 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Directing terrorism

3 An offence under section 56 of the Terrorism Act 2000 (c. 11) (directing the activities of a terrorist organisation).

Commencement Information
I455 Sch. 5 para. 3 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Slavery, etc.

[[F1776]3A An offence under section 1 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude and forced or compulsory labour).**]**

Textual Amendments
F1776 Sch. 5 para. 3A inserted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 8(2)**, 28(2)

People trafficking

[[F1777]4 (1) An offence under section 25 **[**[F1778]or 25A**]** of the Immigration Act 1971 (assisting unlawful immigration etc.).

[F1779](2) . . . . . .

[F1779](3) . . . . . .

[[F1780](4) An offence under section2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (human trafficking).**]]**

Textual Amendments
F1777 Sch. 5 para. 4 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 7 para. 33** (with s. 159); S.I. 2003/1, art. 2, Sch.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

F1778 Words in Sch. 5 para. 4(1) substituted (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), **Sch. 1 para. 1(3)** (with Sch. 1 para. 1(5))

F1779 Sch. 5 para. 4(2)(3) repealed (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 5**

F1780 Sch. 5 para. 4(4) inserted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 8(3)**, 28(2)

Commencement Information

I456 Sch. 5 para. 4 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Arms trafficking

5 (1) An offence under either of the following provisions of the Customs and Excise Management Act 1979 if it is committed in connection with a firearm or ammunition—

(a) section 68(2) (exportation of prohibited goods);

(b) section 170 (fraudulent evasion).

(2) An offence under **[**[F1781]Article 24(1)**]** of the Firearms (Northern Ireland) Order **[**[F1781]2004 (S.I. 2004/ (N.I.))**]** (dealing in firearms or ammunition by way of trade or business).

(3) In this paragraph "firearm" and "ammunition" have the same meanings as in Article 2(2) of that Order.

Textual Amendments

F1781 Words in Sch. 5 para. 5(2) substituted (1.2.2005) by The Firearms (Northern Ireland) Order 2004 (S.I. 2004/702), art. 1(3), **Sch. 7 para. 26** (with art. 81); S.R. 2005/4, art. 3 (with arts. 4-7)

Commencement Information

I457 Sch. 5 para. 5 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Counterfeiting

6 An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45)—

(a) section 14 (making counterfeit notes or coins);

(b) section 15 (passing etc counterfeit notes or coins);

(c) section 16 (having counterfeit notes or coins);

(d) section 17 (making or possessing materials or equipment for counterfeiting).

Commencement Information

I458 Sch. 5 para. 6 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Intellectual property

7 (1) An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)—

(a) section 107(1) (making or dealing in an article which infringes copyright);

(b) section 107(2) (making or possessing an article designed or adapted for making a copy of a copyright work);

(c) section 198(1) (making or dealing in an illicit recording);

(d) section 297A (making or dealing in unauthorised decoders).

(2) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (c. 26) (unauthorised use etc of trade mark).

Commencement Information

I459 Sch. 5 para. 7 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Pimps and brothels

8 (1) An offence under any of the following provisions of the Criminal Law Amendment Act 1885 (c. 69)—

F1782(a) . . . . . .

F1782(b) . . . . . .

F1782(c) . . . . . .

(d) section 13(3) (letting premises for use as a brothel).

[F1783(1A) An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008—

(a) Article 21 (arranging or facilitating commission of a sex offence against a child);

(b) Article 38 (causing or inciting child prostitution or pornography);

(c) Article 39 (controlling a child prostitute or a child involved in pornography);

(d) Article 40 (arranging or facilitating child prostitution or pornography);

(e) Article 62 (causing or inciting prostitution for gain);

(f) Article 63 (controlling prostitution for gain).**]**

F1784(2) . . . . . .

F1784(3) . . . . . .

F1784(4) . . . . . .

F1784(5) . . . . . .

F1785(6) . . . . . .

(7) An offence of keeping a bawdy house.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1782 Sch. 5 para. 8(1)(a)-(c) repealed (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769), art. 1(3), Sch. 1 para. 29(2), **Sch. 3**; S.R. 2008/510, art. 2

F1783 Sch. 5 para. 8(1A) substituted (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769), art. 1(3), **Sch. 1 para. 29(3)**; S.R. 2008/510, art. 2

F1784 Sch. 5 para. 8(2)-(5) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 46(5)(b), **Sch. 7**; S.I. 2004/874, art. 2

F1785 Sch. 5 para. 8(6) repealed (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769), art. 1(3), Sch. 1 para. 29(4), **Sch. 3**; S.R. 2008/510, art. 2

Commencement Information

I460 Sch. 5 para. 8 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Blackmail

9 An offence under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16) (blackmail).

Commencement Information

I461 Sch. 5 para. 9 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

[[F1786]9A An offence under section 12(1) or (2) of the Gangmasters (Licensing) Act 2004 (acting as a gangmaster other than under the authority of a licence, possession of false documents etc).**]**

Textual Amendments

F1786 Sch. 5 para. 9A inserted (1.10.2006) by Gangmasters (Licensing) Act 2004 (c. 11), **ss. 14(4)**, 29(1); S.I. 2006/2406, art. 2(e)

Textual Amendments

F1786 Sch. 5 para. 9A inserted (1.10.2006) by Gangmasters (Licensing) Act 2004 (c. 11), **ss. 14(4)**, 29(1); S.I. 2006/2406, art. 2(e)

Commencement Information

I461 Sch. 5 para. 9 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Inchoate offences

10 (1) An offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule.

[[F1787](1A) An offence under section 44 of the Serious Crime Act 2007 of doing an act capable of encouraging or assisting the commission of an offence specified in this Schedule.**]**

(2) An offence of aiding, abetting, counselling or procuring the commission of such an offence.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1787 Sch. 5 para. 10(1A) inserted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 62** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

Commencement Information

I462 Sch. 5 para. 10 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

SCHEDULE 6

Sections 247 and 257

POWERS OF INTERIM RECEIVER OR ADMINISTRATOR

Seizure

1 Power to seize property to which the order applies.

Commencement Information

I463 Sch. 6 para. 1 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Information

2 (1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings.

(4) Sub-paragraph (3) does not apply—

(a) on a prosecution for an offence under section 5 of the Perjury Act 1911, section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 or Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements), or

(b) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.

(5) But an answer may not be used by virtue of sub-paragraph (4)(b) against a person unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

Commencement Information

I464 Sch. 6 para. 2 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Entry, search, etc.

3 (1) Power to—

(a) enter any premises in the United Kingdom to which the interim order applies, and

(b) take any of the following steps.

(2) Those steps are—

(a) to carry out a search for or inspection of anything described in the order,

(b) to make or obtain a copy, photograph or other record of anything so described,

(c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Chapter 2 of Part 5.

(3) The order may describe anything generally, whether by reference to a class or otherwise.

Commencement Information

I465 Sch. 6 para. 3 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Supplementary

4 (1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege (in Scotland, legal privilege within the meaning of Chapter 3 of Part 8).

(2) An order making any provision under paragraph 3 may require any person—

(a) to give the interim receiver or administrator access to any premises which he may enter in pursuance of paragraph 3,

(b) to give the interim receiver or administrator any assistance he may require for taking the steps mentioned in that paragraph.

Commencement Information

I466 Sch. 6 para. 4 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Management

5 (1) Power to manage any property to which the order applies.

(2) Managing property includes—

(a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,

(b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,

(c) incurring capital expenditure in respect of the property.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I467 Sch. 6 para. 5 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

SCHEDULE 7

Section 267

POWERS OF TRUSTEE FOR CIVIL RECOVERY

Sale

1 Power to sell the property or any part of it or interest in it.

Commencement Information

I468 Sch. 7 para. 1 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Expenditure

2 Power to incur expenditure for the purpose of—

(a) acquiring any part of the property, or any interest in it, which is not vested in him,

(b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Commencement Information

I469 Sch. 7 para. 2 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Management

3 (1) Power to manage property.

(2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 6.

Commencement Information

I470 Sch. 7 para. 3 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Legal proceedings

4 Power to start, carry on or defend any legal proceedings in respect of the property.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I471 Sch. 7 para. 4 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Compromise

5 Power to make any compromise or other arrangement in connection with any claim relating to the property.

Commencement Information

I472 Sch. 7 para. 5 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Supplementary

6 (1) For the purposes of, or in connection with, the exercise of any of his powers—

(a) power by his official name to do any of the things mentioned in sub-paragraph (2),

(b) power to do any other act which is necessary or expedient.

(2) Those things are—

(a) holding property,

(b) entering into contracts,

(c) suing and being sued,

(d) employing agents,

(e) executing a power of attorney, deed or other instrument.

Commencement Information

I473 Sch. 7 para. 6 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F1788SCHEDULE 7A

Section 282A

CONNECTION WITH RELEVANT PART OF UNITED KINGDOM

Textual Amendments

F1788 Sch. 7A inserted (retrospectively) by Crime and Courts Act 2013 (c. 22), **ss. 48(3)**(7), 61(11)(c) (with s. 48(8), Sch. 25) and extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Unlawful conduct

1 There is a connection where the unlawful conduct occurred entirely or partly in the relevant part of the United Kingdom.

Property

2 There has been a connection where the property in question has been in the relevant part of the United Kingdom, but only if it was recoverable property in relation to the unlawful conduct for some or all of the time it was there.

3 There is a connection where there is other property in the relevant part of the United Kingdom that is recoverable property in relation to the unlawful conduct.

4 There has been a connection where, at any time, there has been other property in the relevant part of the United Kingdom that, at the time, was recoverable property in relation to the unlawful conduct.

Person

5 (1) There is or has been a connection where a person described in sub-paragraph (2)—

(a) is linked to the relevant part of the United Kingdom,

(b) was linked to that part of the United Kingdom at a time when the unlawful conduct, or some of the unlawful conduct, was taking place, or

(c) has been linked to that part of the United Kingdom at any time since that conduct took place.

(2) Those persons are—

(a) a person whose conduct was, or was part of, the unlawful conduct;

(b) a person who was deprived of property by the unlawful conduct;

(c) a person who holds the property in question;

(d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct at the time;

(e) a person who holds other property that is recoverable property in relation to the unlawful conduct;

(f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct at the time.

(3) A person is linked to the relevant part of the United Kingdom if the person is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who, under the British Nationality Act 1981, is a British subject,

(c) a British protected person within the meaning of that Act,

(d) a body incorporated or constituted under the law of any part of the United Kingdom, or

(e) a person domiciled, resident or present in the relevant part of the United Kingdom.

Property held on trust

6 (1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and—

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(a) the trust arises under the law of any part of the United Kingdom,

(b) the trust is entirely or partly governed by the law of any part of the United Kingdom,

(c) one or more of the trustees is linked to the relevant part of the United Kingdom, or

(d) one or more of the beneficiaries of the trust is linked to the relevant part of the United Kingdom.

(2) A person is linked to the relevant part of the United Kingdom if the person falls within paragraph 5(3).

(3) "Beneficiaries" includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

7 "The relevant part of the United Kingdom" has the meaning given in section 282A(4).

8 "The unlawful conduct" means—

(a) in a case in which the property in question was obtained through unlawful conduct, that conduct,

(b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct, or

(c) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 242(2)(b)), one or more of those kinds of conduct.**]**

SCHEDULE 8

Section 325

FORMS OF DECLARATIONS

Commencement Information

I474 Sch. 8 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

F1789 **...**

Textual Amendments

F1789 Words in Sch. 8 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 101(2), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

MEMBERS OF [F1790SOCA'S STAFF]

Textual Amendments

F1790 Words in Sch. 8 substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 101(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

"I, A.B., do solemnly declare that I will not disclose any information received by me in carrying out the functions under Part 6 of the Proceeds of Crime Act 2002 which I may from time to time be **[**F1791assigned by **[**F1792the National Crime Agency**]]** to carry out except for the purposes of those functions, or to **[**F1793to **[**F1794that Agency**]]** or in accordance with **[**F1795that Agency's**]** instructions, or for the purposes of any prosecution for an offence relating to inland revenue, or in such other cases as may be required or permitted by law."

Textual Amendments

F1791 Words in Sch. 8 substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 101(4)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1792 Words in Sch. 8 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 152(a)**; S.I. 2013/1682, art. 3(v)

F1793 Words in Sch. 8 substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 101(5)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1794 Words in Sch. 8 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 152(b)**; S.I. 2013/1682, art. 3(v)

F1795 Words in Sch. 8 substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 152(c)**; S.I. 2013/1682, art. 3(v)

SCHEDULE 9

Section 330

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

[F1796PART 1

REGULATED SECTOR

Textual Amendments

F1796 Sch. 9 Pts. 1, 2 substituted (15.12.2007) by The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 (S.I. 2007/3287), arts. 1, **2**

Business in the regulated sector

1. (1) A business is in the regulated sector to the extent that it consists of—
   (a) the acceptance by a credit institution of deposits or other repayable funds from the public, or the granting by a credit institution of credits for its own account;

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(b) the carrying on of one or more of the activities listed in points 2 to 12**[**[F1797], 14 and 15**]** of **[**[F1798]Schedule 2 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**]** by an undertaking other than—

(i) a credit institution; [F1799]...

[[F1800](ia) an undertaking whose only listed activity is as a creditor under an agreement which—

(aa) falls within section 12(a) of the Consumer Credit Act 1974 (debtor-creditor-supplier agreements);

(bb) provides fixed sum credit (within the meaning given in section 10(1)(b) of the Consumer Credit Act 1974 (running-account credit and fixed-sum credit)) in relation to the provision of services; and

(cc) provides financial accommodation by way of deferred payment or payment by instalments over a period not exceeding 12 months; or**]**

(ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of **[**[F1798]Schedule 2 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**]** and which does not act on behalf of a customer (that is, a third party which is not a member of the same group as the undertaking);

(c) **[**[F1801]the carrying on of activities by an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, where those activities consist of carrying out or effecting contracts of long-term insurance;**]**

(d) the provision of investment services or the performance of investment activities by a person **[**[F1802](other than a person falling within one of the exclusions to the definition of "investment firm" in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544))**]** whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis;

(e) the marketing or other offering of units or shares by a collective investment undertaking;

(f) the activities of an insurance intermediary as defined in **[**[F1803]Article 2.1(3), and an ancillary insurance intermediary as defined in Article 2.1(4), of the Insurance Distribution Directive**]**, in respect of contracts of long-term insurance within the meaning given by article 3(1) of, and Part II of Schedule 1 to, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(g) the carrying on of any of the activities mentioned in paragraphs (b) to (f) by a branch located in **[**[F1804]the United Kingdom**]** of a person referred to in those paragraphs (or of an equivalent person in any other State), wherever its head office is located;

(h) the activities of the National Savings Bank;

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(i) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968 under the auspices of the Director of Savings;

(j) the carrying on of statutory audit work within the meaning of section 1210 of the Companies Act 2006 (meaning of "statutory auditor" etc) by any firm or individual who is a statutory auditor within the meaning of Part 42 of that Act (statutory auditors);

[[F1805](ja) the carrying on of local audit work within the meaning of Schedule 5 to the Local Audit and Accountability Act 2014 (eligibility and regulation of local auditors) by any firm or individual who is a local auditor within the meaning of section 4(1) of that Act (general requirements for audit);**]**

(k) the activities of a person appointed to act as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 (meaning of "act as insolvency practitioner") or article 3 of the Insolvency (Northern Ireland) Order 1989;

(l) the provision to other persons of accountancy services by a firm or sole practitioner who by way of business provides such services to other persons;

(m) the provision of **[**[F1806]material aid, or assistance or advice, in connection with the tax affairs of other persons by a firm or sole practitioner, whether provided directly or through a third party, if the firm or sole practitioner by way of business provides (as the case may be) aid, assistance or advice in connection with**]** the tax affairs of other persons;

(n) the participation in financial or real property transactions concerning—

(i) the buying and selling of real property (or, in Scotland, heritable property) or business entities;

(ii) the managing of client money, securities or other assets;

(iii) the opening or management of bank, savings or securities accounts;

(iv) the organisation of contributions necessary for the creation, operation or management of companies; or

(v) the creation, operation or management of trusts, companies or similar structures,

by a firm or sole practitioner who by way of business provides legal or notarial services to other persons;

(o) the provision to other persons by way of business by a firm or sole practitioner of any of the services mentioned in sub-paragraph (4);

(p) the carrying on of estate agency work **[**[F1807]or letting agency work,**]**[F1808]... by a firm or a sole practitioner who carries on, or whose employees carry on, such work;

(q) the trading in goods (including dealing as an auctioneer) whenever a transaction involves the **[**[F1809]making or**]** receipt of a payment or payments in cash of at least **[**[F1810]10,000**]** euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked, by a firm or sole trader who by way of business trades in goods;

(r) operating a casino under a casino operating licence (within the meaning given by section 65(2) of the Gambling Act 2005 (nature of licence)).

[[F1811](s) the auctioning by an auction platform of two-day spot or five-day futures, within the meanings given by Article 3 of the Emission Allowance Auctioning Regulation.**]**

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[[F1812](t) bidding directly, on behalf of clients, in auctions of emissions allowances in accordance with the Emission Allowance Auctioning Regulation.**]**

[[F1813](u) the carrying on of activities by a firm or sole practitioner when it—

(i) by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or

(ii) is the operator of a freeport when it, or any other firm or sole practitioner, stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more;

(v) the carrying on of activities by a firm or individual when acting as a cryptoasset exchange provider or custodian wallet provider.**]**

(2) For the purposes of sub-paragraph (1)(a) and (b) "credit institution" means—

(a) a credit institution as defined in **[**[F1814]Article 4(1)(1) of the Capital Requirements Regulation**]** ; or

(b) a branch (within the meaning of **[**[F1815]Article 4(1)(17) of that Regulation**]**) located in **[**[F1816]the United Kingdom**]** of an institution falling within paragraph (a) (or of an equivalent institution in any other State) wherever its head office is located.

[[F1817](2A) For the purposes of sub-paragraph (1)(c), "contract of long-term insurance" means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).**]**

(3) For the purposes of sub-paragraph (1)(n) a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

(4) The services referred to in sub-paragraph (1)(o) are—

(a) forming companies or other legal persons;

(b) acting, or arranging for another person to act—

(i) as a director or secretary of a company;

(ii) as a partner of a partnership; or

(iii) in a similar position in relation to other legal persons;

(c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;

(d) acting, or arranging for another person to act, as—

(i) a trustee of an express trust or similar legal arrangement; or

(ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

(5) **[**[F1818]For the purposes of sub-paragraph (4)(d) "regulated market" has the meaning given by regulation 3(1) (general interpretation) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).**]**

[F1819](6) . . . . . .

[[F1820](6A) For the purposes of sub-paragraph (1)(p) "estate agency work" is to be read in accordance with section 1 of the Estate Agents Act 1979 (estate agency work), but

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for those purposes references in that section to disposing of or acquiring an interest in land are (despite anything in section 2 of that Act) to be taken to include references to disposing of or acquiring an estate or interest in land outside the United Kingdom where that estate or interest is capable of being owned or held as a separate interest.**]**

[[F1821](6B) For the purposes of sub-paragraph (1)(p) "letting agency work" means work—

(a) consisting of things done in response to instructions received from—

(i) a person (a "prospective landlord") seeking to find another person to whom to let land, or

(ii) a person (a "prospective tenant") seeking to find land to rent, and

(b) done in a case where an agreement is concluded for the letting of land—

(i) for a term of a month or more, and

(ii) at a rent which during at least part of the term is, or is equivalent to, a monthly rent of 10,000 euros or more.

(6C) For the purposes of sub-paragraph (1)(p) "letting agency work" does not include the things listed in sub-paragraph (6D) when done by, or by employees of, a firm or sole practitioner if neither the firm or sole practitioner, nor any of their employees, does anything else within sub-paragraph (6B).

(6D) Those things are—

(a) publishing advertisements or disseminating information;

(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;

(c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other;

(d) the provision of legal or notarial services by a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on grounds of confidentiality of communication.

(6E) In sub-paragraph (6B) "land" includes part of a building and part of any other structure.**]**

(7) For the purposes of **[**[F1822]sub-paragraphs**]** (1)(j) and (l) to (q) **[**[F1823]and (6C)**]** "firm" means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association.

(8) For the purposes of sub-paragraph (1)(q) "cash" means notes, coins or travellers' cheques in any currency.

[[F1824](9) For the purposes of sub-paragraph (1)(s) "auction platform" means a platform on which auctions of emissions allowances are held in accordance with the Emission Allowance Auctioning Regulation.**]**

[[F1825](10) For the purposes of sub-paragraph (1)(u), "work of art" means anything which, in accordance with section 21(6) to (6B) of the Value Added Tax Act 1994 (value of imported goods), is a work of art for the purposes of section 21(5)(a) of that Act.

(11) For the purposes of sub-paragraph (1)(u), "freeport" means a warehouse or storage facility within an area designated by the Treasury as a special area for customs purposes pursuant to section 100A(1) of the Customs and Excise Management Act 1979.

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(12) For the purposes of sub-paragraph (1)(v)—

(a) "cryptoasset exchange provider" means a firm or sole practitioner who by way of business provides one or more of the following services, including where the firm or sole practitioner does so as creator or issuer of any of the cryptoassets involved—

(i) exchanging, or arranging or making arrangements with a view to the exchange of, cryptoassets for money or money for cryptoassets,

(ii) exchanging, or arranging or making arrangements with a view to the exchange of, one cryptoasset for another, or

(iii) operating a machine which utilises automated processes to exchange cryptoassets for money or money for cryptoassets;

(b) "custodian wallet provider" means a firm or sole practitioner who by way of business provides services to safeguard, or to safeguard and administer—

(i) cryptoassets on behalf of its customers, or

(ii) private cryptographic keys on behalf of its customers in order to hold, store and transfer cryptoassets.

(13) For the purposes of sub-paragraph (12)—

(a) "cryptoasset" means a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically;

(b) "money" means—

(i) money in sterling,

(ii) money in any other currency, or

(iii) money in any other medium of exchange,

but does not include a cryptoasset; and

(c) in sub-paragraphs (i), (ii) and (iii) of sub-paragraph (12)(a), "cryptoasset" includes a right to, or interest in, the cryptoasset.**]**

Textual Amendments

F1797 Words in Sch. 9 para. 1(1)(b) substituted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 4(a)**

F1798 Words in Sch. 9 para. 1(1)(b) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **5(2)** (with regs. 24-26)

F1799 Word in Sch. 9 para. 1(1)(b)(i) omitted (26.6.2017) by virtue of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(4)(a)(ii)** (with regs. 8, 15)

F1800 Sch. 9 para. 1(1)(b)(ia) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(4)(a)(iii)** (with regs. 8, 15)

F1801 Sch. 9 para. 1(1)(c) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F1802 Words in Sch. 9 para. 1(1)(d) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F1803 Words in Sch. 9 para. 1(1)(f) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **26(a)**

F1804 Words in Sch. 9 para. 1(1)(g) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F1805 Sch. 9 para. 1(1)(ja) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(4)(b)** (with regs. 8, 15)

F1806 Words in Sch. 9 para. 1(1)(m) substituted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(4)(a)**

F1807 Words in Sch. 9 para. 1(1)(p) inserted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(4)(b)**

F1808 Words in Sch. 9 para. 1(1)(p) omitted (1.10.2012) by virtue of The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) (No.2) Order 2012 (S.I. 2012/2299), arts. 1, **3(a)**

F1809 Words in Sch. 9 para. 1(1)(q) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(4)(c)(i)** (with regs. 8, 15)

F1810 Word in Sch. 9 para. 1(1)(q) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(4)(c)(ii)** (with regs. 8, 15)

F1811 Sch. 9 para. 1(1)(s) inserted (12.12.2011) by The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2011 (S.I. 2011/2701), arts. 1, **3(2)(a)**

F1812 Sch. 9 para. 1(1)(t) inserted (7.7.2012) by The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2012 (S.I. 2012/1534), arts. 1, **3**

F1813 Sch. 9 para. 1(1)(u)(v) inserted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(4)(c)**

F1814 Words in Sch. 9 para. 1(2)(a) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 41(3)**

F1815 Words in Sch. 9 para. 1(2)(b) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 41(4)**

F1816 Words in Sch. 9 para. 1(2)(b) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

F1817 Sch. 9 para. 1(2A) inserted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

F1818 Sch. 9 para. 1(5) substituted (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(f)**; 2020 c. 1, Sch. 5 para. 1(1)

F1819 Sch. 9 para. 1(6) omitted (31.12.2020) by virtue of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(13)(g)**; 2020 c. 1, Sch. 5 para. 1(1)

F1820 Sch. 9 para. 1(6A) inserted (1.10.2012) by The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) (No.2) Order 2012 (S.I. 2012/2299), arts. 1, **3(b)**

F1821 Sch. 9 para. 1(6B)-(6E) inserted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(6)**

F1822 Word in Sch. 9 para. 1(7) substituted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(7)(a)**

F1823 Words in Sch. 9 para. 1(7) inserted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(7)(b)**

F1824 Sch. 9 para. 1(9) inserted (12.12.2011) by The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2011 (S.I. 2011/2701), arts. 1, **3(2)(b)**

F1825 Sch. 9 para. 1(10)-(13) inserted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **15(8)**

Modifications etc. (not altering text)

C249 2014 c.2.

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Excluded activities

2. (1) A business is not in the regulated sector to the extent that it consists of—
   (a) the issuing of withdrawable share capital within the limit set by **[**[F1826]section 24 of the Co-operative and Community Benefit Societies Act 2014 (maximum interest in a society's withdrawable shares)**]**, or the acceptance of deposits from the public within the limit set by **[**[F1827]section 67(2) of that Act (registered society with withdrawable share capital not to carry on banking etc)**]**, by **[**[F1828]a registered society within the meaning of that Act**]**;
   (b) the issuing of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (maximum shareholding in society), or the acceptance of deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies), by a society registered under that Act;
   (c) the carrying on of any activity in respect of which a person who is (or falls within a class of persons) specified in any of paragraphs 2 to 23, **[**[F1829]26**]** to 38 or 40 to 49 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 is exempt;
   (d) the exercise of the functions specified in section 45 of the Financial Services Act 1986 (miscellaneous exemptions) by a person who was an exempted person for the purposes of that section immediately before its repeal; [F1830]...
   (e) the engaging in financial activity which fulfils all of the conditions set out in paragraphs (a) to (g) of sub-paragraph (3) of this paragraph by a person whose main activity is that of a high value dealer; [F1831]...
   [F1831](f) . . . . . .
   [[F1832](g) the carrying on by a local authority (within the meaning given in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) of an activity which would be a regulated activity for the purposes of the Financial Services and Markets Act 2000 but for article 72G of that Order; or
   (h) the preparation of a home report, which for these purposes means the documents prescribed for the purposes of sections 98, 99(1) or 101(2) of the Housing (Scotland) Act 2006.**]**

   (2) For the purposes of sub-paragraph (1)(e) a "high value dealer" means a person mentioned in paragraph 1(1)(q) when carrying on the activities mentioned in that paragraph.

   (3) A business is not in the regulated sector to the extent that it consists of financial activity if—
   (a) the person's total annual turnover in respect of the financial activity does not exceed **[**[F1833]£100,000**]**;
   (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding 1,000 euros, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;
   (c) the financial activity does not exceed 5% of the person's total annual turnover;
   (d) the financial activity is ancillary to the person's main activity and directly related to that activity;

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(e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means;

(f) the main activity of the person carrying on the financial activity is not an activity mentioned in paragraph 1(1)(a) to (p) or (r) **[**[F1834]to (t)**]**; and

(g) the financial activity is provided only to customers of the person's main activity and is not offered to the public.

(4) A business is not in the regulated sector if it is carried on by—

(a) the Auditor General for Scotland;

(b) the Auditor General for Wales;

(c) the Bank of England **[**[F1835](acting otherwise than in its capacity as the Prudential Regulation Authority)**]**;

(d) the Comptroller and Auditor General;

(e) the Comptroller and Auditor General for Northern Ireland;

(f) the Official Solicitor to the Supreme Court, when acting as trustee in his official capacity; or

(g) the Treasury Solicitor.

Textual Amendments

F1826 Words in Sch. 9 para. 2(1)(a) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 81(2)** (with Sch. 5)

F1827 Words in Sch. 9 para. 2(1)(a) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 81(3)** (with Sch. 5)

F1828 Words in Sch. 9 para. 2(1)(a) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 81(4)** (with Sch. 5)

F1829 Word in Sch. 9 para. 2(1)(c) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(7)(a)** (with regs. 8, 15)

F1830 Word in Sch. 9 para. 2(1)(d) omitted (26.6.2017) by virtue of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(7)(b)** (with regs. 8, 15)

F1831 Sch. 9 para. 2(1)(f) and word repealed (15.1.2012) by Localism Act 2011 (c. 20), s. 240(1)(k)(m), Sch. 18 para. 2(b), **Sch. 25 Pt. 29**

F1832 Sch. 9 para. 2(1)(g)(h) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(7)(c)** (with regs. 8, 15)

F1833 Word in Sch. 9 para. 2(3)(a) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(7)(d)(i)** (with regs. 8, 15)

F1834 Words in Sch. 9 para. 2(3)(f) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(7)(d)(ii)** (with regs. 8, 15)

F1835 Words in Sch. 9 para. 2(4)(c) inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 13**

INTERPRETATION

3. (1) In this Part—

[F1836]…

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[F1837]…

[[F1838]"the Capital Requirements Regulation" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;**]**

[[F1839]"the Emission Allowance Auctioning Regulation" means Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community;**]**

[[F1840]"the Insurance Distribution Directive" means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) as amended by Directive (EU) 2018/411 of the European Parliament and of the Council of 14 March 2018;**]**

[F1841]…

[F1842]…

"the Markets in Financial Instruments Directive" means directive **[**[F1843]2014/65/EU of the European Parliament and of the Council of 15 May 2014**]** on markets in financial instruments.

[[F1844]"the Solvency 2 Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);**]**

(2) In this Part references to amounts in euros include references to equivalent amounts in another currency.

(3) Terms used in this Part and in **[**[F1845]the Capital Requirements Regulation[F1846]...**]** or the Markets in Financial Instruments Directive have the same meaning in this Part as **[**[F1847]in that Regulation or**]** in **[**[F1848]that Directive**]**.

Textual Amendments

F1836 Words in Sch. 9 para. 3(1) omitted (1.1.2014) by virtue of The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 41(5)(a)**

F1837 Words in Sch. 9 para. 3(1) omitted (17.8.2022) by virtue of The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **5(3)(a)** (with regs. 24-26)

F1838 Words in Sch. 9 para. 3(1) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **6**

F1839 Words in Sch. 9 para. 3(1) inserted (12.12.2011) by The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2011 (S.I. 2011/2701), arts. 1, **3(3)**

F1840 Words in Sch. 9 para. 3(1) inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **26(b)(ii)**

F1841 Words in Sch. 9 para. 3(1) omitted (1.10.2018) by virtue of The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **26(b)(i)**

F1842 Words in Sch. 9 para. 3(1) omitted (1.1.2016) by virtue of The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 1 para. 23(3)(a)**

F1843 Words in Sch. 9 para. 3(1) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services

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and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 4 para. 7(3)** (with reg. 7)

F1844 Words in Sch. 9 para. 3(1) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 1 para. 23(3)(b)**

F1845 Words in Sch. 9 para. 3(3) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(8)(b)(i)** (with regs. 8, 15)

F1846 Words in Sch. 9 para. 3(3) omitted (17.8.2022) by virtue of The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **5(3)(b)(i)** (with regs. 24-26)

F1847 Words in Sch. 9 para. 3(3) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(8)(b)(ii)** (with regs. 8, 15)

F1848 Words in Sch. 9 para. 3(3) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **5(3)(b)(ii)** (with regs. 24-26)

PART 2

SUPERVISORY AUTHORITIES

4. (1) The following bodies are supervisory authorities—

(a) the Commissioners for Her Majesty's Revenue and Customs;

F1849(b) . . . . . .

[F1850(c) Financial Conduct Authority;]

(d) the Gambling Commission;

F1851(e) . . . . . .

F1849(ea) . . . . . .

F1849(f) ... and

(g) the professional bodies listed in sub-paragraph (2).

(2) The professional bodies referred to in sub-paragraph (1)(g) are—

(a) the Association of Accounting Technicians;

(b) the Association of Chartered Certified Accountants;

(c) the Association of International Accountants;

(d) the Association of Taxation Technicians;

[F1852(da) the Chartered Institute of Legal Executives;]

(e) the Chartered Institute of Management Accountants;

F1853(f) . . . . . .

(g) the Chartered Institute of Taxation;

(h) the Council for Licensed Conveyancers;

(i) the Faculty of Advocates;

(j) the Faculty Office of the Archbishop of Canterbury;

(k) the General Council of the Bar;

(l) the General Council of the Bar of Northern Ireland;

(m) the Insolvency Practitioners Association;

(n) the Institute of Certified Bookkeepers;

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(o) the Institute of Chartered Accountants in England and Wales;
(p) the Institute of Chartered Accountants in Ireland;
(q) the Institute of Chartered Accountants of Scotland;
(r) the Institute of Financial Accountants;
(s) the International Association of Book-keepers;
(t) the Law Society;
(u) the Law Society for Northern Ireland; and
(v) the Law Society of Scotland.**]**

Textual Amendments

F1849 Sch. 9 para. 4(1)(b)(ea)(f) omitted (26.6.2017) by virtue of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(9)(a)** (with regs. 8, 15)

F1850 Sch. 9 para. 4(1)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(4)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1851 Sch. 9 para. 4(1)(e) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 159** (with art. 3)

F1852 Sch. 9 para. 4(2)(da) inserted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(9)(b)(i)** (with regs. 8, 15)

F1853 Sch. 9 para. 4(2)(f) omitted (26.6.2017) by virtue of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 6(9)(b)(ii)** (with regs. 8, 15)

PART 3

POWER TO AMEND

5 The Treasury may by order amend Part 1 or 2 of this Schedule.

Commencement Information

I475 Sch. 9 para. 5 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

SCHEDULE 10

Section 448

TAX

PART 1

GENERAL

1 Sections 75 and 77 of the Taxes Management Act 1970 (c. 9) (receivers: income tax and capital gains tax) shall not apply in relation to—

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(a) a receiver appointed under section 48 **[**[F1854] or 50**]** ;
(b) an administrator appointed under section 125 or 128;
(c) a receiver appointed under section 196 **[**[F1855]or 198 **]** ;
[[F1856](ca) a receiver appointed under section 245E;**]**
(d) an interim receiver appointed under section 246;
[[F1857](da) a PPO receiver appointed under section 255G;**]**
(e) an interim administrator appointed under section 256.

Textual Amendments

F1854 Words in Sch. 10 para. 1(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 84(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1855 Words in Sch. 10 para. 1(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 84(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F1856 Sch. 10 para. 1(ca) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(3)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F1857 Sch. 10 para. 1(da) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 59**; S.I. 2015/820, reg. 3(q)(vi)

Commencement Information

I476 Sch. 10 para. 1 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

PART 2

PROVISIONS RELATING TO PART 5

INTRODUCTORY

2 (1) The vesting of property in the trustee for civil recovery or any other person by a recovery order or in pursuance of an order under section 276 is referred to as a Part 5 transfer.

(2) The person who holds the property immediately before the vesting is referred to as the transferor; and the person in whom the property is vested is referred to as the transferee.

(3) Any amount paid in respect of the transfer by the trustee for civil recovery, or another, to a person who holds the property immediately before the vesting is referred to (in relation to that person) as a compensating payment.

(4) If the recovery order provides or (as the case may be) the terms on which the order under section 276 is made provide for the creation of any interest in favour of a person who holds the property immediately before the vesting, he is to be treated instead as receiving (in addition to any payment referred to in sub-paragraph (3)) a compensating payment of an amount equal to the value of the interest.

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(5) Where the property belongs to joint tenants immediately before the vesting and a compensating payment is made to one or more (but not both or all) of the joint tenants, this Part has effect separately in relation to each joint tenant.

(6) Expressions used in this paragraph have the same meaning as in Part 5 of this Act.

(7) "The Taxes Act 1988" means the Income and Corporation Taxes Act 1988 (c. 1), and "the Allowances Act 2001" means the Capital Allowances Act 2001 (c. 2)**[**[F1858], and "ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005**]**.

(8) This paragraph applies for the purposes of this Part.

Textual Amendments

F1858 Words in Sch. 10 para. 2(7) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(2)** (with Sch. 2)

Commencement Information

I477 Sch. 10 para. 2 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Capital Gains Tax

3 (1) If a gain attributable to a Part 5 transfer accrues to the transferor, it is not a chargeable gain.

(2) But if a compensating payment is made to the transferor—

(a) sub-paragraph (1) does not apply, and

(b) the consideration for the transfer is the amount of the compensating payment.

(3) If a gain attributable to the forfeiture under section **[**[F1859] 297C or **]** 298 of property consisting of—

(a) notes or coins in any currency other than sterling,

(b) anything mentioned in section 289(6)(b) to (d), if expressed in any currency other than sterling, or

(c) bearer bonds or bearer shares,

accrues to the person who holds the property immediately before the forfeiture, it is not a chargeable gain.

(4) This paragraph has effect as if it were included in Chapter 1 of Part 2 of the Taxation of Chargeable Gains Act 1992 (c. 12).

Textual Amendments

F1859 Words in Sch. 10 para. 3(3) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 111**; S.I. 2015/983, arts. 2(2)(e), 3(hh)

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Commencement Information

I478 Sch. 10 para. 3 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

INCOME TAX AND CORPORATION TAX

Accrued income scheme

4 If a Part 5 transfer is a transfer of securities within the meaning of **[**[F1860]Chapter 2 of Part 12 of the Income Tax Act 2007, that Part does not apply to the transfer**]**.

Textual Amendments

F1860 Words in Sch. 10 para. 4 substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 424** (with Sch. 2)

Commencement Information

I479 Sch. 10 para. 4 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Discounted securities

5 In the case of a Part 5 transfer of property consisting of a **[**[F1861]deeply**]** discounted security (within the meaning of **[**[F1862]Chapter 8 of Part 4 of ITTOIA 2005**]**), it is not to be treated as a transfer for the purposes of **[**[F1862]that Chapter**]**.

Textual Amendments

F1861 Word in Sch. 10 para. 5 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(3)(a)** (with Sch. 2)

F1862 Words in Sch. 10 para. 5 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(3)(b)** (with Sch. 2)

Commencement Information

I480 Sch. 10 para. 5 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Rights to receive amounts stated in certificates of deposit etc.

6 In the case of a Part 5 transfer of property consisting of a right to which section 56(2) of the Taxes Act 1988 applies, or a right mentioned in section 56A(1) of that Act, (rights stated in certificates of deposit etc.)**[**[F1863], or a right falling within the definition of "deposit rights" in section 552(1) of ITTOIA 2005**]** it is not to be treated as a disposal of the right for the purposes of section 56(2) **[**[F1864]of the Taxes Act 1988 or Chapter 11 of Part 4 of ITTOIA 2005**]**.

Status: *Point in time view as at 05/01/2023.*
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Textual Amendments

F1863 Words in Sch. 10 para. 6 inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(4)(a)** (with Sch. 2)

F1864 Words in Sch. 10 para. 6 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(4)(b)** (with Sch. 2)

Commencement Information

I481 Sch. 10 para. 6 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Non-qualifying offshore funds

7 In the case of a Part 5 transfer of property consisting of an asset mentioned in section 757(1)(a) or (b) of the Taxes Act 1988 (interests in non-qualifying offshore funds etc.), it is not to be treated as a disposal for the purposes of that section.

Commencement Information

I482 Sch. 10 para. 7 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Futures and options

8 In the case of a Part 5 transfer of property consisting of futures or options (within the meaning of **[**[F1865]section 562 of ITTOIA 2005**]**), it is not to be treated as a disposal of the futures or options for the purposes of **[**[F1866]Chapter 12 of Part 4 of that Act**]**.

Textual Amendments

F1865 Words in Sch. 10 para. 8 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(5)(a)** (with Sch. 2)

F1866 Words in Sch. 10 para. 8 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 583(5)(b)** (with Sch. 2)

Commencement Information

I483 Sch. 10 para. 8 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Loan relationships

9 (1) Sub-paragraph (2) applies if, apart from this paragraph, a Part 5 transfer would be a related transaction for the purposes of **[**[F1867]Part 5 of the Corporation Tax Act 2009 (loan relationships**]** .

(2) The Part 5 transfer is to be disregarded for the purposes of **[**[F1868]that Part**]** , except for the purpose of identifying any person in whose case any debit or credit not relating to the transaction is to be brought into account.

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Textual Amendments

F1867 Words in Sch. 10 para. 9(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 547(2)(a)** (with Sch. 2 Pts. 1, 2)

F1868 Words in Sch. 10 para. 9(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 547(2)(b)** (with Sch. 2 Pts. 1, 2)

Commencement Information

I484 Sch. 10 para. 9 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Exception from paragraphs 4 to 9

10 Paragraphs 4 to 9 do not apply if a compensating payment is made to the transferor.

Commencement Information

I485 Sch. 10 para. 10 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Trading stock

11 (1) Sub-paragraph (2) applies, in the case of a Part 5 transfer of property consisting of the trading stock of a trade, for the purpose of computing any profits of the trade for tax purposes.

(2) If, because of the transfer, the trading stock is to be treated for that purpose as if it had been sold in the course of the trade, the amount realised on the sale is to be treated for that purpose as equal to its acquisition cost.

(3) Sub-paragraph (2) has effect in spite of anything in **[**[F1869] section 173 of ITTOIA 2005 or section 162 of the Corporation Tax Act 2009 (valuation of trading stock on cessation). **]**

(4) In this paragraph, trading stock and trade have the same meaning as in **[**[F1870] section 174 of ITTOIA 2005 or (as the case may be) section 163 of the Corporation Tax Act 2009. **]**

Textual Amendments

F1869 Words in Sch. 10 para. 11(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 547(3)(a)** (with Sch. 2 Pts. 1, 2)

F1870 Words in Sch. 10 para. 11(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 547(3)(b)** (with Sch. 2 Pts. 1, 2)

Commencement Information

I486 Sch. 10 para. 11 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

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CAPITAL ALLOWANCES

Plant and machinery

12 (1) If there is a Part 5 transfer of plant or machinery, Part 2 of the Allowances Act 2001 is to have effect as if a transferor who has incurred qualifying expenditure were required to bring the disposal value of the plant or machinery into account in accordance with section 61 of that Act for the chargeable period in which the transfer occurs.

(2) But the Part 5 transfer is not to be treated as a disposal event for the purposes of Part 2 of that Act other than by virtue of sub-paragraph (1).

Commencement Information

I487 Sch. 10 para. 12 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

13 (1) If a compensating payment is made to the transferor, the disposal value to be brought into account is the amount of the payment.

(2) Otherwise, the disposal value to be brought into account is the amount which would give rise neither to a balancing allowance nor to a balancing charge.

Commencement Information

I488 Sch. 10 para. 13 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

14 (1) Paragraph 13(2) does not apply if the qualifying expenditure has been allocated to the main pool or a class pool.

(2) Instead, the disposal value to be brought into account is the notional written-down value of the qualifying expenditure incurred by the transferor on the provision of the plant or machinery.

(3) The notional written-down value is—

$$QE - A$$

where—

QE is the qualifying expenditure incurred by the transferor on the provision of the plant or machinery,

A is the total of all allowances which could have been made to the transferor in respect of the expenditure if—

(a) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure, and

(b) all allowances had been made in full.

(4) But if—

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(a) the Part 5 transfer of the plant or machinery occurs in the same chargeable period as that in which the qualifying expenditure is incurred, and

(b) a first-year allowance is made in respect of an amount of the expenditure,

the disposal value to be brought into account is that which is equal to the balance left after deducting the first year allowance.

Commencement Information

I489 Sch. 10 para. 14 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

15 (1) Paragraph 13 does not apply if—

(a) a qualifying activity is carried on in partnership,

(b) the Part 5 transfer is a transfer of plant or machinery which is partnership property, and

(c) compensating payments are made to one or more, but not both or all, of the partners.

(2) Instead, the disposal value to be brought into account is the sum of—

(a) any compensating payments made to any of the partners, and

(b) in the case of each partner to whom a compensating payment has not been made, his share of the tax-neutral amount.

(3) A partner's share of the tax-neutral amount is to be determined according to the profit-sharing arrangements for the twelve months ending immediately before the date of the Part 5 transfer.

Commencement Information

I490 Sch. 10 para. 15 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

16 (1) Paragraph 13 does not apply if—

(a) a qualifying activity is carried on in partnership,

(b) the Part 5 transfer is a transfer of plant or machinery which is not partnership property but is owned by two or more of the partners ("the owners"),

(c) the plant or machinery is used for the purposes of the qualifying activity, and

(d) compensating payments are made to one or more, but not both or all, of the owners.

(2) Instead, the disposal value to be brought into account is the sum of—

(a) any compensating payments made to any of the owners, and

(b) in the case of each owner to whom a compensating payment has not been made, his share of the tax-neutral amount.

(3) An owner's share of the tax-neutral amount is to be determined in proportion to the value of his interest in the plant or machinery.

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Commencement Information

I491 Sch. 10 para. 16 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

17 (1) Paragraphs 12 to 16 have effect as if they were included in section 61 of the Allowances Act 2001.

(2) In paragraphs 15 and 16, the tax-neutral amount is the amount that would be brought into account as the disposal value under paragraph 13(2) or (as the case may be) 14 if the provision in question were not disapplied.

Commencement Information

I492 Sch. 10 para. 17 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Industrial buildings

F1871 18 . . . . . .

Textual Amendments

F1871 Sch. 10 paras. 18-21 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 27 para. 24**

Commencement Information

I493 Sch. 10 para. 18 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

F1871 19 . . . . . .

Textual Amendments

F1871 Sch. 10 paras. 18-21 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 27 para. 24**

Commencement Information

I494 Sch. 10 para. 19 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

F1871 20 . . . . . .

Textual Amendments

F1871 Sch. 10 paras. 18-21 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 27 para. 24**

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I495 Sch. 10 para. 20 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

F1871 21 . . . . . .

Textual Amendments

F1871 Sch. 10 paras. 18-21 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 27 para. 24**

Commencement Information

I496 Sch. 10 para. 21 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Flat conversion

22 (1) If there is a Part 5 transfer of a relevant interest in a flat, Part 4A of the Allowances Act 2001 is to have effect as if the transfer were a balancing event within section 393N of that Act.

(2) But the Part 5 transfer is not to be treated as a balancing event for the purposes of Part 4A of that Act other than by virtue of sub-paragraph (1).

Commencement Information

I497 Sch. 10 para. 22 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

23 (1) If a compensating payment is made to the transferor, the proceeds from the balancing event are the amount of the payment.

(2) Otherwise, the proceeds from the balancing event are the amount which is equal to the residue of qualifying expenditure immediately before the transfer.

Commencement Information

I498 Sch. 10 para. 23 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

24 (1) Paragraph 23 does not apply to determine the proceeds from the balancing event if—

(a) the relevant interest in the flat is partnership property, and

(b) compensating payments are made to one or more, but not both or all, of the partners.

(2) Instead, the proceeds from the balancing event are the sum of—

(a) any compensating payments made to any of the partners, and

(b) in the case of each partner to whom a compensating payment has not been made, his share of the amount which is equal to the residue of qualifying expenditure immediately before the transfer.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(3) A partner's share of that amount is to be determined according to the profit-sharing arrangements for the twelve months ending immediately before the date of the transfer.

Commencement Information

I499 Sch. 10 para. 24 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

25 Paragraphs 22 to 24 have effect as if they were included in Part 4A of the Allowances Act 2001.

Commencement Information

I500 Sch. 10 para. 25 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Research and development

26 If there is a Part 5 transfer of an asset representing qualifying expenditure incurred by a person, the disposal value he is required to bring into account under section 443(1) of the Allowances Act 2001 for any chargeable period is to be determined as follows (and not in accordance with subsection (4) of that section).

Commencement Information

I501 Sch. 10 para. 26 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

27 (1) If a compensating payment is made to the transferor, the disposal value he is required to bring into account is the amount of the payment.

(2) Otherwise, the disposal value he is required to bring into account is nil.

Commencement Information

I502 Sch. 10 para. 27 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

28 (1) Paragraph 27 does not apply to determine the disposal value to be brought into account if—

(a) the asset is partnership property, and

(b) compensating payments are made to one or more, but not both or all, of the partners.

(2) Instead, the disposal value to be brought into account is equal to the sum of any compensating payments.

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I503 Sch. 10 para. 28 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

29 Paragraphs 26 to 28 have effect as if they were included in Part 6 of the Allowances Act 2001.

Commencement Information

I504 Sch. 10 para. 29 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

EMPLOYEE ETC. SHARE SCHEMES

Share options

30 Section 135(6) of the Taxes Act 1988 (gains by directors and employees) does not make any person chargeable to tax in respect of any gain realised by the trustee for civil recovery.

Commencement Information

I505 Sch. 10 para. 30 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Conditional acquisition of shares

31 Section 140A(4) of the Taxes Act 1988 (disposal etc. of shares) does not make the transferor chargeable to income tax in respect of a Part 5 transfer of shares or an interest in shares.

Commencement Information

I506 Sch. 10 para. 31 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Shares acquired at an undervalue

32 Section 162(5) of the Taxes Act 1988 (employee shareholdings) does not make the transferor chargeable to income tax in respect of a Part 5 transfer of shares.

Commencement Information

I507 Sch. 10 para. 32 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Shares in dependent subsidiaries

33 Section 79 of the Finance Act 1988 (c. 39) (charge on increase in value of shares) does not make the transferor chargeable to income tax in respect of a Part 5 transfer of shares or an interest in shares.

Commencement Information

I508 Sch. 10 para. 33 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

SCHEDULE 11

Section 456

AMENDMENTS

Introduction

1 The amendments specified in this Schedule shall have effect.

Commencement Information

I509 Sch. 11 para. 1 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Parliamentary Commissioner Act 1967 (c. 13)

F1872 2 . . . . . .

Textual Amendments

F1872 Sch. 11 para. 2 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

Commencement Information

I510 Sch. 11 para. 2 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Police (Scotland) Act 1967 (c. 77)

3 (1) The Police (Scotland) Act 1967 is amended as follows.

(2) In section 38(3B)(liability of Scottish Ministers for constables on central service) after "central service" insert " or on temporary service as mentioned in section 38A(1)(aa) of this Act ".

(3) In section 38A(1) (meaning of "relevant service") after paragraph (a) insert—

"(aa) temporary service with the Scottish Ministers in connection with their functions under Part 5 or 8 of the Proceeds of Crime Act 2002, on which a person is engaged with the consent of the appropriate authority;".

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I511 Sch. 11 para. 3 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Criminal Appeal Act 1968 (c. 19)

4 (1) The Criminal Appeal Act 1968 is amended as follows.

F1873 (2) . . . . . .

(3) In section 50(1) (meaning of sentence) after paragraph (c) insert—

"(ca) a confiscation order under Part 2 of the Proceeds of Crime Act 2002;

(cb) an order which varies a confiscation order made under Part 2 of the Proceeds of Crime Act 2002 if the varying order is made under section 21, 22 or 29 of that Act (but not otherwise);".

Textual Amendments

F1873 Sch. 11 para. 4(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

Commencement Information

I512 Sch. 11 para. 4 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Misuse of Drugs Act 1971 (c. 38)

5 (1) Section 27 of the Misuse of Drugs Act 1971 (forfeiture) is amended as follows.

(2) In subsection (1) for "a drug trafficking offence, as defined in section 1(3) of the Drug Trafficking Act 1994" substitute " an offence falling within subsection (3) below ".

(3) After subsection (2) insert—

"(3) An offence falls within this subsection if it is an offence which is specified in—

(a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or

(b) so far as it relates to that paragraph, paragraph 10 of that Schedule."

Commencement Information

I513 Sch. 11 para. 5 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Immigration Act 1971 (c. 77)

6 In section 28L of the Immigration Act 1971, in paragraph (c) for the words "33 of the Criminal Law (Consolidation) (Scotland) Act 1995" substitute " 412 of the Proceeds of Crime Act 2002 ".

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Commencement Information

I514 Sch. 11 para. 6 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Rehabilitation of Offenders Act 1974 (c. 53)

7 In section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent convictions) after subsection (2A) insert—

"(2B) In subsection (2)(a) above the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 2 or 3 of the Proceeds of Crime Act 2002."

Commencement Information

I515 Sch. 11 para. 7 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I516 Sch. 11 para. 7 in force at 24.3.2003 in so far as not already in force by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))

8 In Article 3 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (rehabilitated persons and spent convictions) after paragraph (2) insert—

"(2A) In paragraph (2)(a) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 4 of the Proceeds of Crime Act 2002."

Commencement Information

I517 Sch. 11 para. 8 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

9 (1) The Criminal Appeal (Northern Ireland) Act 1980 is amended as follows.

(2) In section 30(3) (meaning of sentence) omit "and" after paragraph (b) and after paragraph (c) insert—

"(d) a confiscation order under Part 4 of the Proceeds of Crime Act 2002;

(e) an order which varies a confiscation order made under Part 4 of the Proceeds of Crime Act 2002 if the varying order is made under section 171, 172 or 179 of that Act (but not otherwise)."

F1874(3) . . . . . .

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1874 Sch. 11 para. 9(3) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

Commencement Information

I518 Sch. 11 para. 9 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))

F1875 10 . . . . . .

Textual Amendments

F1875 Sch. 11 para. 10 repealed (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435), art. 1(2), **Sch. 5** (with art. 45); S.R. 2015/194, art. 2, Sch. (with art. 3)

Civil Jurisdiction and Judgments Act 1982 (c. 27)

11 In section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) in subsection (3) (exceptions) insert after paragraph (c)—

"(d) an order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (confiscation)."

Commencement Information

I519 Sch. 11 para. 11 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I520 Sch. 11 para. 11 in force at 24.3.2003 in so far as not already in force by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Civic Government (Scotland) Act 1982 (c. 45)

12 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 86A(3) (application of Part VIIA) for "sections 21(2) and 28(1) of the Proceeds of Crime (Scotland) Act 1995" substitute " section 21(2) of the Proceeds of Crime (Scotland) Act 1995 and Part 3 of the Proceeds of Crime Act 2002 ".

(3) In paragraph 8 of Schedule 2A (interpretation) for the definition of "restraint order" substitute—

""restraint order" means a restraint order made under Part 3 of the Proceeds of Crime Act 2002".

Commencement Information

I521 Sch. 11 para. 12 in force for specified purposes at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Status: *Point in time view as at 05/01/2023.*
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Criminal Justice Act 1982 (c. 48)

13 In Part 2 of Schedule 1 to the Criminal Justice Act 1982 (offences excluded from early release provisions) after the entry relating to the Drug Trafficking Act 1994 insert—

"**PROCEEDS OF CRIME ACT 2002**

Section 327 (concealing criminal property etc).

Section 328 (arrangements relating to criminal property).

Section 329 (acquisition, use and possession of criminal property)."

Commencement Information

I522 Sch. 11 para. 13 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Police and Criminal Evidence Act 1984 (c. 60)

14 (1) The Police and Criminal Evidence Act 1984 is amended as follows.

(2) In section 56 (right to have someone informed when arrested) for subsection (5A) substitute—

"(5A) An officer may also authorise delay where he has reasonable grounds for believing that—

(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(5B) For the purposes of subsection (5A) above the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002."

(3) In section 58 (access to legal advice) for subsection (8A) substitute—

"(8A) An officer may also authorise delay where he has reasonable grounds for believing that—

(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by subsection (1) above.

(8B) For the purposes of subsection (8A) above the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002."

F1876(4) . . . . . .

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1876 Sch. 11 para. 14(4) repealed (E.W.) (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8)(8), **Sch. 17 Pt. 2**; S.I. 2005/3495, art. 2(1)(u)

Commencement Information

I523 Sch. 11 para. 14(1)(4) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I524 Sch. 11 para. 14(2)(3) in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Bankruptcy (Scotland) Act 1985 (c. 66)

F1877 15 . . . . . .

Textual Amendments

F1877 Sch. 11 para. 15 repealed (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 2 Pt. 1**

Insolvency Act 1986 (c. 45)

16 (1) The Insolvency Act 1986 is amended as follows.

(2) In section 281 (effect of discharge) after subsection (4) insert—

"(4A) In subsection (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002."

(3) After section 306 insert—

"**306A Property subject to restraint order**

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),

(b) an order under section 50, 52, 128, 198 or 200 of that Act has not been made in respect of the property, and

(c) the restraint order is discharged.

(2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt's estate.

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

306B Property in respect of which receivership or administration order made

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(b), (c) or (d) of the Proceeds of Crime Act 2002

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(property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

306C Property subject to certain orders where confiscation order discharged or quashed

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the trustee as part of the bankrupt's estate.

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses)."

Commencement Information

I525 Sch. 11 para. 16 in force at 24.3.2003 in so far as not already in force by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

I526 Sch. 11 para. 16 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Criminal Justice Act 1988 (c. 33)

17 (1) The Criminal Justice Act 1988 is amended as follows.

(2) The following provisions shall cease to have effect—

(a) sections 71 to 102;

(b) Schedule 4.

(3) In section 151(4) (Customs and Excise power of arrest) omit "and" after paragraph (a), and after paragraph (b) insert—

"(c) a money laundering offence;"

Status: *Point in time view as at 05/01/2023.*
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(4) In section 151(5) for the words after "means" substitute "any offence which is specified in—

(a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or

(b) so far as it relates to that paragraph, paragraph 10 of that Schedule."

(5) In section 151 after subsection (5) insert—

"(6) In this section "money laundering offence" means any offence which by virtue of section 415 of the Proceeds of Crime Act 2002 is a money laundering offence for the purposes of Part 8 of that Act."

(6) In section 152(4) (remands of suspected drugs offenders to customs detention) for the words after "means" substitute "any offence which is specified in—

(a) paragraph 1 of Schedule 5 to the Proceeds of Crime Act 2002 (drug trafficking offences), or

(b) so far as it relates to that paragraph, paragraph 10 of that Schedule."

Commencement Information

I527 Sch. 11 para. 17(1)(3)(5) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I528 Sch. 11 para. 17(2) in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3-6) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I529 Sch. 11 para. 17(2) in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I530 Sch. 11 para. 17(4)(6) in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Extradition Act 1989 (c. 33)

F1878 18 . . . . . .

Textual Amendments

F1878 Sch. 11 para. 18 repealed (1.1.2004) by Extradition Act 2003 (c. 41), s. 221, **Sch. 4**; S.I. 2003/3103, art. 2 (with arts. 3-5) (as amended (11.12.2003) by S.I. 2003/3258, art. 2 and (18.12.2003) by S.I. 2003/3312, art. 2)

Commencement Information

I531 Sch. 11 para. 18 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4, 7) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

19 (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows.

(2) In Article 57 (right to have someone informed when arrested) for paragraph (5A) substitute—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

"(5A) An officer may also authorise delay where he has reasonable grounds for believing that—

(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(5B) For the purposes of paragraph (5A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002."

(3) In Article 59 (access to legal advice) for paragraph (8A) substitute—

"(8A) An officer may also authorise delay where he has reasonable grounds for believing that—

(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by paragraph (1).

(8B) For the purposes of paragraph (8A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002."

(4) In Article 87 (meaning of serious arrestable offence) in paragraph (2) for sub-paragraph (aa) substitute—

"(aa) any offence which is specified in paragraph 1 of Schedule 5 to the Proceeds of Crime Act 2002 (drug trafficking offences);

(ab) any offence under section 327, 328 or 329 of that Act (certain money laundering offences);".

Commencement Information

I532 Sch. 11 para. 19(1)(4) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I533 Sch. 11 para. 19(2) (3) in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))

20 (1) The Insolvency (Northern Ireland) Order 1989 is amended as follows.

(2) In Article 255 (effect of discharge) after paragraph (4) insert—

"(4A) In paragraph (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002."

(3) After Article 279 insert—

Property subject to restraint order

"279A(1) This Article applies where—

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),

(b) an order under section 50, 52, 128, 198 or 200 of that Act has not been made in respect of the property, and

(c) the restraint order is discharged.

(2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt's estate.

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

Property in respect of which receivership or administration order made

279B(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

Property subject to certain orders where confiscation order discharged or quashed

279C(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the trustee as part of the bankrupt's estate.

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses)."

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I534 Sch. 11 para. 20 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I535 Sch. 11 para. 20 in force at 24.3.2003 in so far as not already in force by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Criminal Justice (International Co-operation) Act 1990 (c. 5)

21 In section 13(6) of the Criminal Justice (International Co-operation) Act 1990 (information not to be disclosed except for certain purposes)—

(a) omit "the Drug Trafficking Act 1994 or the Criminal Justice (Scotland) Act 1987";

(b) at the end insert "or of proceedings under Part 2, 3 or 4 of the Proceeds of Crime Act 2002".

Commencement Information

I536 Sch. 11 para. 21 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I537 Sch. 11 para. 21 in force at 24.3.2003 in so far as not already in force by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Pension Schemes Act 1993 (c. 48)

22 (1) The Pension Schemes Act 1993 is amended as follows.

(2) In section 10 (protected rights and money purchase benefits), after subsection (5) insert—

"(6) Where, in the case of a scheme which makes such provision as is mentioned in subsection (2) or (3), any liability of the scheme in respect of a member's protected rights ceases by virtue of a civil recovery order, his protected rights are extinguished or reduced accordingly."

(3) In section 14 (earner's guaranteed minimum), after subsection (2) insert—

"(2A) Where any liability of a scheme in respect of an earner's guaranteed minimum pension ceases by virtue of a civil recovery order, his guaranteed minimum in relation to the scheme is extinguished or reduced accordingly."

(4) In section 47 (further provisions relating to guaranteed minimum pensions), in subsection (6), after "but for" insert " section 14(2A) and ".

[F1879](5) . . . . . .

(6) In section 181(1) (general interpretation), after the definition of "Category A retirement pension" insert—

""civil recovery order" means an order under section 266 of the Proceeds of Crime Act 2002 or an order under section 276 imposing the requirement mentioned in section 277(3)."

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Textual Amendments

F1879 Sch. 11 para. 22(5) repealed (6.4.2009) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 11 Pt. 2**; S.I. 2009/82, art. 2(2)(g)

Commencement Information

I538 Sch. 11 para. 22 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Pension Schemes (Northern Ireland) Act 1993 (c. 49)

23 (1) The Pension Schemes (Northern Ireland) Act 1993 is amended as follows.

[F1880](2) . . . . . .

(3) In section 10 (earner's guaranteed minimum), after subsection (2) insert—

"(2A) Where any liability of a scheme in respect of an earner's guaranteed minimum pension ceases by virtue of a civil recovery order, his guaranteed minimum in relation to the scheme is extinguished or reduced accordingly."

(4) In section 43 (further provisions relating to guaranteed minimum pensions), in subsection (6), after "but for" insert "section 10(2A) and".

[F1881](5) . . . . . .

(6) In section 176(1) (general interpretation), after the definition of "Category A retirement pension" insert—

""civil recovery order" means an order under section 266 of the Proceeds of Crime Act 2002 or an order under section 276 imposing the requirement mentioned in section 277(3)."

Textual Amendments

F1880 Sch. 11 para. 23(2) repealed (N.I.) (6.4.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 10 Pt. 3** (with s. 73); S.R. 2012/119, art. 2(c)

F1881 Sch. 11 para. 23(5) repealed (N.I.) (6.4.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 10 Pt. 2** (with s. 73); S.R. 2009/22, art. 2(2)(d)

Commencement Information

I539 Sch. 11 para. 23 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Criminal Justice and Public Order Act 1994 (c. 33)

24 In section 139(12) of the Criminal Justice and Public Order Act 1994 (search powers) in paragraph (b) of the definition of "items subject to legal privilege" for "section 40 of the Criminal Justice (Scotland) Act 1987" substitute " section 412 of the Proceeds of Crime Act 2002 ".

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I540 Sch. 11 para. 24 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Drug Trafficking Act 1994 (c. 37)

25 (1) The Drug Trafficking Act 1994 is amended as follows.

(2) The following provisions shall cease to have effect—

(a) sections 1 to 54;

(b) in sections 55(4)(a) (orders to make material available) and 56(3)(a) and (4)(a) (authority for search) the words "or has benefited from";

(c) in section 59 (disclosure of information held by government departments), subsections (1) to (10) and in subsection (11) the words "An order under subsection (1) above, and,";

(d) in section 60(6) (Customs and Excise prosecution powers), in the definition of "specified offence", in paragraph (a) the words "Part III or" and paragraph (c) and the word "or" immediately preceding it;

(e) in section 60(6) the words from "and references to the institution of proceedings" to the end;

(f) in section 60, subsections (7) and (8);

(g) in section 61 (extension of certain offences to the Crown), subsections (2) to (4);

(h) sections 62, 63(1), (2) and (3)(a) and 64 (interpretation);

(i) in section 68(2) (extent -Scotland), paragraphs (a) to (c) and in paragraph (g) the words "1, 41, 62" and "64";

(j) in section 68(3) (extent -Northern Ireland), paragraph (a) and in paragraph (d) the word "64".

(3) In section 59(12)(b) for the words "referred to in subsection (1) above" substitute " specified in an order under section 55(2) ".

(4) After section 59 insert the following section—

"**59A Construction of sections 55 to 59**

(1) This section has effect for the purposes of sections 55 to 59.

(2) A reference to a constable includes a reference to a customs officer.

(3) A customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).

(4) Drug trafficking means doing or being concerned in any of the following (whether in England and Wales or elsewhere)—

(a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;

(b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;

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Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;

(d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section or would be such an offence if it took place in England and Wales;

(e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act.

(5) In this section "corresponding law" has the same meaning as in the Misuse of Drugs Act 1971."

(5) In section 60 after subsection (6) insert—

"(6A) Proceedings for an offence are instituted—

(a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (issue of summons to, or warrant for arrest of, accused) in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section (preferment by direction of the criminal division of the Court of Appeal or by direction, or with the consent, of a High Court judge).

(6B) Where the application of subsection (6A) would result in there being more than one time for the institution of proceedings they must be taken to have been instituted at the earliest of those times."

(6) In section 61(1) for "sections 49(2), 50 to 53 and 58" substitute " section 58 ".

(7) In section 68(2)(d), for "59(10)" substitute " 59(11) ".

Commencement Information

I541 Sch. 11 para. 25(1) in force for specified purposes at 30.12.2002 by S.I. 2002/3015, **art. 2**, Sch.

I542 Sch. 11 para. 25(2)(a) in force at 30.12.2002 for specified purposes by S.I. 2002/3015, **art. 2**, Sch., and at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3-6) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I543 Sch. 11 para. 25(2)(a) in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I544 Sch. 11 para. 25(2)(b)-(g)(3)-(7) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I545 Sch. 11 para. 25(2)(h)-(j) in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15))

26 In Article 16 of the Criminal Justice (Northern Ireland) Order 1994 in paragraph (a) after "Proceeds of Crime (Northern Ireland) Order 1996" insert " or Part 4 of the Proceeds of Crime Act 2002 ".

Commencement Information

I546 Sch. 11 para. 26 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Proceeds of Crime Act 1995 (c. 11)

27 Section 15(2) and (3) of the Proceeds of Crime Act 1995 (investigation into benefit to be treated as the investigation of an offence for the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984) shall cease to have effect.

Commencement Information

I547 Sch. 11 para. 27 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I548 Sch. 11 para. 27 in force at 24.3.2003 in so far as not already in force by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Proceeds of Crime (Scotland) Act 1995 (c. 43)

28 (1) The Proceeds of Crime (Scotland) Act 1995 is amended as follows.

(2) The following provisions in the Act shall cease to have effect—

(a) Part I, except section 2(7);

(b) in section 28, subsections (1)(a) and (2) and in subsection (5) the words "(including a restraint order made under and within the meaning of the 1994 Act)";

(c) section 29;

(d) in section 31, subsection (2) and in subsection (4) the words "or (2)";

(e) sections 35 to 39;

(f) in section 40, subsections (1)(a), (2) and (4);

(g) in section 42, subsections (1)(a) and (b);

(h) in section 43, in subsection (1) the words ", confiscation order" and subsection (2);

(i) in section 45, subsection (1)(a);

(j) section 47;

(k) in section 49, in subsection (1) the definitions of "the 1988 Act", "the 1994 Act" and "confiscation order" and subsection (4).

(3) The following provisions in Schedule 1 to the Act shall cease to have effect—

(a) in paragraph 1(1)(b) the words "or a confiscation order", in paragraph 1(2)(a) the words "subject to paragraph (b) below", paragraph 1(2)(b) and in paragraph 1(3)(a)(i) the words "or confiscation order";

(b) in paragraph 2(1)(a) the words ", and if appointed (or empowered) under paragraph 1(1)(b) above where a confiscation order has been made";

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(c) paragraph 4;
(d) in paragraph 5(1) the words "Part I of";
(e) in paragraph 8(2) the words ", unless in a case where a confiscation order has been made there are sums available to be applied in payment of it under paragraph 4(4)(b) above,";
(f) in paragraph 10(1) the words "or the recipient of a gift caught by Part I of this Act or an implicative gift" and paragraphs 10(2) and 10(3);
(g) in paragraph 12(1)(a) the words "paragraph (a) or (b) of section 4(1) or".

(4) The following provisions in Schedule 2 to the Act shall cease to have effect—
(a) in paragraph 1(2) the words "and 35 to 38";
(b) in paragraph 2, in sub-paragraph (1) the words"realisable or", in sub-paragraph (2) the words"and 35 to 38", sub-paragraph (5).
(c) in paragraph 3(2) the words"and 35 to 38" and paragraphs 3(4) and (5);
(d) in paragraph 4(2) the words "and 35 to 38";
(e) paragraph 6(2)(a).

(5) In section 28(9) (restraint orders) for "Subsections (2)(a) and" substitute " Subsection ".

(6) In section 42 (enforcement) in subsections (2)(a), (c) and (d) for "Part I," substitute " Part ".

Commencement Information

I549 Sch. 11 para. 28 in force at 24.3.2003 for specified purposes by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

I550 Sch. 11 para. 28(1) in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I551 Sch. 11 para. 28(1)(2)(e)(g) in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I552 Sch. 11 para. 28(2)(a) in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Criminal Procedure (Scotland) Act 1995 (c. 46)

29 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 109(1) (intimation of appeal) for "section 10 of the Proceeds of Crime (Scotland) Act 1995 (postponed confiscation orders)" substitute " section 99 of the Proceeds of Crime Act 2002 (postponement) ".

(3) In section 205B(5) (minimum sentence for third drug trafficking offence) for the definition of "drug trafficking offence" substitute—

> ""drug trafficking offence" means an offence specified in paragraph 2 or (so far as it relates to that paragraph) paragraph 10 of Schedule 4 to the Proceeds of Crime Act 2002;".

(4) In section 219(8)(b) (fines: imprisonment for non-payment) for "14(2) of the Proceeds of Crime (Scotland) Act 1995" substitute " 118(2) of the Proceeds of Crime Act 2002 ".

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

Commencement Information

I553 Sch. 11 para. 29 in force for specified purposes at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Police Act 1996 (c. 16)

30 F1882(1) . . . . . .

F1883(2) . . . . . .

F1884(3) . . . . . .

F1884(4) . . . . . .

Textual Amendments

F1882 Sch. 11 para. 30(1)(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

F1883 Sch. 11 para. 30(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

F1884 Sch. 11 para. 30(3)(4) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. para. 13(nn)

Commencement Information

I554 Sch. 11 para. 30 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)

31 (1) The Proceeds of Crime (Northern Ireland) Order 1996 is amended as follows.

(2) Parts II and III shall cease to have effect.

(3) The following provisions shall also cease to have effect—

(a) in Article 2 (interpretation) in paragraph (2) from the definition of "charging order" to the definition of "external confiscation order" and from the definition of "modifications" to the definition of "restraint order" and paragraphs (3) to (10) and (12);

(b) Article 3 (definition of "property" etc.);

(c) in Article 49 (additional investigation powers), in paragraph (1) sub-paragraph (c) and the word "and" immediately preceding it, in paragraph (1A) sub-paragraph (c) and the word "and" immediately preceding it, paragraph (4) and in paragraph (5) the definitions of "customs officer" and "relevant property";

(d) in Article 52 (supplementary provisions) in paragraph (2) sub-paragraph (b) and the word "and" immediately preceding it, and paragraph (3);

(e) in Article 54 (disclosure of information held by government departments) paragraphs (1) to (10) and (13) and in paragraph (11) the words "An order under paragraph (1) and,";

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(f) in Article 55 (Customs and Excise prosecution powers), in paragraph (6) in the definition of "specified offence" in paragraph (a) the words "Part III or" and paragraph (c) and the word "or" immediately preceding it, and paragraph (7);

(g) Article 56(2) to (4) (extension of certain offences to the Crown);

(h) in Schedule 2 paragraph 3.

(4) In Article 49(1) (additional investigation powers)—

(a) for "county court" substitute " Crown Court ";

(b) in sub-paragraph (a) for the words from "an investigation" to the end of head (ii) substitute " a confiscation investigation ";

(c) in sub-paragraph (b) after "and who is" insert " an accredited financial investigator ".

(5) In Article 49(1A)—

(a) after "application made by" insert " the Director of the Assets Recovery Agency or ";

(b) for "county court" substitute " Crown Court ";

(c) in sub-paragraph (a) for the words from "an investigation" to the end of head (ii) substitute " a confiscation investigation ";

(d) in sub-paragraph (b) after "if" insert " the Director or ";

(e) after "authorise" insert " the Director or ";

(f) for "paragraphs 3 and 3A" where it twice occurs substitute " paragraph 3A ".

(6) In Article 49(5) insert at the appropriate place in alphabetical order—

""accredited financial investigator" has the meaning given by section 3(5) of the Proceeds of Crime Act 2002;

"confiscation investigation" has the same meaning as it has for the purposes of Part 8 of that Act by virtue of section 341(1);".

(7) In Article 50(1) (order to make material available)—

(a) for sub-paragraphs (a) and (b) substitute "drug trafficking";

(b) for "county court" substitute " Crown Court ".

(8) In Article 50(4)(a), for heads (i) to (iii) substitute "has carried on drug trafficking".

(9) In Article 50(8) for "county court" substitute " Crown Court ".

(10) In Article 51(1) (authority for search)—

(a) for sub-paragraphs (a) and (b) substitute "drug trafficking";

(b) for "county court" substitute " Crown Court ".

(11) In Article 51(3)(a) for heads (i) to (iii) substitute "has carried on drug trafficking".

(12) In Article 51(4)—

(a) in sub-paragraph (a) for heads (i) to (iii) substitute "has carried on drug trafficking";

(b) in sub-paragraph (b)(i) for the words from "the question" to the end substitute " drug trafficking ".

(13) In Article 52(1)(a) (supplementary provisions), for heads (i) to (ii) substitute "drug trafficking".

Status: *Point in time view as at 05/01/2023.*
Changes to legislation: *Proceeds of Crime Act 2002 is up to date with all changes known to be in force on or before 21 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)*

(14) In Article 54 (disclosure of information held by government departments) in paragraph (12)(b) for "referred to in paragraph (1)" substitute " specified in an order under Article 50(2) ".

(15) After Article 54 insert the following Article—

Construction of Articles 49 to 54

"54A(1) This Article has effect for the purposes of Articles 49 to 54.

(2) A reference to a constable includes a reference to a customs officer.

(3) A customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.

(4) Drug trafficking means doing or being concerned in any of the following (whether in Northern Ireland or elsewhere)—

(a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;

(b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;

(c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;

(d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section or would be such an offence if it took place in Northern Ireland;

(e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act.

(5) In this Article "corresponding law" has the same meaning as in the Misuse of Drugs Act 1971."

(16) In Article 55 after paragraph (6) insert—

"(6A) Proceedings for an offence are instituted—

(a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when an indictment is preferred under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.

(6B) Where the application of paragraph (6A) would result in there being more than one time for the institution of proceedings they must be taken to have been instituted at the earliest of those times."

Status: *Point in time view as at 05/01/2023.*
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(17) In Article 56(1) (extension of certain offences to the Crown), for "Articles 44, 45, 46, 47(2), 48 and" substitute " Article ".

(18) In Schedule 2 (financial investigations) in paragraph 3A—

(a) in sub-paragraph (1) for "any conduct to which Article 49 applies" substitute " his criminal conduct ";

(b) after that paragraph insert—

"(1A) For the purposes of sub-paragraph (1) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002."

Commencement Information

I555 Sch. 11 para. 31(1)(3)(c)-(h)(4)-(18) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I556 Sch. 11 para. 31(2) in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3-6) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I557 Sch. 11 para. 31(2) in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

I558 Sch. 11 para. 31(3)(a)-(c) in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Crime (Sentences) Act 1997 (c. 43)

32 (1) The Crime (Sentences) Act 1997 is amended as follows.

(2) In section 35 (fine defaulters) in subsection (1)(a) after "Drug Trafficking Act 1994" insert " or section 6 of the Proceeds of Crime Act 2002 ".

(3) In section 40 (fine defaulters) in subsection (1)(a) after "Drug Trafficking Act 1994" insert " or section 6 of the Proceeds of Crime Act 2002 ".

Commencement Information

I559 Sch. 11 para. 32 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Crime and Punishment (Scotland) Act 1997 (c. 48)

33 The following provisions of the Crime and Punishment (Scotland) Act 1997 shall cease to have effect—

(a) section 15(3),

(b) in Schedule 1, paragraph 20.

Commencement Information

I560 Sch. 11 para. 33 in force for specified purposes at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

Status: *Point in time view as at 05/01/2023.*
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Police (Northern Ireland) Act 1998 (c. 32)

34 F1885(1) . . . . . .

F1886(2) . . . . . .

F1887(3) . . . . . .

F1887(4) . . . . . .

Textual Amendments

F1885 Sch. 11 para. 34(1)(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

F1886 Sch. 11 para. 34(2) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 14**; S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

F1887 Sch. 11 para. 34(3)(4) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. para. 13(nn)

Commencement Information

I561 Sch. 11 para. 34 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Crime and Disorder Act 1998 (c. 37)

35 In Schedule 8 to the Crime and Disorder Act 1998 paragraphs 115 and 116 shall cease to have effect.

Commencement Information

I562 Sch. 11 para. 35 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Access to Justice Act 1999 (c. 22)

F1888 36 . . . . . .

Textual Amendments

F1888 Sch. 11 para. 36 repealed (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 Pt. 2**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)

F1889 37 . . . . . .

Textual Amendments

F1889 Sch. 11 para. 37 repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

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Modifications etc. (not altering text)

C250 Sch. 11 para. 37 modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), **ss. 1**, 5(2)(3); S.I. 2012/1236, reg. 2

Commencement Information

I563 Sch. 11 para. 37 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

F1890 …

F1890 38 . . . . . .

Textual Amendments

F1890 Sch. 11 para. 38 and italic heading before it repealed (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 19** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Terrorism Act 2000 (c. 11)

39 (1) Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.

(2) In paragraph 8 (authorisation of delay in exercise of detained person's rights) for sub-paragraph (5) substitute—

"(5) An officer may also give an authorisation under sub-paragraph (1) if he has reasonable grounds for believing that—

(a) the detained person has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by—

(i) informing the named person of the detained person's detention (in the case of an authorisation under sub-paragraph (1)(a)), or

(ii) the exercise of the right under paragraph 7 (in the case of an authorisation under sub-paragraph (1)(b)).

(5A) For the purposes of sub-paragraph (5) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002."

(3) In paragraph 17(3) (grounds for authorising delay or requiring presence of senior officer), in paragraph (d) for "Part VI of the Criminal Justice Act 1988, Part I of the Proceeds of Crime (Scotland) Act 1995" substitute " Part 2 or 3 of the Proceeds of Crime Act 2002 ".

(4) For paragraph 17(4) (further grounds for authorising delay in exercise of detained person's rights) substitute—

"(4) This sub-paragraph applies where an officer mentioned in paragraph 16(4) or (7) has reasonable grounds for believing that—

(a) the detained person has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by—

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(i) informing the named person of the detained person's detention (in the case of an authorisation under paragraph 16(4)), or

(ii) the exercise of the entitlement under paragraph 16(6) (in the case of an authorisation under paragraph 16(7)).

(4A) For the purposes of sub-paragraph (4) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002."

(5) In paragraph 34 (authorisation for withholding information from detained person) for sub-paragraph (3) substitute—

"(3) A judicial authority may also make an order under sub-paragraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that—

(a) the detained person has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit would be hindered if the information were disclosed.

(3A) For the purposes of sub-paragraph (3) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 or 3 of the Proceeds of Crime Act 2002."

Commencement Information

I564 Sch. 11 para. 39 in force at 24.3.2003 in so far as not already in force by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

I565 Sch. 11 para. 39 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Criminal Justice and Police Act 2001 (c. 16)

40 (1) The Criminal Justice and Police Act 2001 is amended as follows.

(2) In section 55 (obligation to return excluded and special procedure material) in subsection (5) (powers in relation to which section does not apply as regards special procedure material) omit "and" after paragraph (b), and after paragraph (c) insert—

"and

(d) section 352(4) of the Proceeds of Crime Act 2002,".

(3) In section 60 (cases where duty to secure seized property arises) in subsection (4) (powers in relation to which duty does not arise as regards special procedure material) omit "or" after paragraph (b), and after paragraph (c) insert—

"or

(d) section 352(4) of the Proceeds of Crime Act 2002,".

(4) In section 64 (meaning of appropriate judicial authority) in subsection (3) after paragraph (a) omit "and" and insert—

"(aa) the power of seizure conferred by section 352(4) of the Proceeds of Crime Act 2002, if the power is exercisable for the purposes of

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a civil recovery investigation (within the meaning of Part 8 of that Act);".

(5) In section 65 (meaning of "legal privilege")—

(a) in subsection (1)(b) for the words "33 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)" substitute " 412 of the Proceeds of Crime Act 2002 ";

(b) after subsection (3) insert—

"(3A) In relation to property which has been seized in exercise, or purported exercise, of—

(a) the power of seizure conferred by section 352(4) of the Proceeds of Crime Act 2002, or

(b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,

references in this Part to an item subject to legal privilege shall be read as references to privileged material within the meaning of section 354(2) of that Act."

(6) In Part 1 of Schedule 1 (powers of seizure to which section 50 applies) at the end add—

"**Proceeds of Crime Act 2002 (c. 00)**

73A The power of seizure conferred by section 352(4) of the Proceeds of Crime Act 2002 (seizure of material likely to be of substantial value to certain investigations)."

(7) In Part 3 of Schedule 1 (powers of seizure to which section 55 applies) at the end add—

"**Proceeds of Crime Act 2002 (c. 00)**

110 The power of seizure conferred by section 352(4) of the Proceeds of Crime Act 2002 (seizure of material likely to be of substantial value to certain investigations)."

Commencement Information

I566 Sch. 11 para. 40 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

SCHEDULE 12

Section 457

REPEALS AND REVOCATIONS

Commencement Information

I567 Sch. 12 in force at 30.12.2002 for specified purposes by S.I. 2002/3015, **art. 2**, Sch.

Status: *Point in time view as at 05/01/2023.*
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I568 Sch. 12 in force at 24.2.2003 for specified purposes by S.I. 2003/120, art. 2, **Sch.** (with arts. 3-6) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

I569 Sch. 12 in force at 24.3.2003 for specified purposes by S.S.I. 2003/210, art. 2(1)(b)(2), **sch.** (with art. 7)

I570 Sch. 12 in force at 24.3.2003 for specified purposes by S.I. 2003/333, art. 2, **Sch.** (with arts. 10-13)

Short title and chapter	***Extent of repeal or revocation***
Misuse of Drugs Act 1971 (c. 38)	In section 21 the words "or section 49 of the Drug Trafficking Act 1994". In section 23(3A) the words "or section 49 of the Drug Trafficking Act 1994".
Criminal Appeal (Northern Ireland) Act 1980 (c. 47)	In section 30(3) the word "and" after paragraph (b).
Police and Criminal Evidence Act 1984 (c. 60)	In section 65— (a) the definitions of "drug trafficking" and "drug trafficking offence"; (b) the words from "references in this Part" to "in accordance with the Drug Trafficking Act 1994".
Criminal Justice Act 1988 (c. 33)	Sections 71 to 102. In section 151(4) the word "and" after paragraph (a). In section 172— (a) in subsection (2) the words from "section 76(3)" to "extending to Scotland"; (b) in subsection (4) the words from "sections 90" to "section 93E". Schedule 4.
Housing Act 1988 (c. 50)	In Schedule 17, paragraphs 83 and 84.
Extradition Act 1989 (c. 33)	In section 22(4)(h) the word "and" after sub-paragraph (ii).
Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))	In Article 53— (a) the definitions of "drug trafficking" and "drug trafficking offence"; (b) the words from "References in this Part" to "Order 1996".
Criminal Justice (International Co-operation) Act 1990 (c. 5)	In section 13(6) the words "the Drug Trafficking Act 1994 or". Section 14. In Schedule 4, paragraph 1.
Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17))	In Article 37— (a) paragraph (2); (b) in paragraphs (3) and (4) sub-paragraph (b) and the word "and" before it; (c) paragraph (5).
Criminal Justice Act 1993 (c. 36)	Section 21(3)(e) to (g). Sections 27 to 35. In Schedule 4, paragraph 3.

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	In Schedule 5, paragraph 14.
Criminal Justice and Public Order Act 1994 (c. 33)	In Schedule 9, paragraph 36.
Drug Trafficking Act 1994 (c. 37)	Sections 1 to 54. In sections 55(4)(a) and 56(3)(a) and (4)(a) the words “or has benefited from”. In section 59, subsections (1) to (10) and in subsection (11) the words “An order under subsection (1) above, and”. In section 60(6), in the definition of “specified offence”, in paragraph (a) the words “Part III or” and paragraph (c) and the word “or” immediately preceding it. In section 60(6), the words from “and references to the institution of proceedings” to the end. Section 60(7) and (8). Section 61(2) to (4). Sections 62, 63(1), (2) and (3)(a) and 64. In section 68(2), paragraphs (a) to (c) and in paragraph (g) the words “1, 41, 62” and “64”. In section 68(3), paragraph (a) and in paragraph (d) the word “64”. In Schedule 1, paragraphs 3, 4(a), 8, 21 and 26.
Proceeds of Crime Act 1995 (c. 11)	Sections 1 to 13. Section 15(1) to (3). Section 16(2), (5) and (6). Schedule 1.
Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)	Part V.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 3, paragraph 4(2). In Schedule 4, paragraphs 69 and 94.
Private International Law (Miscellaneous Provisions) Act 1995 (c. 42)	Section 4(3).
Proceeds of Crime (Scotland) Act 1995 (c. 43)	Part I, except section 2(7). In section 28, subsections (1)(a) and (2) and in subsection (5) the words “(including a restraint order made under and within the meaning of the 1994 Act)”. Section 29. In section 31, subsection (2), in subsection (4) the words “or (2)”. Sections 35 to 39. In section 40, subsections (1)(a), (2) and (4). In section 42, subsections (1)(a) and (b). In section 43, in subsection (1) the words “confiscation order”, subsection (2). Section 45(1)(a).

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	Section 47. In section 49, in subsection (1) the definitions of “the 1988 Act”, “the 1994 Act” and “confiscation order” and subsection (4). In Schedule 1, in paragraph 1, in sub-paragraph (1)(b) the words “or a confiscation order”, in sub-paragraph (2)(a) the words “subject to paragraph (b) below”, sub-paragraph (2)(b), in sub-paragraph (3)(a)(i) the words “or confiscation order”. In Schedule 1, in paragraph 2, in sub-paragraph (1)(a) the words “, and if appointed (or empowered) under paragraph 1(1)(b) above where a confiscation order has been made”, paragraph 4, in paragraph 5(1) the words “Part I of”, in paragraph 8(2) the words from “, unless in a case where a confiscation order has been” to “4(4)(b) above,”. In Schedule 1, in paragraph 10(1) the words “or the recipient of a gift caught by Part I of this Act or an implicative gift”, paragraphs 10(2) and (3), in paragraph 12(1)(a) the words “paragraph (a) or (b) of section 4(1) or”. In Schedule 2, in paragraph 1(2) the words “and 35 to 38”, in paragraph 2(1) the words “realisable or”, in paragraph 2(2) the words “and 35 to 38”, paragraph 2(5), in paragraph 3(2) the words “and 35 to 38”, paragraphs 3(4) and (5), in paragraph 4(2) the words “and 35 to 38”, paragraph 6(2)(a).
Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9))	Parts II and III. In Article 2 in paragraph (2) from the definition of “charging order” to the definition of “external confiscation order” and from the definition of “modifications” to the definition of “restraint order” and paragraphs (3) to (10) and (12). Article 3. In Article 49, in paragraph (1) sub-paragraph (c) and the word “and” immediately preceding it, in paragraph (1A) sub-paragraph (c) and the word “and” immediately preceding it, paragraph (4) and in paragraph (5) the definitions of “customs officer” and “relevant property”. In Article 52 in paragraph (2) sub-paragraph (b) and the word “and” immediately preceding it, and paragraph (3).

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	In Article 54 paragraphs (1) to (10) and (13) and in paragraph (11) the words "An order under paragraph (1) and,". In Article 55, in paragraph (6) in the definition of "specified offence" in paragraph (a) the words "Part III or" and paragraph (c) and the word "or" immediately preceding it, and paragraph (7). Article 56(2) to (4). In Schedule 2— (a) in paragraph 1(3) "3 or"; (b) paragraph 3; (c) in paragraphs 4(2), 5(1) and 6(1) "3". In Schedule 3, paragraphs 1 to 3 and 18.
Justices of the Peace Act 1997 (c. 25)	In Schedule 5, paragraphs 23 and 36.
Crime and Punishment (Scotland) Act 1997 (c. 48)	Section 15(3). In Schedule 1, paragraph 20.
Crime and Disorder Act 1998 (c. 37)	Section 83. In Schedule 8, paragraphs 115 and 116. In Schedule 8, paragraph 114. In Schedule 9, paragraph 8.
Access to Justice Act 1999 (c. 22)	In Schedule 2— (a) in paragraph 2(2) the word "or" at the end of paragraph (c); (b) in paragraph 2(3) the word "or" at the end of paragraph (j). In Schedule 13, paragraphs 139 and 172.
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraphs 105 to 113 and 163 to 173.
Terrorism Act 2000 (c. 11)	In Schedule 15, paragraphs 6, 10 and 11(2).
Criminal Justice and Police Act 2001 (c. 16)	In section 55(5) paragraph (a) and the word "and" after paragraph (b). In section 60(4) paragraph (a) and the word "or" after paragraph (b). In section 64(3) the word "and" after paragraph (a). In Schedule 1, paragraphs 47 and 105.
Financial Investigations (Northern Ireland) Order 2001 (S.I. 2001/1866 (N.I. 1))	Articles 3(2)(b) and 4(1)(a) and (c), (2), (3) and (5).
Land Registration Act 2002 (c. 9)	In Schedule 11, paragraphs 22 and 32.
This Act	Section 248(2)(a) and (4).

Status:
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