

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Confiscation: Scotland

Accused unlawfully at large

Sections 111-114: Accused unlawfully at large

182. These sections deal with confiscation orders against accused persons unlawfully at large. These are new provisions; there are no provisions relating to persons unlawfully at large in existing Scottish legislation. The Act empowers the court to make a confiscation order against an accused person unlawfully at large who has been convicted of an offence or against whom proceedings have been instituted.
183. *Section 111* deals with the situation where an accused person has been convicted and is then unlawfully at large. The prosecutor may ask the court for a confiscation order to be made against the accused. *Subsection (3)(e)* provides that none of the reconsideration *sections 104-106* apply where a person is still unlawfully at large post conviction and thus that they do all apply where a convicted person unlawfully at large returns.
184. *Section 112* deals with persons unlawfully at large who are unlawfully at large prior to conviction. A confiscation order may only be made against a person unlawfully at large against whom proceedings have been instituted, and if two years have elapsed from the time the accused went unlawfully at large.
185. *Section 113* provides that where an unconvicted accused is unlawfully at large and has a confiscation order made against him, but later ceases to be unlawfully at large, he may apply to the court to have the order varied. Where such a person returns and is subsequently acquitted, *section 114* provides that he can apply to the court to have the confiscation order discharged and the court must do so.