Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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)



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 4

CONFISCATION: NORTHERN IRELAND

Modifications etc. (not altering text)

- C1 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)
- C2 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.)
- C3 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)

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 F1... 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—

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- (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.
- (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

F1 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)

Modifications etc. (not altering text)

C4 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

I1 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).

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- (4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which—
 - (a) a recovery order is in force under section 266, or
 - (b) a forfeiture order is in force under section 298(2), must be ignored.
- (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.

Commencement Information

I2 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);

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- (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 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. 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

I4 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.

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- (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.
- (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

I5 S. 160 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

161 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.
- (2) If the defendant 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.

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- (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 defendant applies to the Crown Court for the period to be extended and the court 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 12 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—
 - (a) the prosecutor, F2 . . .
 - F2(b)

an opportunity to make representations.

Textual Amendments

F2 S. 161(7)(b) and preceding word repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 37, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Modifications etc. (not altering text)

C4 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

I6 S. 161 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

162 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, he must pay interest on the 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.
- (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 161(4),
 - (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.

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(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.

Commencement Information

I7 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 [F3 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 both a confiscation order and 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)) 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.

Textual Amendments

F3 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)

Commencement Information

I8 S. 163 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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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 ^{F4}...:
 - (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 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).

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Textual Amendments

F4 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

I9 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).

- (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

I10 S. 165 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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166 Statement of information

- (1) If the court is proceeding under section 156 in a case where section 156(3)(a) applies, the prosecutor ^{F5}... 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 ^{F6}... believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor ^{F7}... 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 ^{F8}... 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 ^{F9}... does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor ^{F10}... 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 F11... 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.
- (7) If the court makes an order under this section it may at any time vary it by making another one.

Textual Amendments

- F5 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)
- **F6** 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)
- F7 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)
- **F8** 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)
- **F9** 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)
- **F10** 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)

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F11 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)

Commencement Information

III 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 F12... 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.
- (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

F12 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

I12 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.

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- (2) For the purpose of obtaining information to help it in carrying out its functions 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 F13... 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 deciding the available amount under section 159,

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

F13 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)

Commencement Information

I13 S. 168 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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 ^{F14}... 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.

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Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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 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;
 - (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.

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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

F14 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

I14 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.

- (4) F16... 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 ^{F17}... 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 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.

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(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).

Textual Amendments

- F15 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)
- **F16** 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)
- **F17** 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

I15 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 ^{F18}... at the relevant time,

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- (c) the prosecutor ^{F19}... 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 ^{F20}... 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.
- (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;

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- (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

- **F18** 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)
- **F19** 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)
- **F20** 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

I16 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;

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- (c) a receiver appointed under section 198 F22....
- (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;
 - (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

- **F21** 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)
- **F22** 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

I17 S. 172 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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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, or a receiver appointed under section 198 F23..., 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 adjudged 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

F23 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)

Commencement Information

I18 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

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(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 [F24Department of Justice in Northern Ireland] by order.
- (5) The [F25Department of Justice in Northern Ireland] may by order vary the amount for the time being specified in subsection (1)(c).

Textual Amendments

- F24 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)
- F25 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)

Commencement Information

I19 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 [F26Department of Justice in Northern Ireland] may by order vary the amount for the time being specified in subsection (1)(c).

Textual Amendments

F26 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)

Commencement Information

I20 S. 175 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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 F27... applies under section 171.
- (2) In such a case—

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- (a) the prosecutor ^{F28}... 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 ^{F29}... 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

- **F27** 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)
- **F28** 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)
- **F29** 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

I21 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.
- (2) The first condition is that a defendant absconds after—
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court, or
 - (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 F30... applies to the Crown Court to proceed under this section,
 - (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 ^{F31}... 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;

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- (e) sections 169, 170 and 171 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 169 has effect as if subsection (1)(a) read—
 - "(a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156,."
- (7) If the court does not believe it is appropriate for it to proceed under this section, once the defendant ceases to be an absconder section 169 has effect as if subsection (1)(b) read—
 - "(b) there is evidence which was not available to the prosecutor F32... on the relevant date,."

Textual Amendments

- **F30** 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)
- **F31** 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)
- **F32** Words in s. 177(7) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 48(4), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I22 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 two years (starting with the day the court believes he absconded) has ended.
- (3) The second condition is that—
 - (a) the prosecutor F33... 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 ^{F34}... has taken reasonable steps to contact the defendant;

Proceeds of Crime Act 2002 (c. 29)
Part 4 – Confiscation: Northern Ireland
Document Generated: 2024-06-24

Status: Point in time view as at 22/11/2014.

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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) 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.
- (6) Once the defendant has ceased to be an absconder section 171 has effect as if references to the date of conviction were to—
 - (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.

(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

- **F33** 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)
- **F34** 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)

Commencement Information

123 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
 - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

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- (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

I24 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

I25 S. 180 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Proceeds of Crime Act 2002 (c. 29)
Part 4 – Confiscation: Northern Ireland
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Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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 F35...

- (1) If the Crown Court makes a confiscation order the prosecutor ^{F36}... 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 F37... 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 169, 170, 177 or 178.

Textual Amendments

- **F35** 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)
- **F36** 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)
- **F37** 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)

Commencement Information

I26 S. 181 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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.
- (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

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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.
- (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;
 - (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.

Commencement Information 127 S. 182 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

183 Appeal to [F38Supreme Court]

- (1) An appeal lies to the [F39Supreme Court] from a decision of the Court of Appeal on an appeal under section 181.
- (2) An appeal under this section lies at the instance of—
 - (a) the defendant or the prosecutor ^{F40}...;
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the [F42Supreme Court] may confirm, quash or vary the order.
- (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 [F42Supreme 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.

Proceeds of Crime Act 2002 (c. 29)
Part 4 – Confiscation: Northern Ireland
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- (5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the [F42Supreme 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 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.
- (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.

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Textual Amendments

- **F38** 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)
- **F39** 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)
- **F40** Words in s. 183(2)(a) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 51(a), **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- **F41** S. 183(2)(b) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 51(b), **Sch.** 14; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- **F42** 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)

Commencement Information

I28 S. 183 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

Enforcement authority

Textual Amendments F43 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), (2), (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.
- (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 (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (parent or guardian to pay fine etc. instead of child).

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Comr	mencement Information
129	S. 185 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

F44186	Director's application for enforcemen	t

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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

F44 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 (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.

Commencement Information

I30 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

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- (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 [F45prosecutor] 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.

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Textual Amendments

- **F45** 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)
- **F46** 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)

Commencement Information

I31 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 is reasonable cause to believe 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 ^{F47}... 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

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- (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 ^{F48}... 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 ^{F49}... has been made under section 172 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 F50... 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

- **F47** 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)
- **F48** 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)
- **F49** 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)
- **F50** 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

I32 S. 189 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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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;
 - (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.
- (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 Northern Ireland.

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Commencement Information

I33 S. 190 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch. (with arts. 6, 10-13)

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;
 - F51(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 (7) 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).
- (7) If the condition in section 189 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

F51 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)

Commencement Information

I34 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.

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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 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

I35 S. 192 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

193 Appeal to [F52Supreme Court]

- (1) An appeal lies to the [F53Supreme Court] from a decision of the Court of Appeal on an appeal under section 192.
- (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 [F54Supreme Court] may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

Textual Amendments

- **F52** 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)
- F53 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)
- F54 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

I36 S. 193 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

194 Seizure

- (1) If a restraint order is in force a constable [F55, an accredited financial investigato] or a customs officer may seize any realisable property to which it applies to prevent its removal from Northern Ireland.
- (2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.
- [F56(3) The reference in subsection (1) 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.]

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Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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

- F55 Words in s. 194(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), ss. 78(3), 94(1); S.I. 2008/755, art. 17(1)(e) (with art. 17(2))
- **F56** S. 194(3) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 78(4)**, 94(1); S.I. 2008/755, art. 17(1)(e) (with art. 17(2))

Commencement Information

I37 S. 194 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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)

C5 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

I38 S. 195 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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I^{F57}Search and seizure powers

Textual Amendments

F57 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]

F58(aa)

- (b) a constable, 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 under section 453.

Textual Amendments

F58 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)

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 is reasonable cause to believe 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

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- (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.
- (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.

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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—
 - (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

[where applicable, in accordance with subsection (6A) or (6B).]

- [F60(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 ^{F61}(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 195B is met, the offence mentioned in that condition,

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(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.

[F62(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

- F59 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)
- **F60** 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)
- **F61** 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)
- **F62** 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.

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- (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).

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

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for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer.

- [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,]
 - (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, 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

F63 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)

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 $[^{F64}$ 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 remuneration or expenses to be paid, are to be determined by the [F65] Department of Justice].
- ["Government department" includes a Northern Ireland department.] ^{F66}(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,

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- (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

- F64 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))
- F65 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))
- F66 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))

1951 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 $[F^{67}]$ Department of Justice].
- (6) The [F68 Department of Justice] must—
 - (a) publish any report received under subsection (5), and
 - (b) lay a copy before [F69the Northern Ireland Assembly].
- [Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the F⁷⁰(6A) 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 [F71]Department of Justice] must exclude from the report any matter which the [F71]Department of Justice] thinks is likely to prejudice any criminal investigation or criminal proceedings.

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(8) If the [F71Department of Justice] excludes any matter from the report the [F71Department of Justice] must comply with subsection (6) in relation to the whole of the report as soon as the [F71Department of Justice] thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

Textual Amendments

- F67 Words in s. 195I(5) substituted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))
- F68 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))
- **F69** 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))
- F70 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))
- F71 Words in s. 195I(7)(8) substituted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))

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
 - (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.

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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
 - (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,
 - an immigration officer;

^{F72}(aa)

- (b) a constable.
- (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.

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- (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

F72 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)

195N Discharge, variation and lapse of detention order

- (1) An order under section [F73195M] 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).

Textual Amendments

F73 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

1950 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.

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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 1950.
- (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.

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.

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Code of practice about search and seizure and detention of property[: Secretary of State]

195S Codes of practice F⁷⁴: Secretary of State

- (1) The Secretary of State must make a code of practice in connection with—
 - (a) the carrying out by [F75 officers of Revenue and Customs] of the functions conferred by section 195C to 195H,
 - (b) the carrying out by senior officers of their functions under section 195G, and
 - (c) the detention of property [F76by officers of Revenue and Customs and [F77NCA officers]] under or by virtue of sections 190A, 193A and 195J to 195P.

[In subsection (1) senior officers means officers of Revenue and Customs of a F78(1A) rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of 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.
- (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

- F74 Words in s. 195S title inserted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))
- F75 Words in s. 195S(1)(a) substituted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))
- Words in s. 195S(1)(c) inserted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))
- F77 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)

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F78 S. 195S(1A) inserted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))

[F79] 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,
 - (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.]

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Textual Amendments

F79 S. 195T inserted by 2009 c. 26, s. 57(2) (as amended (22.11.2014 for specified purposes in accordance with S.I. 2014/3101, art. 3) 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))

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.

Commencement Information

I39 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;

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- (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.
- [F80(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

F80 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))

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Modifications etc. (not altering text)

C6 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

I40 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.

Commencement Information

I41 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;

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- (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.
- [F81(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

F81 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))

Modifications etc. (not altering text)

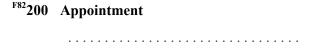
C7 S. 199(6) excluded (24.2.2003) by Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 (S.I. 2002/3133), arts. 1, 12(3)

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Commencement Information

I42 S. 199 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

Director's receivers



Textual Amendments

F82 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)

F83201 Powers

Textual Amendments

F83 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.

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- (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 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

I43 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).
- (4) If the chief clerk received the sums under section 202 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 the receiver appointed under section 198.
- (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.
- [F84(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,

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- a member of staff of the Northern Ireland Policing Board,
- an accredited financial investigator.
- a member of staff of the Public Prosecution Service for Northern Ireland,
- a member of staff of the Serious Fraud Office,
- a member of staff of a Northern Ireland department,
- a member of staff of the Commissioners for Her Majesty's Revenue and (g) Customs,
- [F85(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

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)

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

S. 203 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

204	Director's receivers
F86 20 5	Sums received by Director

Textual Amendments

204

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)

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.

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- (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[F87 or 198].

Textual Amendments

F87 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

I45 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).

	nencement Information
I46	S. 207 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

208	Director's receivers	

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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

F88 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 [F89] 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

F89 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

I47 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 [F90 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 ^{F91}...,

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 F92...—
 - (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

- F90 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)
- **F91** 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)
- **F92** 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)

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Commencement Information

I48 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 [F93 section 198 or 199]
 - (a) the receiver;
 - (b) the person who applied for the order ^{F94}...;
 - (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

- F93 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)
- **F94** 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

I49 S. 211 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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 F95....
- (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.

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(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).

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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 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

- **F95** 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)
- **F96** 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

I50 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 ^{F97}... 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 ^{F98}..., 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;
 - (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 ^{F99}...;
 - (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.

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Textual Amendments

- **F97** 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)
- **F98** 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)
- **F99** 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

I51 S. 213 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

214 Appeal to [F100 Supreme Court]

- (1) An appeal lies to the [F101] Supreme Court I 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 [F102Supreme Court] may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

Textual Amendments

- **F100** 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)
- **F101** 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)
- **F102** 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

I52 S. 214 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Seized money

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—
 - (a) has been seized by a constable under Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (general power of seizure etc), and
 - (b) is held in an account maintained by a police force with a bank or a building society.

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- (3) This section also applies to money which is held by a person and which—
 - (a) has been seized by a customs officer under Article 21 of the 1989 Order as applied by order made under Article 85(1) of that Order, and
 - (b) is held in an account maintained by the Commissioners of Customs and Excise with a bank or a building society.
- (4) This section applies if the following conditions are satisfied—
 - (a) a restraint order has effect in relation to money to which this section applies;
 - (b) a receiver has not been appointed under section 198 in relation to the money;
 - (c) a confiscation order is made against the person by whom the money is held;
 - F103(d)
 - (e) any period allowed under section 161 for payment of the amount ordered to be paid under the confiscation order has ended.
- (5) In such a case on the application of the prosecutor a magistrates' court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order.
- (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 [F104] Department of Justice in Northern Ireland] may by order substitute another sum for the sum for the time being specified in subsection (6)(a).
- (8) For the purposes of this section—
 - (a) a bank is a deposit-taking business within the meaning of the Banking Act 1987 (c. 22);
 - (b) "building society" has the same meaning as in the Building Societies Act 1986 (c. 53);
 - (c) "appropriate chief clerk" has the same meaning as in section 202(7).

Textual Amendments

F103 S. 215(4)(d) repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 66, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

F104 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)

Commencement Information

I53 S. 215 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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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,
 - (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

I54 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

- (1) This section applies to—
 - (a) the powers conferred on a court by sections 189 to [F105207] and sections 210 to 215;
 - (b) the powers of a receiver appointed under section 196 [F106 or 198].
- (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;

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- (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 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

F105 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)

F106 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)

Commencement Information

I55 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

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- (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.

Commencement Information

I56 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

I57 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—

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- (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.
- (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 [F107] 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;
- [F108(ba) if the person in default was a [F109National Crime Agency officer], the compensation is payable by [F110the 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.
 - [FIII(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

- **F107** 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)
- **F108** 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)
- **F109** 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)
- **F110** 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)
- **F111** 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

I58 S. 220 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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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.
- (3) Compensation under this section is payable—
 - (a) to the applicant;
 - (b) by the Lord Chancellor.

Modifications etc. (not altering text)

C8 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

I59 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 F112... believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
 - (c) the prosecutor F113... 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.

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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 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.
- (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

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F112 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)
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F113 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

I60 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.

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- (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—
 - (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 [F114Department of Justice in Northern Ireland] may by order amend Schedule 5.
- (8) The [F115Department of Justice in Northern Ireland] may by order vary the amount for the time being specified in subsection (4).

Textual Amendments

F114 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)

F115 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

I61 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.

Changes to legislation: Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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 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.

Commencement Information

I62 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

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

Commencement Information

I63 S. 225 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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

I64 S. 226 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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

I65 S. 227 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

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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—
 - (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

I66 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.

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Commencement Information

I67 S. 229 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

230 Free property

Property is free unless 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) (deprivation orders);
- (e) section 23[F116, 23A] or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);
- (f) section [F117245A,] 246, [F118255A, 256,] 266, 295(2) or 298(2) of this Act.

Textual Amendments

F116 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)

F117 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)

F118 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)

Commencement Information

I68 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

I69 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.

Proceeds of Crime Act 2002 (c. 29)
Part 4 – Confiscation: Northern Ireland
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- (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, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) or liquidator;
 - (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;
 - (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).

Modifications etc. (not altering text)

- C9 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)
- C10 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

I70 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.

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- (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—
 - (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 [F119]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 [F119]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.
- (7) In applying subsection (6) any power to extend the time for making an application for leave to appeal must be ignored.
- (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

F119 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)

Commencement Information

I71 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—

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- (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 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

I72 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.
- (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; and for this purpose any power to grant leave to appeal out of time must be ignored.

Commencement Information

I73 S. 235 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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.

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- (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

I74 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 [F120]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

F120 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

I75 S. 237 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

238 Procedure on appeal to the

- F121 [(1)] In relation to appeals to the [F122 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).
- [F123(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

- **F121** 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)
- **F122** 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)
- **F123** 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)

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Commencement Information

I76 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

I77 S. 239 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

Status:

Point in time view as at 22/11/2014.

Changes to legislation:

Proceeds of Crime Act 2002, Part 4 is up to date with all changes known to be in force on or before 24 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.