



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Enforcement as fines etc

38 Provisions about imprisonment or detention

- (1) Subsection (2) applies if—
 - (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and
 - (b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).
- (2) In such a case the term of imprisonment or of detention under section 108 of [^{F1}the Powers of Criminal Courts (Sentencing) Act 2000] (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above.
- (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences).
- (4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored—
 - (a) any sentence suspended under [^{F2}section 264 or 277 of the Sentencing Code] which has not taken effect at the time the warrant is issued;
 - (b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (c. 45) (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison;

Changes to legislation: Proceeds of Crime Act 2002, Section 38 is up to date with all changes known to be in force on or before 26 April 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) View outstanding changes

- (c) any term of imprisonment or detention fixed under [^{F3}section 129(3) of the Sentencing Code] (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.

Textual Amendments

- F1** Words in s. 38(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 193(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F2** Words in s. 38(4)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 193(3)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F3** Words in s. 38(4)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 193(3)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

- C1** Pt. 2 applied by Terrorism Act 2000 (c. 11), Sch. 8 paras. 8(5A), 34(3A) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7); S.I. 2003/333, art. 2, Sch.)
- C2** Pt. 2 applied by Police and Criminal Evidence Act 1984 (c. 60), ss. 56(5B), 58(8B) (as substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, Sch.)
- C3** Pt. 2 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(5)**
- C4** Pt. 2 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **10(5)**
- C5** S. 38 excluded (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **15(6)**

Commencement Information

- I1** S. 38 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)