



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Confiscation orders

92 Making of order

- (1) The court must act under this section where the following three conditions are satisfied.
- (2) The first condition is that an accused falls within either of the following paragraphs—
 - (a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or
 - (b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.
- (3) The second condition is that the prosecutor asks the court to act under this section.
- (4) The third condition is that the court decides to order some disposal in respect of the accused; and an absolute discharge is a disposal for the purpose of this subsection.
- (5) If the court acts under this section it must proceed as follows—
 - (a) it must decide whether the accused has a criminal lifestyle;
 - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
 - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (6) If the court decides under subsection (5)(b) or (c) that the accused has benefited from the conduct referred to—
 - (a) it must decide the recoverable amount, and
 - (b) it must make an order (a confiscation order) requiring him to pay that amount.

Changes to legislation: *Proceeds of Crime Act 2002, Section 92 is up to date with all changes known to be in force on or before 08 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*

[^{F1}Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the accused to pay the recoverable amount.]

- (7) But the court must treat the duty in subsection (6) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the accused in respect of loss, injury or damage sustained in connection with the conduct.
- (8) Before making an order under this section the court must take into account any representations made to it by any person whom the court thinks is likely to be affected by the order.
- (9) The standard of proof required to decide any question arising under subsection (5) or (6) is the balance of probabilities.
- (10) The first condition is not satisfied if the accused is unlawfully at large (but section 111 may apply).
- (11) For the purposes of any appeal or review, an order under this section is a sentence.
- (12) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).
- (13) In this section and sections 93 to 118 “the court” means the High Court of Justiciary^{F2}, the Sheriff Appeal Court] or the sheriff.

Textual Amendments

- F1** Words in s. 92(6) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(2)(c), **Sch. 4 para. 35**; [S.S.I. 2016/11](#), reg. 2(j)
- F2** Words in s. 92(13) inserted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 3** (with art. 4(2))

Modifications etc. (not altering text)

- C1** Pt. 3 applied by [Terrorism Act 2000 \(c. 11\)](#), Sch. 8 paras. 17(4A), 34(3A) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 39(4)(5)**; [S.S.I. 2003/210](#), art. 2(1)(b)(2), sch. (with art. 7); [S.I. 2003/333](#), art. 2, Sch.

Commencement Information

- I1** S. 92 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)** (with arts. 3(1), 5, 7)

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\(4\)](#)