

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Confiscation: England and Wales

Seized money

Section 67: Seized money

120. *Section 67* provides the magistrates' court with a new power to order any realisable property in the form of money in a bank or building society account to be paid to the justices' chief executive in satisfaction of a confiscation order. The power is only available where a confiscation order has been made, time to pay has expired, the confiscation order is being enforced by a justices' chief executive (i.e. not by the Director) and the money is subject to a restraint order.
121. The new power provides an alternative to garnishee proceedings to enable justices' chief executives to seize money held by the defendant in a bank or building society account. A garnishee order is an order to a person who owes a debt to one person (the defendant) to pay it to another (the justices' chief executive). It is usually used to seize money of the defendant's in a bank account. A garnishee order can only be made by the civil courts (the High Court or a county court). Unlike garnishee orders, the new order will be made by the magistrates' court.
122. *Section 67* also enables justices' chief executives to confiscate money in the form of cash which has been seized from defendants as evidence and subsequently paid into a bank account. Under earlier legislation, the only legal means of getting at the money without the defendant's consent is by having a receiver appointed. *Subsection (6)* enables the magistrates' court to order a bank or building society which fails to comply with one of the new orders to pay a sum of up to £5,000. It also provides that this sum is to be treated as if it were adjudged to be paid by a conviction of the court. The effect of this is that the fine enforcement powers in Part 3 of the Magistrates' Courts Act 1980 are available to enforce payment of this sum.