



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 3

CONFISCATION: SCOTLAND

Realisation of property: general

128 Enforcement administrators

- (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) In such a case the court may on the application of the prosecutor exercise the powers conferred on it by this section.
- (3) The court may appoint an administrator in respect of realisable property.
- (4) An appointment of an administrator may be made subject to conditions or exceptions.
- (5) The court may confer the powers mentioned in subsection (6) on an administrator appointed under subsection (3) above.
- (6) Those powers are—
 - (a) power to take possession of any realisable property;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise any realisable property, in such manner as the court may specify.
 - [^{F1}(d) so far as the property consists of cryptoassets, power to destroy the property.]
- (7) The court may order any person who has possession of realisable property to give possession of it to an administrator referred to in subsection (5).

Changes to legislation: Proceeds of Crime Act 2002, Section 128 is up to date with all changes known to be in force on or before 19 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

- (8) The clerk of court must notify the accused and any person subject to an order under subsection (7) of the making of the order.
- (9) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment.
- (10) The court—
- (a) may order a person holding an interest in realisable property to make to the administrator such payment as the court specifies in respect of a beneficial interest held by the accused 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.
- (11) The court must not—
- (a) confer the power mentioned in subsection (6)(b) [^{F2}or (c)] [^{F2}, (c) or (d)] in respect of property, or
 - (b) exercise the power conferred on it by subsection (10) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (12) 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.
- (13) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.
- [^{F3}(13A) The court may confer the power mentioned in subsection (6)(d) only where—
- (a) it is not reasonably practicable to realise the cryptoassets in question, or
 - (b) there are reasonable grounds to believe that the realisation of the cryptoassets would be contrary to the public interest, having regard in particular to how likely it is that the entry of the cryptoassets into general circulation would facilitate criminal conduct by any person.
- (13B) An order conferring that power—
- (a) must set out the court's assessment of the market value of the cryptoassets to which it relates;
 - (b) may confer power to destroy the cryptoassets only to the extent that their market value, as set out in the order, is less than or equal to the amount remaining to be paid under the confiscation order.
- (13C) If the administrator destroys any cryptoassets in the exercise of that power, the accused is to be treated as having paid, towards satisfaction of the confiscation order, an amount equal to the market value, as set out in the order, of the cryptoassets which have been destroyed.]
- (14) Subsection (6) does not apply to property for the time being subject to a charge under—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);

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- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 199/2588 (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)).

Textual Amendments

- F1** S. 128(6)(d) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(4)(a), **Sch. 8 para. 27(2)**
- F2** Words in s. 128(11)(a) substituted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(4)(a), **Sch. 8 para. 27(3)**
- F3** S. 128(13A)-(13C) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(4)(a), **Sch. 8 para. 27(4)**

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. 128 in force at 24.3.2003 by [S.S.I. 2003/210](#), **art. 2(1)(a)**

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\(4\)](#)