



Policing and Crime Act 2009

2009 CHAPTER 26

PART 5

PROCEEDS OF CRIME

Confiscation

59 Power to sell seized personal property: Scotland

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 131 insert—

“Seized personal property

131A Seized personal property

- (1) This section applies to moveable property which is held by a person and which—
 - (a) has been seized by an appropriate officer under a relevant seizure power, or
 - (b) has been produced to an appropriate officer in compliance with a production order under section 380.
- (2) This section applies if the following conditions are satisfied—
 - (a) a confiscation order is made against the person by whom the property is held;
 - (b) an administrator has not been appointed under section 128 in relation to the property;
 - (c) any period allowed under section 116 for payment of the amount ordered to be paid under the confiscation order has ended.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Section 59. (See end of Document for details)

- (3) In such a case the sheriff may by order authorise an appropriate officer to realise the property.
- (4) In this section “appropriate officer” and “relevant seizure power” have the same meaning as in section 120A.

131B Costs of storage and realisation

- (1) This section applies if the sheriff makes an order under section 131A.
- (2) The sheriff may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
 - (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
 - (b) realising the property.
- (3) If the sheriff makes a determination under this section the appropriate officer is entitled to payment of the amount under section 131(5A).
- (4) A determination under this section may be made on the same occasion as the section 131A order or on any later occasion; and more than one determination may be made in relation to any case.
- (5) In this section “appropriate officer” has the same meaning as in section 120A.

131C Sections 131A and 131B: appeals

- (1) If a sheriff decides not to make an order under section 131A, an appropriate officer may appeal to the Court of Session.
- (2) If a sheriff makes an order under section 131A, a person affected by the order may appeal to the Court of Session.
- (3) But the person mentioned in section 131A(2)(a) may not appeal.
- (4) An appropriate officer may appeal to the Court of Session against—
 - (a) a determination made by a sheriff under section 131B;
 - (b) a decision by a sheriff not to make a determination under that section.
- (5) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the decision or (as the case may be) the order was made.
- (6) On an appeal under this section the Court of Session may—
 - (a) confirm, quash or vary the decision or (as the case may be) the order, or
 - (b) make such order as Court of Session believes is appropriate.
- (7) In this section “appropriate officer” has the same meaning as in section 120A.

131D Proceeds of realisation

- (1) This section applies to sums which—
 - (a) are in the hands of an appropriate officer, and

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- (b) are the proceeds of the realisation of property under section 131A.
- (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 sheriff;
 - (c) third, they must be paid to the appropriate clerk of court on account of the amount payable under the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—
- (a) among such persons who held (or hold) interests in the property represented by the proceeds as the sheriff directs, and
 - (b) in such proportions as the sheriff directs.
- (4) Before making a direction under subsection (3) the sheriff must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to the sheriff.
- (5) In this section—
- (a) “appropriate officer” has the same meaning as in section 120A;
 - (b) “appropriate clerk of court” means the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1).”
- (3) In section 131 (sums received by clerk of court)—
- (a) in subsection (3)(b) after “section 130(3)(a)” insert “ or 131D(2)(a) ”,
 - (b) in subsection (5) after “130” insert “ or 131D ”, and
 - (c) after subsection (5) insert—
- “(5A) If the clerk of court received the sums from an appropriate officer under section 130 or 131D, the clerk of court must next apply them in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 131B.”

Commencement Information

II S. 59 in force at 1.6.2015 by S.I. 2015/983, art. 2(2)(a)

Changes to legislation:

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