



Serious Crime Act 2015

2015 CHAPTER 9

PART 1

PROCEEDS OF CRIME

CHAPTER 3

NORTHERN IRELAND

Confiscation: other amendments

28 Time for payment

(1) For section 161 of the Proceeds of Crime Act 2002 substitute—

“161 Time for payment

- (1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.
- (2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid—
 - (a) in a specified period, or
 - (b) in specified periods each of which relates to a specified amount.
- (3) A specified period—
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed three months.
- (4) If—
 - (a) within any specified period the defendant applies to the Crown Court for that period to be extended, and

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- (b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,
the court may make an order extending the period (for all or any part or parts of the amount in question).
- (5) An extended period—
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed six months.
- (6) An order under subsection (4)—
 - (a) may be made after the end of the specified period to which it relates, but
 - (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.
- (7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able—
 - (a) to pay the amount remaining to be paid, or
 - (b) to pay an amount towards what remains to be paid,
 that amount is required to be paid no later than that day.
- (8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.”
- (2) In section 162 of that Act (interest on unpaid sums), for subsection (3) substitute—
 - “(3) If—
 - (a) an application has been made under section 161(4) for a specified period to be extended,
 - (b) the application has not been determined by the court, and
 - (c) the period of six months starting with the day on which the confiscation order was made has not ended,
 the amount on which interest is payable under this section does not include the amount to which the specified period relates.”
- (3) In section 235 of that Act (interpretation: confiscation orders), after subsection (1) insert—
 - “(1A) The “amount payable” under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.”

29 Orders for securing compliance with confiscation order

After section 163 of the Proceeds of Crime Act 2002 insert—

“163A Orders for securing compliance with confiscation order

- (1) This section applies where the court makes a confiscation order.
- (2) The court may make such order as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”).

- (3) The court must consider whether to make a compliance order—
 - (a) on the making of the confiscation order, and
 - (b) if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the prosecutor.
- (4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in subsection (2).
- (5) The court may discharge or vary a compliance order on an application made by—
 - (a) the prosecutor;
 - (b) any person affected by the order.

163B Appeals against orders under section 163A

- (1) If on an application under section 163A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.
- (2) The following persons may appeal to the Court of Appeal in respect of the Crown Court's decision to make, discharge or vary a compliance order—
 - (a) the prosecutor;
 - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may—
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.
- (4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).
- (5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (6) On an appeal under subsection (4) the Supreme Court may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.
- (7) In this section “compliance order” means an order made under section 163A.”

30 Variation or discharge

- (1) In section 173 of the Proceeds of Crime Act 2002 (inadequacy of available amount: variation of confiscation order), in subsection (1)(b), after “the defendant” insert “or the prosecutor”.
- (2) After section 175 of that Act insert—

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**“175A Recovery from estate of deceased defendant impractical:
discharge of order**

- (1) This section applies if—
- (a) a court has made a confiscation order,
 - (b) the defendant dies while the order is not satisfied, and
 - (c) the prosecutor applies to the Crown Court for the discharge of the order.
- (2) The court may discharge the order if it appears to the court that—
- (a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or
 - (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.”
- (3) Section 175A of that Act (inserted by subsection (2) above) applies to—
- (a) a confiscation order made under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), or
 - (b) a confiscation order made under Part 2 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)),
- as it applies to a confiscation order made under the Proceeds of Crime Act 2002.

31 Absconding defendants

- (1) In section 177 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute—
- “(2) The first condition is that a defendant falls within either of the following paragraphs—
- (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;
 - (b) he absconds after being committed to the Crown Court in respect of an offence or offences under section 218 below (committal with a view to a confiscation order being considered).”
- (2) For subsections (6) and (7) of that section substitute—
- “(6) Once the defendant ceases to be an absconder—
- (a) section 169 has effect as if subsection (1) read—
- “(1) This section applies if—
- (a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156,
 - (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 156, and
 - (c) the court believes it is appropriate for it to do so.”;
- (b) section 170 has effect as if subsection (4) read—

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“(4) The second condition is that—

- (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and
 - (b) the court believes it is appropriate for it to do so.”;
- (c) section 171 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
 - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
 - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
 - (d) the court believes it is appropriate for it to do so.”;
- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 169, 170 or 171 (as applied by this subsection).”

(3) In section 178 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “three months”.

(4) For subsection (6) of that section substitute—

“(6) Once the defendant has ceased to be an absconder—

- (a) section 171 has effect as if subsection (1) read—

“(1) This section applies if—

- (a) a court has made a confiscation order,
 - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
 - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
 - (d) the court believes it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 171 (as applied by this subsection).”

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32 Default sentences

- (1) In section 185 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert—

“(2A) Where a court is fixing a term of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

TABLE

<i>Amount</i>	<i>Maximum term</i>
£10,000 or less	6 months
More than £10,000 but no more than £500,000	5 years
More than £500,000 but no more than £1 million	7 years
More than £1 million	14 years

- (2B) The Department of Justice in Northern Ireland may by order—

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of amounts ordered to be paid under a confiscation order;
 - (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of the power in paragraph (a) of this subsection) or to add any entry.”
- (2) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), after “section” insert “185(2B),”.

33 Conditions for exercise of restraint order powers

- (1) In section 189 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.

- (2) In section 190 of that Act (restraint orders), after subsection (7) insert—

“(7A) Subsections (7B) and (7C) apply where the High Court makes a restraint order (by virtue of the first condition in section 189) as a result of a criminal investigation having been started in Northern Ireland with regard to an offence.

- (7B) The court—

- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
- (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 191(3)).

(7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—

- (a) must give reasons for its decision, and
- (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 191(3)).”

34 Continuation of restraint order after quashed conviction

In section 191 of the Proceeds of Crime Act 2002 (application, discharge and variation of restraint orders), after subsection (6) insert—

“(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—

- (a) the proceedings are concluded by reason of a defendant’s conviction for an offence being quashed,
- (b) the order is in force at the time when the conviction is quashed, and
- (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.

(6B) But the court must discharge the restraint order—

- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
- (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
- (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.”

35 Conditions for exercise of search and seizure powers

(1) In section 195B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.

(2) In section 195G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert—

- “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,”.

36 Seized money etc

(1) In section 215 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute—

“(5) If—

- (a) a confiscation order is made against a person holding money to which this section applies, and

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(b) a receiver has not been appointed under section 198 in relation to the money,
 a magistrates' court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order."

(2) After subsection (5) of that section insert—

“(5A) A person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.

(5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates' court—

- (a) may make an order under subsection (5) only if the extent of the person's interest in the money has been determined under section 160A, and
- (b) must have regard to that determination in deciding what is the appropriate order to make.”

(3) After subsection (7) of that section insert—

“(7A) The Department of Justice in Northern Ireland may by order amend this section so that it applies not only to money held in an account maintained with a bank or building society but also to—

- (a) money held in an account maintained with a financial institution of a specified kind, or
- (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.

(7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.”

(4) In section 215A of that Act (seized personal property), for subsections (2) and (3) substitute—

“(3) If—

- (a) a confiscation order is made against the person by whom the property is held, and
- (b) a receiver has not been appointed under section 198 in relation to the property,

a magistrates' court may by order authorise an appropriate officer to realise the property.”

(5) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), before “223(7) or (8)” insert “215(7A).”