

Confiscation orders

Confiscation of the proceeds of crime can be ordered under CJA 1988, Drug Trafficking Act 1994 and Proceeds of Crime Act 2002.

Following conviction, if the Crown Court is satisfied that the person has made financial gain from their crime, it can impose a confiscation order of the amount gained. If the court finds the defendant had a criminal lifestyle, confiscation can also be applied to property and expenditure assumed to be linked to that lifestyle

If the person can demonstrate that they do not have capacity to pay, a lesser amount may be ordered. The court also specifies the period to be served in prison if they fail to pay. This period of imprisonment is called a 'term in default'

Under s.10 of the Serious Crime Act 2015 there is a 4-tier sliding scale of default terms:

Confiscation Order	Max Term
£10,000 or less	6 months
> £10,000 to £500,000	5 years
> £500,000 to £1,000,000	7 years
More than £1,000,000	14 years

Prisoners can only be detained to serve a term in default at their sentence release date if the default term has been activated by a Magistrates' Court and a warrant of commitment issued to the prison.

Confiscation order proceedings

Confiscation order proceedings are complex and can take years to resolve. Prisoners who have ongoing confiscation order proceedings retain all their usual sentence entitlements. However, the fact that a prisoner may receive a further term of imprisonment can affect the prison's considerations of their suitability for ROTL and recategorisation to Category D/open conditions. Once the default term is activated, this will also affect their eligibility for early release schemes.

Early release schemes

The default term is a 'term of imprisonment', and not a 'sentence of imprisonment', as July 2022

imposed for a criminal offence. This affects prisoners' eligibility for Home Detention Curfew and the Early Removal Scheme, both of which only apply to sentences of imprisonment.

Home Detention Curfew (HDC)

Prisoners are not eligible for HDC on a default term. However, they may still be eligible for HDC on the original criminal sentence providing there is a minimum of ten days to spend on HDC between the end of the custodial period of the default term and the Conditional Release Date of the original sentence.

A term in default begins on the day after the HDC eligibility date (HDCED) if the decision to grant HDC is made on or prior to the HDCED. If the decision to grant HDC is made after the HDCED, the term in default is added to the decision date. In either case HDC can only be granted if there is a minimum of ten days to spend on HDC between the end of the custodial period of the default term and the Automatic Release Date of the original criminal sentence.

Early Removal Scheme (ERS)

Foreign national prisoners who have a default term to serve are not eligible for ERS, although very short default terms may be waived on application for those serving long sentences.

Release dates

A term in default runs consecutive to (ie after) the original sentence of imprisonment. Default terms cannot be aggregated or single termed with other custodial sentences, and release dates are calculated separately.

For prisoners released by the Parole Board, the default term starts on their notional parole release date

Release from the default term is automatic and calculated as follows:

- Where the warrant of commitment is dated before 4 April 2005 and the term is

for less than 12 months, release is at the halfway point. If the term is for 12 months or more, release is at the two thirds point.

- Where the warrant of commitment is dated on or after 4 April 2005 release is at the halfway point whatever the length of the term, unless the following applies:
- The prisoner will have to serve the full default term if:

i) the default term is ordered after 1 June 2015

and

ii) the amount of the order is £10 million or more.

In such circumstances, the prisoner would be required to serve the full default sentence irrespective of how much of the confiscation order has been paid or remains to be paid.

Appropriations

When a prisoner is imprisoned on a term in default, the prison must usually take away any money in their possession to help pay the confiscation order, but only if this will advance the release date by reducing the term. Prisoners have the right to appeal the decision to take their money. The governor may decide not to appropriate the money if they are satisfied, for example, that the funds do not belong to the prisoner, or that undue hardship to the prisoner or his or her family would result. A prisoner who has had money appropriated must be informed of the amount taken and its effect on their release date.

Serving the term in default

Prisoners serving a default term have the status of civil prisoners. Details of the rights of civil prisoners can be found in PSO 4600.

Adjudications

Additional days cannot be awarded as a punishment to prisoners serving a term in default.

Open Conditions

The fact that a prisoner is subject to a confiscation order does not preclude a transfer to open conditions. However, prisons frequently use it as one and some legal challenges to such decisions have been unsuccessful. Prison Service Instruction 16/2010 *Confiscation Orders* requires the prison to consider the following factors when assessing risk and particularly the risk of abscond:

- Whether the prisoner is in default and the size of the outstanding confiscation order;
- Whether the prisoner may have hidden his/her assets abroad and therefore may abscond to be able to access them or make it harder for the authorities to find them or access them by no longer being able to be questioned on their whereabouts or to sign powers of attorney over them.

If a prisoner is already in open conditions when a confiscation order is imposed, this may trigger a categorisation review resulting in return to closed conditions.

Release on Temporary Licence (ROTL)

The ROTL eligibility criteria for prisoners with default terms to serve are based on their overall period of imprisonment (the criminal sentence plus the default term). This is the only purpose for which the two custodial periods are aggregated. Normal ROTL criteria apply.

All risk assessments must reflect the individual circumstances of a prisoner, giving particular consideration to the risk of absconding in light of impending proceedings or the presence of the unpaid confiscation order.

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