



Criminal Finances Act 2017

2017 CHAPTER 22

PART 1

PROCEEDS OF CRIME

CHAPTER 5

MISCELLANEOUS

Miscellaneous provisions relating to Scotland

28 Seized money

After section 131 of the Proceeds of Crime Act 2002 insert—

“Seized money

131ZA Seized money

- (1) This section applies to money which—
 - (a) is held by a person, and
 - (b) is held in an account maintained by the person with a bank or building society.
- (2) This section also applies to money which is held by a person and which—
 - (a) has been seized under a relevant seizure power by a constable or another person lawfully exercising the power, and
 - (b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.
- (3) But this section applies to money only so far as the money is free property.

Status: This is the original version (as it was originally enacted).

- (4) Subsection (5) applies if—
- (a) a confiscation order is made against a person holding money to which this section applies, and
 - (b) an administrator has not been appointed under section 128 in relation to the money.
- (5) The relevant court may order the appropriate person to pay, within such period as the court may specify, the money or a portion of it specified by the court to the appropriate clerk of court on account of the amount payable under the confiscation order.
- (6) An order under subsection (5) may be made—
- (a) on the application of the prosecutor, or
 - (b) by the relevant court of its own accord.
- (7) The Scottish Ministers may by regulations amend this section so that it applies by virtue of subsection (1) 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.
- (8) Regulations under subsection (7) may amend this section so that it makes provision about realising an instrument or product within subsection (7)(b) or otherwise obtaining money from it.
- (9) In this section—
- “appropriate clerk of court”, in relation to a confiscation order, 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);
- “appropriate person” means—
- (a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;
 - (b) in any other case, the person on whose authority the money is detained;
- “bank” means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;
- “building society” has the same meaning as in the Building Societies Act 1986;
- “relevant court”, in relation to a confiscation order, means—
- (a) the court which makes the confiscation order, or
 - (b) the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1);
- “relevant seizure power” means a power to seize money conferred by or by virtue of—
- (a) a warrant granted under any enactment or rule of law, or
 - (b) any enactment, or rule of law, under which the authority of a warrant is not required.

- (10) In the definition of “bank” in subsection (9), “authorised deposit-taker” means—
- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;
 - (b) a person who—
 - (i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and
 - (ii) accepts deposits;
 - (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.
- (11) A reference in subsection (10) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.”

29 Recovery orders relating to heritable property

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) After section 245 insert—

“245ZA Notice to local authority: Scotland

- (1) This section applies if, in proceedings under this Chapter for a recovery order, the enforcement authority applies under section 266(8ZA) for decree of removing and warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse.
- (2) The enforcement authority must give notice of the application to the local authority in whose area the dwellinghouse is situated.
- (3) Notice under subsection (2) must be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.
- (4) In this section—
“dwellinghouse” has the meaning given by section 11(8) of the Homelessness etc. (Scotland) Act 2003;
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and “area”, in relation to a local authority, means the local government area for which the authority is constituted.”
- (3) In section 266 (recovery orders), after subsection (8) insert—
“(8ZA) If the recoverable property in respect of which the Court of Session makes a recovery order includes heritable property, the Court of Session must, on the application of the enforcement authority, also grant decree of removing and warrant for ejection, enforceable by the trustee for civil recovery, in relation to any persons occupying the heritable property.”
- (4) In section 267(3) (functions of trustee for civil recovery), after paragraph (b) insert—

Status: This is the original version (as it was originally enacted).

“(ba) if decree of removing and warrant for ejection is granted by the Court of Session under section 266(8ZA), to enforce the decree and warrant.”.

(5) After section 269 insert—

“269A Leases and occupancy rights: Scotland

- (1) This section applies where, in making a recovery order, the Court of Session also grants decree of removing and warrant for ejection under section 266(8ZA) in relation to any persons occupying the heritable property.
- (2) Any lease under which a person has the right to occupy the heritable property (or part of it) for residential or commercial purposes is terminated on the granting of decree of removing and warrant for ejection.
- (3) Any other right to occupy the heritable property (or part of it) which subsists immediately before the granting of decree of removing and warrant for ejection is extinguished on the granting of the decree and warrant.
- (4) Subsection (3) does not apply in relation to a right under a lease to occupy or use the property other than those mentioned in subsection (2).
- (5) Where the heritable property is vested in the trustee for civil recovery under the recovery order, the following enactments do not apply in relation to the heritable property—
 - (a) sections 34 to 38A of the Sheriff Courts (Scotland) Act 1907 (removings, notice of termination of tenancy and notice of removal);
 - (b) the Tenancy of Shops (Scotland) Act 1949;
 - (c) the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - (d) Parts 2 and 3 of the Rent (Scotland) Act 1984 (security of tenure and protection against harassment and unlawful eviction);
 - (e) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (termination of certain leases);
 - (f) Part 2 of the Housing (Scotland) Act 1988 (rented accommodation: security of tenure etc.);
 - (g) Chapter 3 of Part 3 of the Civil Partnership Act 2004 (occupancy rights and tenancies);
 - (h) Part 5 of the Private Housing (Tenancies) (Scotland) Act 2016 (security of tenure, termination of tenancy and eviction).”

30 Money received by administrators

- (1) Paragraph 6 of Schedule 3 to the Proceeds of Crime Act 2002 (money received by administrator) is amended as follows.
- (2) In sub-paragraph (1) for “an appropriate bank or institution” substitute “a bank or building society”.
- (3) For sub-paragraph (3) substitute—

“(3) In sub-paragraph (1)—

Status: This is the original version (as it was originally enacted).

- (a) “bank” means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom;
 - (b) “building society” has the same meaning as in the Building Societies Act 1986.
- (4) In sub-paragraph (3)(a) “authorised deposit-taker” means—
- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;
 - (b) a person who—
 - (i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and
 - (ii) accepts deposits;
 - (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.
- (5) A reference in sub-paragraph (4) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.”