



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 5

#### CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

#### CHAPTER 1

#### INTRODUCTORY

#### **240 General purpose of this Part**

- (1) This Part has effect for the purposes of—
  - (a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,
  - (b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff.
- (2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

#### **241 “Unlawful conduct”**

- (1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.
- (2) Conduct which—
  - (a) occurs in a country outside the United Kingdom and is unlawful under the criminal law of that country, and
  - (b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,

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is also unlawful conduct.

- (3) The court or sheriff must decide on a balance of probabilities whether it is proved—
- (a) that any matters alleged to constitute unlawful conduct have occurred, or
  - (b) that any person intended to use any cash in unlawful conduct.

## 242 “Property obtained through unlawful conduct”

- (1) A person obtains property through unlawful conduct (whether his own conduct or another’s) if he obtains property by or in return for the conduct.
- (2) In deciding whether any property was obtained through unlawful conduct—
  - (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,
  - (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

## CHAPTER 2

### CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

VALID FROM 24/02/2003

#### *Proceedings for recovery orders*

### 243 Proceedings for recovery orders in England and Wales or Northern Ireland

- (1) Proceedings for a recovery order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property.
- (2) The enforcement authority must serve the claim form—
  - (a) on the respondent, and
  - (b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order,  
 wherever domiciled, resident or present.
- (3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the claim form it must be described in the form in general terms; and the form must state whether it is alleged to be recoverable property or associated property.
- (4) The references above to the claim form include the particulars of claim, where they are served subsequently.

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#### **244 Proceedings for recovery orders in Scotland**

- (1) Proceedings for a recovery order may be taken by the enforcement authority in the Court of Session against any person who the authority thinks holds recoverable property.
- (2) The enforcement authority must serve the application—
  - (a) on the respondent, and
  - (b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order, wherever domiciled, resident or present.
- (3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the application it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property.

#### **245 “Associated property”**

- (1) “Associated property” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—
  - (a) any interest in the recoverable property,
  - (b) any other interest in the property in which the recoverable property subsists,
  - (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,
  - (d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner,
  - (e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.
- (2) References to property being associated with recoverable property are to be read accordingly.
- (3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of sections 273 to 275).

VALID FROM 24/02/2003

#### *Interim receiving orders (England and Wales and Northern Ireland)*

#### **246 Application for interim receiving order**

- (1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for an interim receiving order (whether before or after starting the proceedings).
- (2) An interim receiving order is an order for—
  - (a) the detention, custody or preservation of property, and
  - (b) the appointment of an interim receiver.

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- (3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make an interim receiving order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.
- (5) The first condition is that there is a good arguable case—
  - (a) that the property to which the application for the order relates is or includes recoverable property, and
  - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
  - (a) the property to which the application for the order relates includes property alleged to be associated property, and
  - (b) the enforcement authority has not established the identity of the person who holds it,
 the authority has taken all reasonable steps to do so.
- (7) In its application for an interim receiving order, the enforcement authority must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the Agency.
- (8) The extent of the power to make an interim receiving order is not limited by sections 247 to 255.

#### **247 Functions of interim receiver**

- (1) An interim receiving order may authorise or require the interim receiver—
  - (a) to exercise any of the powers mentioned in Schedule 6,
  - (b) to take any other steps the court thinks appropriate,
 for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).
- (2) An interim receiving order must require the interim receiver to take any steps which the court thinks necessary to establish—
  - (a) whether or not the property to which the order applies is recoverable property or associated property,
  - (b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.
- (3) If—
  - (a) the interim receiver deals with any property which is not property to which the order applies, and
  - (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,
 the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

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## 248 Registration

- (1) The registration Acts—
  - (a) apply in relation to interim receiving orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgements or recognisances,
  - (b) apply in relation to applications for interim receiving orders as they apply in relation to other pending land actions.
- (2) The registration Acts are—
  - (a) [<sup>F1</sup>the Land Registration Act 1925 (c. 21),]
  - (b) the Land Charges Act 1972 (c. 61), and
  - (c) the Land Registration Act 2002 (c. 9).
- (3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of an interim receiving order.
- (4) [<sup>F2</sup>A person applying for an interim receiving order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—
  - (a) the application relates, or
  - (b) an interim receiving order made in pursuance of the application relates.]

### Textual Amendments

**F1** S. 248(2)(a) repealed (prosp.) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 457, 458(1), [Sch. 12](#)

**F2** S. 248(4) repealed (prosp.) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 457, 458(1), [Sch 12](#)

## 249 Registration (Northern Ireland)

- (1) A person applying for an interim receiving order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which—
  - (a) the application relates, or
  - (b) an interim receiving order made in pursuance of the application relates.
- (2) Upon being served with a copy of an interim receiving order, the Registrar must, in respect of any registered land to which an interim receiving order or an application for an interim receiving order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under subsection (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.
- (4) Where an interim receiving order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order setting aside the interim receiving order may require that entry to be vacated.
- (5) In this section—
 

“Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970, and

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“Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

#### **250 Duties of respondent etc.**

- (1) An interim receiving order may require any person to whose property the order applies—
  - (a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so),
  - (b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.
- (2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or to place them in the custody of the interim receiver.

“Document” means anything in which information of any description is recorded.

#### **251 Supervision of interim receiver and variation of order**

- (1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver’s functions.
- (2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.
- (3) The court may at any time vary or set aside an interim receiving order.
- (4) Before exercising any power under this Chapter to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court’s decision.

#### **252 Restrictions on dealing etc. with property**

- (1) An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.
- (2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  - (a) to meet his reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation,
 and may be made subject to conditions.

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- (4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (5) If the excluded property is not specified in the order it must be described in the order in general terms.
- (6) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

### **253 Restriction on proceedings and remedies**

- (1) While an interim receiving order has effect—
  - (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,
  - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.
- (4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

### **254 Exclusion of property which is not recoverable etc.**

- (1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.
- (2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.
- (3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

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## 255 Reporting

- (1) An interim receiving order must require the interim receiver to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—
  - (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
  - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
  - (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or
  - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,
 or if he thinks that there has been any other material change of circumstances.
- (2) An interim receiving order must require the interim receiver—
  - (a) to report his findings to the court,
  - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

VALID FROM 24/02/2003

### *Interim administration orders (Scotland)*

## 256 Application for interim administration order

- (1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for an interim administration order (whether before or after starting the proceedings).
- (2) An interim administration order is an order for—
  - (a) the detention, custody or preservation of property, and
  - (b) the appointment of an interim administrator.
- (3) An application for an interim administration order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make an interim administration order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.
- (5) The first condition is that there is a *probabilis causa litigandi*—
  - (a) that the property to which the application for the order relates is or includes recoverable property, and
  - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
  - (a) the property to which the application for the order relates includes property alleged to be associated property, and



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(b) the enforcement authority has not established the identity of the person who holds it,  
the authority has taken all reasonable steps to do so.

(7) In its application for an interim administration order, the enforcement authority must nominate a suitably qualified person for appointment as interim administrator, but the nominee may not be a member of the staff of the Scottish Administration.

(8) The extent of the power to make an interim administration order is not limited by sections 257 to 264.

### **257 Functions of interim administrator**

(1) An interim administration order may authorise or require the interim administrator—

- (a) to exercise any of the powers mentioned in Schedule 6,
- (b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim administration order must require the interim administrator to take any steps which the court thinks necessary to establish—

- (a) whether or not the property to which the order applies is recoverable property or associated property,
- (b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If—

- (a) the interim administrator deals with any property which is not property to which the order applies, and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim administrator is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

### **258 Inhibition of property affected by order**

(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in an interim administration order.

(2) That property is heritable property situated in Scotland to which the interim administration order applies (whether generally or such of it as is specified in the application).

(3) The warrant for inhibition—

- (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
- (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

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- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.
- (6) An inhibition executed under this section ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the enforcement authority must—
  - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
  - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

#### **259 Duties of respondent etc.**

- (1) An interim administration order may require any person to whose property the order applies—
  - (a) to bring the property to a place (in Scotland) specified by the interim administrator or place it in the custody of the interim administrator (if, in either case, he is able to do so),
  - (b) to do anything he is reasonably required to do by the interim administrator for the preservation of the property.
- (2) An interim administration order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in Scotland) specified by the interim administrator or to place them in the custody of the interim administrator.

“Document” means anything in which information of any description is recorded.

#### **260 Supervision of interim administrator and variation of order**

- (1) The interim administrator, any party to the proceedings and any person affected by any action taken by the interim administrator, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim administrator's functions.
- (2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be interested in the application.
- (3) The court may at any time vary or recall an interim administration order.
- (4) Before exercising any power under this Chapter to vary or set aside an interim administration order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be affected by the court's decision.

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## **261 Restrictions on dealing etc. with property**

- (1) An interim administration order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.
- (2) Exclusions may be made when the interim administration order is made or on an application to vary the order.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  - (a) to meet his reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation,and may be made subject to conditions.
- (4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (5) If the excluded property is not specified in the order it must be described in the order in general terms.
- (6) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

## **262 Restriction on proceedings and remedies**

- (1) While an interim administration order has effect, the court may sist any action, execution or other legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that an interim administration order has been applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim administrator (if appointed) and any person who may be affected by the court's decision.

## **263 Exclusion of property which is not recoverable etc.**

- (1) If the court decides that any property to which an interim administration order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.
- (2) The court may vary an interim administration order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.
- (3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim administration order has effect, which the court thinks necessary or expedient.

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## **264 Reporting**

- (1) An interim administration order must require the interim administrator to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—
  - (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
  - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
  - (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or
  - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,or if he thinks that there has been any other material change of circumstances.
- (2) An interim administration order must require the interim administrator—
  - (a) to report his findings to the court,
  - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

## **265 Arrestment of property affected by interim administration order**

- (1) On the application of the enforcement authority or the interim administrator the Court of Session may, in relation to moveable recoverable property to which an interim administration order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.
- (2) An application by the enforcement authority under subsection (1) may be made at the same time as the application for the interim administration order or at any time thereafter.
- (3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority or, as the case may be, the interim administrator against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.
- (6) An arrestment executed under this section ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (7) If an arrestment ceases to have effect to any extent by virtue of subsection (6) the enforcement authority or, as the case may be, the interim administrator must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

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### *Vesting and realisation of recoverable property*

VALID FROM 24/02/2003

#### **266 Recovery orders**

- (1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.
- (2) The recovery order must vest the recoverable property in the trustee for civil recovery.
- (3) But the court may not make in a recovery order—
  - (a) any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so, or
  - (b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).
- (4) In relation to a court in England and Wales or Northern Ireland, the conditions referred to in subsection (3)(a) are that—
  - (a) the respondent obtained the recoverable property in good faith,
  - (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,
  - (c) when he took the steps, he had no notice that the property was recoverable,
  - (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.
- (5) In relation to a court in Scotland, the conditions referred to in subsection (3)(a) are that—
  - (a) the respondent obtained the recoverable property in good faith,
  - (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,
  - (c) when he took the steps, he had no reasonable grounds for believing that the property was recoverable,
  - (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.
- (6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) or (as the case may be) (5) are met, the court must have regard to—
  - (a) the degree of detriment that would be suffered by the respondent if the provision were made,
  - (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.
- (7) A recovery order may sever any property.

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- (8) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.
- (9) This section is subject to sections 270 to 278.

VALID FROM 24/02/2003

### **267 Functions of the trustee for civil recovery**

- (1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.
- (2) The enforcement authority must nominate a suitably qualified person for appointment as the trustee.
- (3) The functions of the trustee are—
- (a) to secure the detention, custody or preservation of any property vested in him by the recovery order,
  - (b) in the case of property other than money, to realise the value of the property for the benefit of the enforcement authority, and
  - (c) to perform any other functions conferred on him by virtue of this Chapter.
- (4) In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.
- (5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the enforcement authority.
- (6) The trustee has the powers mentioned in Schedule 7.
- (7) References in this section to a recovery order include an order under section 276 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under section 276.

VALID FROM 24/02/2003

### **268 Recording of recovery order (Scotland)**

- (1) The clerk of the court must immediately after the making of a recovery order which relates to heritable property situated in Scotland send a certified copy of it to the keeper of the register of inhibitions and adjudications for recording in that register.
- (2) Recording under subsection (1) is to have the effect, as from the date of the recovery order, of an inhibition at the instance of the trustee for civil recovery against the person in whom the heritable property was vest prior to that date.

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VALID FROM 24/02/2003

## 269 Rights of pre-emption, etc.

- (1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.
- (2) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.  

A right of return means any right under a provision for the return or reversion of property in specified circumstances.
- (3) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.
- (4) References to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.
- (5) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

## 270 Associated and joint property

- (1) Sections 271 and 272 apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).
- (2) A case is within this subsection if—
  - (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form or (in Scotland) application, and
  - (b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service.
- (3) A case is within this subsection if—
  - (a) the recoverable property belongs to joint tenants, and
  - (b) one of the tenants is an excepted joint owner.
- (4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.
- (5) Subsections (3) and (4) do not extend to Scotland.

### Commencement Information

**II** S. 270(4)(5) in force (30.12.2002) by [S.I. 2002/3015](#), [art. 2](#), [Sch.](#)

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VALID FROM 24/02/2003

## 271 Agreements about associated and joint property

- (1) Where—
  - (a) this section applies, and
  - (b) the enforcement authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree, the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.
- (2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.
- (3) The amount of the payment is to be the amount which the enforcement authority and that person agree represents—
  - (a) in a case within section 270(2), the value of the recoverable property,
  - (b) in a case within section 270(3), the value of the recoverable property less the value of the excepted joint owner's share.
- (4) But if—
  - (a) an interim receiving order or interim administration order applied at any time to the associated property or joint tenancy, and
  - (b) the enforcement authority agrees that the person has suffered loss as a result of the interim receiving order or interim administration order,
 the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.
- (5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the enforcement authority.
- (6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

VALID FROM 24/02/2003

## 272 Associated and joint property: default of agreement

- (1) Where this section applies, the court may make the following provision if—
  - (a) there is no agreement under section 271, and
  - (b) the court thinks it just and equitable to do so.
- (2) The recovery order may provide—



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- (a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished, or
  - (b) in the case of an excepted joint owner, for the severance of his interest.
- (3) A recovery order making any provision by virtue of subsection (2)(a) may provide—
- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or
  - (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,
- or for both.
- (4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court must have regard to—
- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),
  - (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.
- (5) If—
- (a) an interim receiving order or interim administration order applied at any time to the associated property or joint tenancy, and
  - (b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the interim receiving order or interim administration order,
- a recovery order making any provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.
- (6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

VALID FROM 24/02/2003

### **273 Payments in respect of rights under pension schemes**

- (1) This section applies to recoverable property consisting of rights under a pension scheme.
- (2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme—
- (a) to pay to the trustee for civil recovery within a prescribed period the amount determined by the trustees or managers to be equal to the value of the rights, and
  - (b) to give effect to any other provision made by virtue of this section and the two following sections in respect of the scheme.

This subsection is subject to sections 276 to 278.

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- (3) A recovery order made by virtue of subsection (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.
- (4) A recovery order made by virtue of subsection (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in—
  - (a) complying with the recovery order, or
  - (b) providing information, before the order was made, to the enforcement authority, interim receiver or interim administrator.
- (5) None of the following provisions applies to a court making a recovery order by virtue of subsection (2)—
  - (a) any provision of section 159 of the Pension Schemes Act 1993 (c. 48), section 155 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), section 91 of the Pensions Act 1995 (c. 26) or Article 89 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
  - (b) any provision of any enactment (whenever passed or made) corresponding to any of the provisions mentioned in paragraph (a),
  - (c) any provision of the pension scheme in question corresponding to any of those provisions.

VALID FROM 24/02/2003

#### **274 Consequential adjustment of liabilities under pension schemes**

- (1) A recovery order made by virtue of section 273(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that subsection.
- (2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 273 applies to cease.
- (3) So far as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 273 applies to cease, their powers include (in particular) power to reduce the amount of—
  - (a) any benefit or future benefit to which the respondent is or may be entitled under the scheme,
  - (b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

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VALID FROM 24/02/2003

## 275 Pension schemes: supplementary

- (1) Regulations may make provision as to the exercise by trustees or managers of their powers under sections 273 and 274, including provision about the calculation and verification of the value at any time of rights or liabilities.
- (2) The power conferred by subsection (1) includes power to provide for any values to be calculated or verified—
  - (a) in a manner which, in the particular case, is approved by a prescribed person, or
  - (b) in accordance with guidance from time to time prepared by a prescribed person.
- (3) Regulations means regulations made by the Secretary of State after consultation with the Scottish Ministers; and prescribed means prescribed by regulations.
- (4) A pension scheme means an occupational pension scheme or a personal pension scheme; and those expressions have the same meaning as in the Pension Schemes Act 1993 (c. 48) or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993 (c. 49).
- (5) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means—
  - (a) in the case of a scheme established under a trust, the trustees,
  - (b) in any other case, the managers.
- (6) References to a pension scheme include—
  - (a) a retirement annuity contract (within the meaning of Part 3 of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland, Part 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999),
  - (b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme,
  - (c) an annuity purchased, or entered into, for the purpose of discharging any liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland, Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.
- (7) References to the trustees or managers—
  - (a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,
  - (b) in relation to an insurance policy, are to the insurer.
- (8) Subsections (3) to (7) have effect for the purposes of this group of sections (that is, sections 273 and 274 and this section).

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VALID FROM 24/02/2003

## 276 Consent orders

- (1) The court may make an order staying (in Scotland, sisting) any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.
- (2) An order under subsection (1) may, as well as staying (or sisting) the proceedings on terms—
  - (a) make provision for any property which may be recoverable property to cease to be recoverable,
  - (b) make any further provision which the court thinks appropriate.
- (3) Section 280 applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under section 271.

VALID FROM 24/02/2003

## 277 Consent orders: pensions

- (1) This section applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.
- (2) An order made under section 276—
  - (a) may not stay (in Scotland, sist) the proceedings on terms that the rights are vested in any other person, but
  - (b) may include provision imposing the following requirement, if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.
- (3) The requirement is that the trustees or managers of the pension scheme—
  - (a) make a payment in accordance with the agreement, and
  - (b) give effect to any other provision made by virtue of this section in respect of the scheme.
- (4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under section 276 may stay (in Scotland, sist) the proceedings.
- (5) The following provisions apply in respect of an order under section 276, so far as it includes the requirement mentioned in subsection (3).
- (6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.
- (7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in—

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- (a) complying with the order, or
  - (b) providing information, before the order was made, to the enforcement authority, interim receiver or interim administrator.
- (8) Sections 273(5) and 274 (read with section 275) apply as if the requirement were included in an order made by virtue of section 273(2).
- (9) Section 275(4) to (7) has effect for the purposes of this section.

VALID FROM 24/02/2003

## 278 Limit on recovery

- (1) This section applies if the enforcement authority seeks a recovery order—
- (a) in respect of both property which is or represents property obtained through unlawful conduct and related property, or
  - (b) in respect of property which is or represents property obtained through unlawful conduct where such an order, or an order under section 276, has previously been made in respect of related property.
- (2) For the purposes of this section—
- (a) the original property means the property obtained through unlawful conduct,
  - (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.
- (3) The court is not to make a recovery order if it thinks that the enforcement authority's right to recover the original property has been satisfied by a previous recovery order or order under section 276.
- (4) Subject to subsection (3), the court may act under subsection (5) if it thinks that—
- (a) a recovery order may be made in respect of two or more related items of recoverable property, but
  - (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the enforcement authority's right to recover the original property.
- (5) The court may in order to satisfy that right to the extent required make a recovery order in respect of—
- (a) only some of the related items of property, or
  - (b) only a part of any of the related items of property,
- or both.
- (6) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.
- (7) If—
- (a) an order is made under section 298 for the forfeiture of recoverable property, and
  - (b) the enforcement authority subsequently seeks a recovery order in respect of related property,

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the order under section 298 is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.

(8) If—

- (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the claimant has obtained property from the defendant (“the judgment property”),
- (b) the claim was based on the defendant’s having obtained the judgment property or related property through unlawful conduct, and
- (c) the enforcement authority subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the judgment property.

In relation to Scotland, “claimant” and “defendant” are to be read as “pursuer” and “defender”.

(9) If—

- (a) property has been taken into account in deciding the amount of a person’s benefit from criminal conduct for the purpose of making a confiscation order, and
- (b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property referred to in paragraph (a).

(10) In subsection (9), a confiscation order means—

- (a) an order under section 6, 92 or 156, or
- (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person’s benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

VALID FROM 24/02/2003

## 279 Section 278: supplementary

(1) Subsections (2) and (3) give examples of the satisfaction of the enforcement authority’s right to recover the original property.

(2) If—

- (a) there is a disposal, other than a part disposal, of the original property, and
- (b) other property (the representative property) is obtained in its place,

the enforcement authority’s right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

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(3) If—

- (a) there is a part disposal of the original property, and
- (b) other property (the representative property) is obtained in place of the property disposed of,

the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section—

- (a) a part disposal means a disposal to which section 314(1) applies,
- (b) the original property has the same meaning as in section 278.

VALID FROM 24/02/2003

## 280 Applying realised proceeds

(1) This section applies to—

- (a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order,
- (b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.

(2) The trustee is to make out of the sums—

- (a) first, any payment required to be made by him by virtue of section 272,
- (b) second, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 432(10),

and any sum which remains is to be paid to the enforcement authority.

VALID FROM 24/02/2003

### *Exemptions etc.*

## 281 Victims of theft, etc.

(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that—

- (a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct,

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- (b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and
  - (c) the property he claims belongs to him.
- (4) Property to which a declaration under this section applies is not recoverable property.

## **282 Other exemptions**

- (1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person himself or to the property or to any other matter.

In this subsection, prescribed means prescribed by an order made by the Secretary of State after consultation with the Scottish Ministers.

- (2) Proceedings for a recovery order may not be taken in respect of cash found at any place in the United Kingdom unless the proceedings are also taken in respect of property other than cash which is property of the same person.
- (3) Proceedings for a recovery order may not be taken against the Financial Services Authority in respect of any recoverable property held by the authority.
- (4) Proceedings for a recovery order may not be taken in respect of any property which is subject to any of the following charges—
- (a) a collateral security charge, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979),
  - (b) a market charge, within the meaning of Part 7 of the Companies Act 1989 (c. 40),
  - (c) a money market charge, within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995 (S.I. 1995/2049),
  - (d) a system charge, within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469) or the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252).
- (5) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as an insolvency practitioner.

Acting as an insolvency practitioner has the same meaning as in section 433.

VALID FROM 24/02/2003

### *Miscellaneous*

## **283 Compensation**

- (1) If, in the case of any property to which an interim receiving order or interim administration order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.



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- (2) Subsection (1) does not apply if the court—
- (a) has made a declaration in respect of the property by virtue of section 281, or
  - (b) makes an order under section 276.
- (3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning—
- (a) in relation to a decision of the High Court in England and Wales, with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded,
  - (b) in relation to a decision of the Court of Session or of the High Court in Northern Ireland, with the date of the decision or, if there is an appeal against the decision, with the date on which any proceedings on appeal are finally concluded.
- (4) If, in England and Wales or Northern Ireland, the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.
- (5) If the court is satisfied that the applicant has suffered loss as a result of the interim receiving order or interim administration order, it may require the enforcement authority to pay compensation to him.
- (6) If, but for section 269(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.
- (7) The application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 269(2).
- (8) If the court is satisfied that, in consequence of the operation of section 269, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the enforcement authority to pay compensation to him.
- (9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

#### **284 Payment of interim administrator or trustee (Scotland)**

Any fees or expenses incurred by an interim administrator, or a trustee for civil recovery appointed by the Court of Session, in the exercise of his functions are to be reimbursed by the Scottish Ministers as soon as is practicable after they have been incurred.

#### **285 Effect on diligence of recovery order (Scotland)**

- (1) An arrestment or [F3attachment] of any recoverable property executed on or after the appointment of the trustee for civil recovery is ineffectual in a question with the trustee.

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- (2) Any recoverable property so arrested or [<sup>F4</sup>attached.] , or (if the property has been sold) the proceeds of sale, must be handed over to the trustee for civil recovery.
- (3) A poiding of the ground in respect of recoverable property on or after such an appointment is ineffectual in a question with the trustee for civil recovery except for the interest mentioned in subsection (4).
- (4) That interest is—
  - (a) interest on the debt of a secured creditor for the current half yearly term, and
  - (b) arrears of interest on that debt for one year immediately before the commencement of that term.
- (5) On and after such appointment no other person may raise or insist in an adjudication against recoverable property or be confirmed as an executor-creditor on that property.
- (6) An inhibition on recoverable property shall cease to have effect in relation to any heritable property comprised in the recoverable property on such appointment.
- (7) The provisions of this section apply in relation to—
  - (a) an action of maills and duties, and
  - (b) an action for sequestration of rent,
 as they apply in relation to an arrestment or [<sup>F5</sup>attachment] .

#### Textual Amendments

- F3** Words in s. 285(1) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), ss. 61, 64(2), **Sch. 3 Pt. 1** {para. 29(1)(a)} (with s. 59)
- F4** Words in s. 285(2) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), ss. 61, 64(2), **Sch. 3 Pt. 1** {para. 29(1)(b)} (with s. 59)
- F5** Words in s. 285(7)(b) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), ss. 61, 64(2), **Sch. 3 Pt. 1** {para 29(1)(a)} (with s. 59)

#### 286 Scope of powers (Scotland)

- (1) Orders under this Chapter may be made by the Court of Session in respect of a person wherever domiciled, resident or present.
- (2) Such an order may be made by the Court of Session in respect of moveable property wherever situated.
- (3) But such an order in respect of a person's moveable property may not be made by the Court of Session where—
  - (a) the person is not domiciled, resident or present in Scotland, and
  - (b) the property is not situated in Scotland,
 unless the unlawful conduct took place in Scotland.

#### 287 Financial threshold

- (1) At any time when an order specifying an amount for the purposes of this section has effect, the enforcement authority may not start proceedings for a recovery order unless the authority reasonably believes that the aggregate value of the recoverable

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property which the authority wishes to be subject to a recovery order is not less than the specified amount.

- (2) The power to make an order under subsection (1) is exercisable by the Secretary of State after consultation with the Scottish Ministers.
- (3) If the authority applies for an interim receiving order or interim administration order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.
- (4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of an interim receiving order or interim administration order which has been properly applied for.

## 288 Limitation

- (1) After section 27 of the Limitation Act 1980 (c. 58) there is inserted—

**“27A Actions for recovery of property obtained through unlawful conduct etc.**

- (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).
- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director’s cause of action accrued.
- (3) Proceedings under that Chapter are brought when—
  - (a) a claim form is issued, or
  - (b) an application is made for an interim receiving order,
 whichever is the earlier.
- (4) The Director’s cause of action accrues in respect of any recoverable property—
  - (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,
  - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.
- (5) If—
  - (a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel, and
  - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel,
 section 3(2) of this Act does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.
- (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 3(2) of this Act.

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(7) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part.”

(2) After section 19A of the Prescription and Limitation (Scotland) Act 1973 (c. 52) there is inserted—

**“19B Actions for recovery of property obtained through unlawful conduct etc.**

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be commenced after the expiration of the period of twelve years from the date on which the Scottish Ministers’ right of action accrued.

(3) Proceedings under that Chapter are commenced when—  
 (a) the proceedings are served, or  
 (b) an application is made for an interim administration order,  
 whichever is the earlier.

(4) The Scottish Ministers’ right of action accrues in respect of any recoverable property—  
 (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,  
 (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part.”

(3) After Article 72 of the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (N.I. 11)) there is inserted—

**“72A Actions for recovery of property obtained through unlawful conduct etc.**

(1) None of the time limits fixed by Parts II and III applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director’s cause of action accrued.

(3) Proceedings under that Chapter are brought when—  
 (a) a claim form is issued, or  
 (b) an application is made for an interim receiving order,  
 whichever is the earlier.

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- (4) The Director’s cause of action accrues in respect of any recoverable property—
- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,
  - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.
- (5) If—
- (a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and
  - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel,
- Article 17(2) does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.
- (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2).
- (7) Expressions used in this Article and Part 5 of that Act have the same meaning in this Article as in that Part.”

## CHAPTER 3

### RECOVERY OF CASH IN SUMMARY PROCEEDINGS

#### *Searches*

#### **289** Searches

- (1) If a customs officer or constable who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash—
- (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
  - (b) the amount of which is not less than the minimum amount,
- he may search for the cash there.
- (2) If a customs officer or constable has reasonable grounds for suspecting that a person (the suspect) is carrying cash—
- (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
  - (b) the amount of which is not less than the minimum amount,
- he may exercise the following powers.
- (3) The officer or constable may, so far as he thinks it necessary or expedient, require the suspect—
- (a) to permit a search of any article he has with him,

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- (b) to permit a search of his person.
- (4) An officer or constable exercising powers by virtue of subsection (3)(b) may detain the suspect for so long as is necessary for their exercise.
- (5) The powers conferred by this section—
  - (a) are exercisable only so far as reasonably required for the purpose of finding cash,
  - (b) are exercisable by a customs officer only if he has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979 (c. 2)).
- (6) Cash means—
  - (a) notes and coins in any currency,
  - (b) postal orders,
  - (c) cheques of any kind, including travellers' cheques,
  - (d) bankers' drafts,
  - (e) bearer bonds and bearer shares,
 found at any place in the United Kingdom.
- (7) Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by an order made after consultation with the Scottish Ministers.
- (8) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979 (c. 2)).

## **290 Prior approval**

- (1) The powers conferred by section 289 may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.
- (3) A judicial officer means—
  - (a) in relation to England and Wales and Northern Ireland, a justice of the peace,
  - (b) in relation to Scotland, the sheriff.
- (4) A senior officer means—
  - (a) in relation to the exercise of the power by a customs officer, a customs officer of a rank designated by the Commissioners of Customs and Excise as equivalent to that of a senior police officer,
  - (b) in relation to the exercise of the power by a constable, a senior police officer.
- (5) A senior police officer means a police officer of at least the rank of inspector.
- (6) If the powers are exercised without the approval of a judicial officer in a case where—
  - (a) no cash is seized by virtue of section 294, or
  - (b) any cash so seized is not detained for more than 48 hours,

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the customs officer or constable who exercised the powers must give a written report to the appointed person.

- (7) The report must give particulars of the circumstances which led him to believe that—
  - (a) the powers were exercisable, and
  - (b) it was not practicable to obtain the approval of a judicial officer.
- (8) In this section and section 291, the appointed person means—
  - (a) in relation to England and Wales and Northern Ireland, a person appointed by the Secretary of State,
  - (b) in relation to Scotland, a person appointed by the Scottish Ministers.
- (9) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of his appointment, including any remuneration or expenses to be paid to him, are to be determined by the person appointing him.

## **291 Report on exercise of powers**

- (1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.

“Financial year” means—

  - (a) the period beginning with the day on which this section comes into force and ending with the next 31 March (which is the first financial year), and
  - (b) each subsequent period of twelve months beginning with 1 April.
- (2) The report must give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised in cases where the customs officer or constable who exercised them is required to give a report under section 290(6).
- (3) In the report, he may make any recommendations he considers appropriate.
- (4) He must send a copy of his report to the Secretary of State or, as the case may be, the Scottish Ministers, who must arrange for it to be published.
- (5) The Secretary of State must lay a copy of any report he receives under this section before Parliament; and the Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament.

## **292 Code of practice**

- (1) The Secretary of State must make a code of practice in connection with the exercise by customs officers and (in relation to England and Wales and Northern Ireland) constables of the powers conferred by virtue of section 289.
- (2) Where he proposes to issue a code of practice he must—
  - (a) publish a draft,
  - (b) consider any representations made to him about the draft by the Scottish Ministers or any other person,
  - (c) if he thinks it appropriate, modify the draft in the light of any such representations.
- (3) He must lay a draft of the code before Parliament.

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- (4) When he has laid a draft of the code before Parliament he may bring it into operation by order.
- (5) He may revise the whole or any part of the code issued by him and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a customs officer or constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

### **293 Code of practice (Scotland)**

- (1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by virtue of section 289.
- (2) Where they propose to issue a code of practice they must—
  - (a) publish a draft,
  - (b) consider any representations made to them about the draft,
  - (c) if they think it appropriate, modify the draft in the light of any such representations.
- (3) They must lay a draft of the code before the Scottish Parliament.
- (4) When they have laid a draft of the code before the Scottish Parliament they may bring it into operation by order.
- (5) They may revise the whole or any part of the code issued by them and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

### *Seizure and detention*

### **294 Seizure of cash**

- (1) A customs officer or constable may seize any cash if he has reasonable grounds for suspecting that it is—
  - (a) recoverable property, or
  - (b) intended by any person for use in unlawful conduct.
- (2) A customs officer or constable may also seize cash part of which he has reasonable grounds for suspecting to be—
  - (a) recoverable property, or



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- (b) intended by any person for use in unlawful conduct,  
if it is not reasonably practicable to seize only that part.
- (3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than the minimum amount.

## 295 Detention of seized cash

- (1) While the customs officer or constable continues to have reasonable grounds for his suspicion, cash seized under section 294 may be detained initially for a period of 48 hours.
- (2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash—
  - (a) beyond the end of the period of three months beginning with the date of the order,
  - (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.
- (3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (2) extending the period.
- (4) An application for an order under subsection (2)—
  - (a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise or a constable,
  - (b) in relation to Scotland, may be made by the Scottish Ministers in connection with their functions under section 298 or by a procurator fiscal,and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.
- (5) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either—
  - (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
  - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (6) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
  - (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
  - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (7) An application for an order under subsection (2) may also be made in respect of any cash seized under section 294(2), and the court, sheriff or justice may make the order if satisfied that—
  - (a) the condition in subsection (5) or (6) is met in respect of part of the cash, and

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(b) it is not reasonably practicable to detain only that part.

(8) An order under subsection (2) must provide for notice to be given to persons affected by it.

## **296 Interest**

(1) If cash is detained under section 295 for more than 48 hours, it is at the first opportunity to be paid into an interest-bearing account and held there; and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 295 which was seized under section 294(2), the customs officer or constable must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Chapter.

## **297 Release of detained cash**

(1) This section applies while any cash is detained under section 295.

(2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 295 for the detention of the cash are no longer met in relation to the cash to be released.

(4) A customs officer, constable or (in Scotland) procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

## *Forfeiture*

## **298 Forfeiture**

(1) While cash is detained under section 295, an application for the forfeiture of the whole or any part of it may be made—

(a) to a magistrates' court by the Commissioners of Customs and Excise or a constable,

(b) (in Scotland) to the sheriff by the Scottish Ministers.

(2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

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- (4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

### **299 Appeal against forfeiture**

- (1) Any party to proceedings in which an order is made under section 298 for the forfeiture of cash who is aggrieved by the order may appeal—
  - (a) in relation to England and Wales, to the Crown Court,
  - (b) in relation to Scotland, to the Court of Session,
  - (c) in relation to Northern Ireland, to a county court.
- (2) An appeal under subsection (1) must be made within the period of 30 days beginning with the date on which the order is made.
- (3) The appeal is to be by way of a rehearing.
- (4) The court hearing the appeal may make any order it thinks appropriate.
- (5) If the court upholds the appeal, it may order the release of the cash.

### **300 Application of forfeited cash**

- (1) Cash forfeited under this Chapter, and any accrued interest on it—
  - (a) if forfeited by a magistrates' court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,
  - (b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.
- (2) But it is not to be paid in—
  - (a) before the end of the period within which an appeal under section 299 may be made, or
  - (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

## *Supplementary*

### **301 Victims and other owners**

- (1) A person who claims that any cash detained under this Chapter, or any part of it, belongs to him may apply to a magistrates' court or (in Scotland) the sheriff for the cash or part to be released to him.
- (2) The application may be made in the course of proceedings under section 295 or 298 or at any other time.
- (3) If it appears to the court or sheriff concerned that—
  - (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,
  - (b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property, and
  - (c) that cash belongs to him,

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the court or sheriff may order the cash to which the application relates to be released to the applicant.

- (4) If—
- (a) the applicant is not the person from whom the cash to which the application relates was seized,
  - (b) it appears to the court or sheriff that that cash belongs to the applicant,
  - (c) the court or sheriff is satisfied that the conditions in section 295 for the detention of that cash are no longer met or, if an application has been made under section 298, the court or sheriff decides not to make an order under that section in relation to that cash, and
  - (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the court or sheriff may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

### **302 Compensation**

- (1) If no forfeiture order is made in respect of any cash detained under this Chapter, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court or (in Scotland) the sheriff for compensation.
- (2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court or sheriff may order an amount of compensation to be paid to the applicant.
- (3) The amount of compensation to be paid under subsection (2) is the amount the court or sheriff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.
- (4) If the court or sheriff is satisfied that, taking account of any interest to be paid under section 296 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation (or additional compensation) to be paid to him.
- (5) The amount of compensation to be paid under subsection (4) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (6) If the cash was seized by a customs officer, the compensation is to be paid by the Commissioners of Customs and Excise.
- (7) If the cash was seized by a constable, the compensation is to be paid as follows—
  - (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met,
  - (b) in the case of a constable of a police force in Scotland, it is to be paid by the police authority or joint police board for the police area for which that force is maintained,
  - (c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.

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- (8) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.

### **303 “The minimum amount”**

- (1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers.
- (2) For that purpose the amount of any cash held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

## **CHAPTER 4**

### **GENERAL**

#### *Recoverable property*

### **304 Property obtained through unlawful conduct**

- (1) Property obtained through unlawful conduct is recoverable property.
- (2) But if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.
- (3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—
- (a) the person who through the conduct obtained the property, or
  - (b) a person into whose hands it may (by virtue of this subsection) be followed.

### **305 Tracing property, etc.**

- (1) Where property obtained through unlawful conduct (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.
- (2) If a person enters into a transaction by which—
- (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and
  - (b) he obtains other property in place of it,
- the other property represents the original property.
- (3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

### **306 Mixing property**

- (1) Subsection (2) applies if a person’s recoverable property is mixed with other property (whether his property or another’s).

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- (2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.
- (3) Recoverable property is mixed with other property if (for example) it is used—
  - (a) to increase funds held in a bank account,
  - (b) in part payment for the acquisition of an asset,
  - (c) for the restoration or improvement of land,
  - (d) by a person holding a leasehold interest in the property to acquire the freehold.

### **307 Recoverable property: accruing profits**

- (1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.
- (2) The further property is to be treated as representing the property obtained through unlawful conduct.

### **308 General exceptions**

- (1) If—
  - (a) a person disposes of recoverable property, and
  - (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,
 the property may not be followed into that person’s hands and, accordingly, it ceases to be recoverable.
- (2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.
- (3) If—
  - (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,
  - (b) the claimant’s claim is based on the defendant’s unlawful conduct, and
  - (c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property,
 the property ceases to be recoverable.

In relation to Scotland, “claimant” and “defendant” are to be read as “pursuer” and “defender”.

- (4) If—
  - (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)), section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and
  - (b) apart from this subsection, the sum received would be recoverable property,
 the property ceases to be recoverable.
- (5) If—

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- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and
  - (b) apart from this subsection, the sum received, or the property obtained, would be recoverable property,

the property ceases to be recoverable.
- (6) If—
  - (a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (c. 8) (restitution orders), an amount is paid to or distributed among any persons in accordance with the court's directions, and
  - (b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.
- (7) If—
  - (a) in pursuance of a requirement of the Financial Services Authority under section 384(5) of the Financial Services and Markets Act 2000 (power of authority to require restitution), an amount is paid to or distributed among any persons, and
  - (b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.
- (8) Property is not recoverable while a restraint order applies to it, that is—
  - (a) an order under section 41, 120 or 190, or
  - (b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g).
- (9) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—
  - (a) an order under section 6, 92 or 156, or
  - (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.
- (10) Where—
  - (a) a person enters into a transaction to which section 305(2) applies, and
  - (b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 305(2)) of any property obtained on the transaction in place of the property disposed of.

### 309 Other exemptions

- (1) An order may provide that property is not recoverable or (as the case may be) associated property if—

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- (a) it is prescribed property, or
  - (b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.
- (2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 278 as if it had been disposed of in pursuance of a recovery order.
- (3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.
- (4) In this section, an order means an order made by the Secretary of State after consultation with the Scottish Ministers, and prescribed means prescribed by the order.

### **310 Granting interests**

- (1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.
- (2) Accordingly, on his granting an interest in the property (“the property in question”)—
- (a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct,
  - (b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

### *Insolvency*

### **311 Insolvency**

- (1) Proceedings for a recovery order may not be taken or continued in respect of property to which subsection (3) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.
- (2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 295 unless the appropriate court gives leave.
- (3) This subsection applies to recoverable property, or property associated with it, if—
- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
  - (b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act, or Part 2 of the 1989 Order, has effect in relation to the company,
  - (c) an order under section 2 of the 1985 Act, section 286 of the 1986 Act or Article 259 of the 1989 Order (appointment of interim trustee or interim receiver) has effect in relation to the property,
  - (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt or, in relation to Scotland, of a person whose estate has been sequestrated,



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- (e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to him, or
  - (f) in relation to Scotland, it is property comprised in the estate of a person who has granted a trust deed within the meaning of the 1985 Act.
- (4) An application under this section, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings for a recovery order may be made without notice to any person.
- (5) Subsection (4) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).
- (6) References to the provisions of the 1986 Act in sections 420 and 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include subsections (1) to (3) above.
- (7) In this section—
- (a) the 1985 Act means the Bankruptcy (Scotland) Act 1985 (c. 66),
  - (b) the 1986 Act means the Insolvency Act 1986 (c. 45),
  - (c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
- and in subsection (8) “the applicable enactment” means whichever enactment mentioned in paragraphs (a) to (c) is relevant to the resolution, arrangement, order or trust deed mentioned in subsection (3).
- (8) In this section—
- (a) an asset means any property within the meaning of the applicable enactment or, where the 1985 Act is the applicable enactment, any property comprised in an estate to which the 1985 Act applies,
  - (b) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in subsection (3), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court,
  - (c) acting as an insolvency practitioner has the same meaning as in section 433,
  - (d) other expressions used in this section and in the applicable enactment have the same meaning as in that enactment.

VALID FROM 24/02/2003

### *Delegation of enforcement functions*

#### **312 Performance of functions of Scottish Ministers by constables in Scotland**

- (1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.
- (2) The specified functions are the functions conferred on the Scottish Ministers by—
- (a) sections 244(1) and (2) and 256(1) and (7) (proceedings in the Court of Session),

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- (b) section 267(2) (trustee for civil recovery),
- (c) sections 271(3) and (4) and 272(5) (agreements about associated and joint property),
- (d) section 275(3) (pension schemes),
- (e) section 282(1) (exemptions),
- (f) section 283(5) and (8) (compensation),
- (g) section 287(2) (financial threshold),
- (h) section 293(1) (code of practice),
- (i) section 298(1) (forfeiture),
- (j) section 303(1) (minimum amount).

### **313 Restriction on performance of Director’s functions by police**

- (1) In spite of section 1(6), nothing which the Director is authorised or required to do for the purposes of this Part may be done by—
- (a) a member of a police force,
  - (b) a member of the Police Service of Northern Ireland,
  - (c) a person appointed as a police member of the National Criminal Intelligence Service under section 9(1)(b) of the Police Act 1997 (c. 50),
  - (d) a person appointed as a police member of the National Crime Squad under section 55(1)(b) of that Act.
- (2) In this section—
- (a) “member of a police force” has the same meaning as in the Police Act 1996 (c. 16) and includes a person who would be a member of a police force but for section 97(3) of that Act (police officers engaged on service outside their force),
  - (b) “member of the Police Service of Northern Ireland” includes a person who would be a member of the Police Service of Northern Ireland but for section 27(3) of the Police (Northern Ireland) Act 1998 (c. 32) (members of that service engaged on other police service).

### *Interpretation*

### **314 Obtaining and disposing of property**

- (1) References to a person disposing of his property include a reference—
- (a) to his disposing of a part of it, or
  - (b) to his granting an interest in it,
- (or to both); and references to the property disposed of are to any property obtained on the disposal.
- (2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.
- (3) Where a person’s property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

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- (4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

### 315 Northern Ireland courts

In relation to the practice and procedure of courts in Northern Ireland, expressions used in this Part are to be read in accordance with rules of court.

### 316 General interpretation

- (1) In this Part—

“associated property” has the meaning given by section 245,

“cash” has the meaning given by section 289(6) or (7),

“constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32),

“country” includes territory,

“the court” (except in sections 253(2) and (3) and 262(2) and (3) and Chapter 3) means the High Court or (in relation to proceedings in Scotland) the Court of Session,

“dealing” with property includes disposing of it, taking possession of it or removing it from the United Kingdom,

“enforcement authority”—

(a) in relation to England and Wales and Northern Ireland, means the Director,

(b) in relation to Scotland, means the Scottish Ministers,

“excepted joint owner” has the meaning given by section 270(4),

“interest”, in relation to land—

(a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

(b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

“interest”, in relation to property other than land, includes any right (including a right to possession of the property),

“interim administration order” has the meaning given by section 256(2),

“interim receiving order” has the meaning given by section 246(2),

“the minimum amount” (in Chapter 3) has the meaning given by section 303,

“part”, in relation to property, includes a portion,

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60),

“property obtained through unlawful conduct” has the meaning given by section 242,

“recoverable property” is to be read in accordance with sections 304 to 310,

“recovery order” means an order made under section 266,

“respondent” means—

(a) where proceedings are brought by the enforcement authority by virtue of Chapter 2, the person against whom the proceedings are brought,

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- (b) where no such proceedings have been brought but the enforcement authority has applied for an interim receiving order or interim administration order, the person against whom he intends to bring such proceedings,
  - “share”, in relation to an excepted joint owner, has the meaning given by section 270(4),
  - “unlawful conduct” has the meaning given by section 241,
  - “value” means market value.
- (2) The following provisions apply for the purposes of this Part.
- (3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.
- (4) Property is all property wherever situated and includes—
  - (a) money,
  - (b) all forms of property, real or personal, heritable or moveable,
  - (c) things in action and other intangible or incorporeal property.
- (5) Any reference to a person’s property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (6) In relation to land, it is a reference to any interest which he holds in the land.
- (7) In relation to property other than land, it is a reference—
  - (a) to the property (if it belongs to him), or
  - (b) to any other interest which he holds in the property.
- (8) References to the satisfaction of the enforcement authority’s right to recover property obtained through unlawful conduct are to be read in accordance with section 279.
- (9) Proceedings against any person for an offence are concluded when—
  - (a) the person is convicted or acquitted,
  - (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or
  - (c) the jury is discharged without a finding.

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