



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 5

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

### CHAPTER 2

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

##### *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—

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- (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 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.

#### Commencement Information

- I1** S. 256 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## 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.

#### Commencement Information

- I2** S. 257 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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## 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.
- (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.

### Commencement Information

**I3** S. 258 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## 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

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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.

#### Commencement Information

**I4** S. 259 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 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.

#### Commencement Information

**I5** S. 260 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 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.

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- (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.

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**Commencement Information**

- I6** S. 261 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## **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.

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**Commencement Information**

- I7** S. 262 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## **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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**Commencement Information**

- I8** S. 263 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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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.

### Commencement Information

- I9** S. 264 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## 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.

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- (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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**Commencement Information**

**I10** S. 265 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)