

SCHEDULES

SCHEDULE 6

Section 109

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO CHAPTER 6 OF PART 2

Prescription and Limitation (Scotland) Act 1973 (c. 52)

- 1 In section 19B(3) of the Prescription and Limitation (Scotland) Act 1973 (actions for recovery of property obtained through unlawful conduct etc.)—
- (a) after paragraph (a) insert—
 - “(aa) an application is made for a prohibitory property order, or”, and
 - (b) for “earlier” substitute “earliest”.

Limitation Act 1980 (c. 58)

- 2 In section 27A(3) of the Limitation Act 1980 (time limits for bringing proceedings for recovery order: when proceedings are brought)—
- (a) after paragraph (a) insert—
 - “(aa) an application is made for a property freezing order, or”, and
 - (b) for “earlier” substitute “earliest”.

Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11))

- 3 In Article 72A(3) of the Limitation (Northern Ireland) Order 1989 (time limits for bringing proceedings for recovery order: when proceedings are brought)—
- (a) after paragraph (a) insert—
 - “(aa) an application is made for a property freezing order, or”, and
 - (b) for “earlier” substitute “earliest”.

Proceeds of Crime Act 2002 (c. 29)

- 4 The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- 5 In section 82(f) (confiscation: England and Wales: property is free property if order under section 246 etc. applies to it)—
- (a) after “section” insert “245A,” and
 - (b) after “246,” insert “255A, 256,”.
- 6 In section 148(f) (confiscation: Scotland: property is free property if order under section 246 etc. applies to it)—
- (a) after “section” insert “245A,” and
 - (b) after “246,” insert “255A, 256,”.

Status: This is the original version (as it was originally enacted).

- 7 In section 230(f) (confiscation: Northern Ireland: property is free property if order under section 246 etc. applies to it)—
- (a) after “section” insert “245A,” and
 - (b) after “246,” insert “255A, 256.”
- 8 In section 241(2)(a) (conduct occurring outside the United Kingdom that is unlawful conduct for the purposes of Part 5)—
- (a) after “in a country” insert “or territory”, and
 - (b) for “of that country” substitute “applying in that country or territory”.
- 9 In section 243 (proceedings for recovery orders in England and Wales or Northern Ireland), after subsection (4) insert—
- “(5) Nothing in sections 245A to 255 limits any power of the court apart from those sections to grant interim relief in connection with proceedings (including prospective proceedings) under this Chapter.”

- 10 Before section 248 (and its heading) insert the following heading—

“Property freezing orders and interim receiving orders: registration”

- 11 (1) Section 248 (registration: England and Wales) is amended as follows.
- (2) In subsection (1)(a), for “interim receiving orders” substitute “property freezing orders, and in relation to interim receiving orders,”.
 - (3) In subsection (1)(b), for “interim receiving orders” substitute “property freezing orders, and in relation to applications for interim receiving orders,”.
 - (4) In subsection (3), before “an interim receiving order” insert “a property freezing order or”.
- 12 (1) Section 249 (registration: Northern Ireland) is amended as follows.
- (2) In subsection (1), after “applying for” insert “a property freezing order or”.
 - (3) In subsection (1)(b), for “an interim receiving order” substitute “a property freezing order, or an interim receiving order,”.
 - (4) After subsection (1) insert—
 - “(1A) Upon being served with a copy of a property freezing order, the Registrar must, in respect of any registered land to which a property freezing order or an application for a property freezing order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.”
 - (5) In subsection (3), after “entry made under subsection” insert “(1A) or”.
 - (6) In subsection (4)—
 - (a) after “Where” insert “a property freezing order or”, and
 - (b) after “setting aside the” insert “property freezing order or”.

- 13 Before section 250 (and its heading) insert the following heading—

“Interim receiving orders: further provisions”

- 14 (1) Section 252 (interim receiving orders: prohibition on dealings) is amended as follows.

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

- (2) For subsection (4) (restriction on exclusions for legal expenses) substitute—
- “(4) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
 - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
 - (c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (3).
- (4A) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
- (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and
 - (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.”

(3) In subsection (6) (power to make exclusions not to be exercised so as to prejudice enforcement authority’s rights to recover property), after “must” insert “, subject to subsection (4A),”.

15 In section 266 (recovery orders), after subsection (8) insert—

“(8A) A recovery order made by a court in England and Wales or Northern Ireland may provide for payment under section 280 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

 - (a) the proceedings under this Part in which the order is made, or
 - (b) any related proceedings under this Part.

(8B) If regulations under section 286B apply to an item of expenditure, a sum in respect of the item is not payable under section 280 in pursuance of provision under subsection (8A) unless—

 - (a) the enforcement authority agrees to its payment, or
 - (b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.”

16 In section 271(4) (certain payments to trustee for civil recovery to be reduced to take account of loss caused by interim receiving order etc.)—

 - (a) in paragraph (a), for “an interim receiving order or” substitute “a property freezing order, an interim receiving order, a prohibitory property order or an”, and
 - (b) in paragraph (b), for “interim receiving order or interim administration order” substitute “order mentioned in paragraph (a)”.

17 In section 272(5) (provision in recovery orders for compensation for loss caused by interim receiving order etc.)—

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

- (a) in paragraph (a), for “an interim receiving order or” substitute “a property freezing order, an interim receiving order, a prohibitory property order or an”, and
 - (b) in paragraph (b), for “interim receiving order or interim administration order” substitute “order mentioned in paragraph (a)”.
- 18 In section 280(2) (application of realised proceeds of recovery order)—
- (a) after paragraph (a) insert—
 - “(aa) next, any payment of legal expenses which, after giving effect to section 266(8B), are payable under this subsection in pursuance of provision under section 266(8A) contained in the recovery order,” and
 - (b) in paragraph (b), for “second” substitute “then”.
- 19 In section 283 (compensation where interim receiving order etc. has applied)—
- (a) in subsection (1), for “an interim receiving order or” substitute “a property freezing order, an interim receiving order, a prohibitory property order or an”, and
 - (b) in subsection (5), for “interim receiving order or interim administration order” substitute “order mentioned in subsection (1)”.
- 20 After section 286 insert—

“286A Legal expenses excluded from freezing: required conditions

- (1) The Lord Chancellor may by regulations specify the required conditions for the purposes of section 245C(5) or 252(4).
- (2) A required condition may (in particular)—
 - (a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers), or
 - (b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.
- (3) A required condition made for the purpose mentioned in subsection (2)(b) may (for example)—
 - (a) provide for sums to be released only with the agreement of the enforcement authority;
 - (b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under section 286B in respect of that item and the sum is released for payment of the assessed amount;
 - (c) provide for a sum to be released in respect of an item of expenditure only if—
 - (i) the enforcement authority agrees to its release, or
 - (ii) the court has assessed the amount allowed by regulations under section 286B in respect of that item and the sum is released for payment of the assessed amount.
- (4) Before making regulations under this section, the Lord Chancellor must consult such persons as he considers appropriate.

286B Legal expenses: regulations for purposes of section 266(8B) or 286A(3)

- (1) The Lord Chancellor may by regulations—
 - (a) make provision for the purposes of section 266(8B);
 - (b) make provision for the purposes of required conditions that make provision of the kind mentioned in section 286A(3)(b) or (c).
- (2) Regulations under this section may (in particular)—
 - (a) limit the amount of remuneration allowable to representatives for a unit of time worked;
 - (b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;
 - (c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.
- (3) Before making regulations under this section, the Lord Chancellor must consult such persons as he considers appropriate.”

- 21 In section 287 (financial threshold for starting proceedings), in subsections (3) and (4) (threshold applies to applications made before proceedings started but does not apply after proceedings started or application made), for “an interim receiving order or” substitute “a property freezing order, an interim receiving order, a prohibitory property order or an”.
- 22 (1) Section 316(1) (interpretation of Part 5) is amended as follows.
 - (2) After the definition of “premises” insert—

““prohibitory property order” has the meaning given by section 255A(2);

“property freezing order” has the meaning given by section 245A(2);”.
 - (3) In paragraph (b) of the definition of “respondent”, for “an interim receiving order or” substitute “a property freezing order, an interim receiving order, a prohibitory property order or an”.
- 23 In section 432 (insolvency practitioners), in subsections (1)(b), (8)(a) and (9)(a), for “an interim receiving order made under section 246” substitute “a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A”.