



Criminal Finances Act 2017

2017 CHAPTER 22

PART 1

PROCEEDS OF CRIME

CHAPTER 1

INVESTIGATIONS

Unexplained wealth orders: Scotland

4 Unexplained wealth orders: Scotland

In Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (investigations: Scotland), after section 396 insert—

“Unexplained wealth orders

396A Unexplained wealth orders

- (1) The Court of Session may, on an application made by the Scottish Ministers, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) An application for an order must—
 - (a) specify or describe the property in respect of which the order is sought, and
 - (b) specify the person whom the Scottish Ministers think holds the property (“the respondent”) (and the person specified may include a person outside the United Kingdom).

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- (3) An unexplained wealth order is an order requiring the respondent to provide a statement—
- (a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,
 - (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),
 - (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
 - (d) setting out such other information in connection with the property as may be so specified.
- (4) The order must specify—
- (a) the form and manner in which the statement is to be given,
 - (b) the person to whom it is to be given, and
 - (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.
- (5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.
- (6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

396B Requirements for making of unexplained wealth order

- (1) These are the requirements for the making of an unexplained wealth order in respect of any property.
- (2) The Court of Session must be satisfied that there is reasonable cause to believe that—
- (a) the respondent holds the property, and
 - (b) the value of the property is greater than £50,000.
- (3) The Court of Session must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.
- (4) The Court of Session must be satisfied that—
- (a) the respondent is a politically exposed person, or
 - (b) there are reasonable grounds for suspecting that—
 - (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
 - (ii) a person connected with the respondent is, or has been, so involved.
- (5) It does not matter for the purposes of subsection (2)(a)—
- (a) whether or not there are other persons who also hold the property;
 - (b) whether the property was obtained by the respondent before or after the coming into force of this section.

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- (6) For the purposes of subsection (3)—
- (a) regard is to be had to any heritable security, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
 - (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
 - (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
 - (d) “known” sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;
 - (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.
- (7) In subsection (4)(a), “politically exposed person” means a person who is—
- (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State,
 - (b) a family member of a person within paragraph (a),
 - (c) known to be a close associate of a person within that paragraph, or
 - (d) otherwise connected with a person within that paragraph.
- (8) Article 3 of [Directive 2015/849/EU](#) of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining—
- (a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),
 - (b) whether a person is a family member (see point (10) of that Article), and
 - (c) whether a person is known to be a close associate of another (see point (11) of that Article).
- (9) For the purposes of this section—
- (a) a person is involved in serious crime in a part of the United Kingdom or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);
 - (b) section 1122 of the Corporation Tax Act 2010 (“connected” persons) applies in determining whether a person is connected with another.
- (10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

Changes to legislation: There are currently no known outstanding effects for the Criminal Finances Act 2017, Cross Heading: Unexplained wealth orders: Scotland. (See end of Document for details)

396C Effect of order: cases of non-compliance

- (1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.
- (2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5, unless the contrary is shown.
- (3) The presumption in subsection (2) applies in relation to property—
 - (a) only so far as relating to the respondent's interest in the property, and
 - (b) only if the value of that interest is greater than the sum specified in section 396B(2)(b).

It is for the court hearing the proceedings under Part 5 in relation to which reliance is placed on the presumption to determine the matters in this subsection.

- (4) The “response period” is whatever period the court specifies under section 396A(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).
- (5) For the purposes of subsection (1)—
 - (a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 396D);
 - (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.
- (6) Subsections (7) and (8) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—
 - (a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 396B), or
 - (b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).
- (7) In a case within subsection (6)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.
- (8) In a case within subsection (6)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7) (a) of section 396B.
- (9) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

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396D Effect of order: cases of compliance or purported compliance

- (1) This section applies in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made before the end of the response period (as defined by section 396C(4)).
- (2) If an interim freezing order has effect in relation to the property (see section 396J), the Scottish Ministers must—
 - (a) consider whether the Lord Advocate should be given an opportunity to determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property, and
 - (b) determine whether they consider that any proceedings under Part 5 (civil recovery of the proceeds of unlawful conduct) or this Chapter ought to be taken by them in relation to the property.
- (3) If the Scottish Ministers consider that the Lord Advocate should be given an opportunity to make a determination as mentioned in subsection (2)(a), the Lord Advocate must determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.
- (4) A determination under subsection (2)(b) or (3) must be made within the period of 60 days starting with the day of compliance.
- (5) If the determinations under subsections (2)(b) and (3) are that no further proceedings under Part 5 or this Chapter and no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Scottish Ministers must notify the Court of Session of the nature of the determinations as soon as reasonably practicable (and in any event before the end of the 60 day period mentioned in subsection (4)).
- (6) If there is no interim freezing order in effect in relation to the property—
 - (a) the Scottish Ministers may (at any time) determine whether they consider that any proceedings under Part 5 or this Chapter ought to be taken by them in relation to the property, and
 - (b) the Lord Advocate may (at any time) determine what, if any, enforcement or investigatory proceedings the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.
- (7) A determination under this section to take no further proceedings under Part 5 or this Chapter or no further enforcement or investigatory proceedings in relation to any property does not prevent any such proceedings being taken subsequently (whether as a result of new information or otherwise) in relation to the property.
- (8) For the purposes of this section—
 - (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with,
 - (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the

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requirements are complied with over more than one day, the last of those days), and

- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) to (c) references to compliance include purported compliance.

- (9) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—
 - (a) Part 3 (confiscation proceedings in Scotland), or
 - (b) this Chapter.

396E Offence

- (1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person—
 - (a) makes a statement that the person knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement that is false or misleading in a material particular.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

396F Statements

- (1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.
- (2) Subsection (1) does not apply—
 - (a) in the case of proceedings under Part 3,
 - (b) on a prosecution for an offence under section 396E,
 - (c) on a prosecution for perjury, or
 - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
 by the person or on the person's behalf in proceedings arising out of the prosecution.

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396G Disclosure of information, copying of documents, etc

- (1) An unexplained wealth order does not confer the right to require a person to answer any question, provide any information or produce any document which the person would be entitled to refuse to answer, provide or produce on grounds of legal privilege.
- (2) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).
- (3) The Scottish Ministers may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.
- (4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 341 in relation to the property in respect of which the unexplained wealth order is made.
- (5) But if the Scottish Ministers have reasonable grounds to believe that the documents—
 - (a) may need to be produced for the purposes of any legal proceedings, and
 - (b) might otherwise be unavailable for those purposes,they may be retained until the proceedings are concluded.

396H Holding of property: trusts and company arrangements etc

- (1) This section applies for the purposes of sections 396A and 396B.
- (2) The cases in which a person (P) is to be taken to “hold” property include those where—
 - (a) P has effective control over the property;
 - (b) P is the trustee of a settlement in which the property is comprised;
 - (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.
- (3) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person—
 - (a) exercises,
 - (b) is able to exercise, or
 - (c) is entitled to acquire,direct or indirect control over the property.
- (4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.
- (5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.
- (6) For further provision about how to construe references to the holding of property, see section 414.

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396I Supplementary

- (1) An application for an unexplained wealth order may be made without notice.
- (2) Provision may be made by rules of court as to the discharge and variation of unexplained wealth orders.
- (3) An application to discharge or vary an unexplained wealth order may be made to the Court of Session by—
 - (a) the Scottish Ministers, or
 - (b) any person affected by the order.
- (4) The Court of Session may—
 - (a) discharge the order;
 - (b) vary the order.”

Commencement Information

- I1** S. 4 in force at Royal Assent for specified purposes, see s. 58
- I2** S. 4 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(a)

5 Interim freezing orders

After section 396I of the Proceeds of Crime Act 2002 (inserted by section 4 above) insert—

“Unexplained wealth orders: interim freezing of property

396J Application for interim freezing order

- (1) This section applies where the Court of Session makes an unexplained wealth order in respect of any property.
- (2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.
- (3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 396L).
- (4) An interim freezing order—
 - (a) may be made only on the application of the Scottish Ministers,
 - (b) must be made in the same proceedings as those in which the unexplained wealth order is made, and
 - (c) may be combined in one document with the unexplained wealth order.
- (5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

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396K Variation and recall of interim freezing order

- (1) The Court of Session may at any time vary or recall an interim freezing order.
- (2) The Court of Session must recall an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.
- (3) The first case is where—
 - (a) the applicable 48 hour period has ended, and
 - (b) a relevant application has not been made before the end of that period in relation to the property concerned.
- (4) The second case is where—
 - (a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned, and
 - (b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.
- (5) The third case is where the court has received a notification in relation to the property concerned under section 396D(5) (notification of no further proceedings).
- (6) References in this section to the “applicable 48 hour period” are to be read as follows—
 - (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by the unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the 60 day period mentioned in section 396D(4) ends;
 - (b) in any other case, it is the period of 48 hours beginning with the day after the day on which the response period ends.
- (7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of—
 - (a) any Saturday or Sunday,
 - (b) Christmas Day,
 - (c) Good Friday, or
 - (d) any other day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.
- (8) Section 396D(8) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.
- (9) Before exercising power under this section to vary or recall an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (10) Subsection (9) does not apply where the court is acting as required by subsection (2).

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(11) In this section—

“relevant application” means an application for—

- (a) a restraint order under section 120,
- (b) a prohibitory property order under section 255A, or
- (c) an interim administration order under section 256;

“response period” has the meaning given by section 396C(4).

396L Exclusions

- (1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—
 - (a) power to exclude property from the order, and
 - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—
 - (a) to meet the person's reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Chapter.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.

396M Restrictions on proceedings and remedies

- (1) While an interim freezing order has effect the Court of Session 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 freezing order has been applied for or made in respect of the property, it may—
 - (a) sist the proceedings, or
 - (b) allow them to continue on any terms it thinks fit.
- (3) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

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396N Arrestment of property affected by interim freezing order

- (1) On the application of the Scottish Ministers the Court of Session may, in relation to moveable property to which an interim freezing order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.
- (2) An application under subsection (1) may be made at the same time as the application for the interim freezing order or at any time afterwards.
- (3) 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 Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5), the Scottish Ministers must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

396O Inhibition of property affected by interim freezing order

- (1) On the application of the Scottish Ministers, 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 freezing order.
- (2) The property is heritable property situated in Scotland to which the interim freezing order applies (whether generally or to 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 Scottish Ministers 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 Scottish Ministers in the register of inhibitions and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (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) An inhibition executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (6) If an inhibition ceases to have effect to any extent by virtue of subsection (5), the Scottish Ministers must—

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- (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.

396P Receivers in connection with interim freezing orders

- (1) This section applies where the Court of Session makes an interim freezing order on an application by the Scottish Ministers.
- (2) The Court of Session may, on an application by the Scottish Ministers, by order appoint a receiver in respect of any property to which the interim freezing order applies.
- (3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.
- (4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the Scottish Ministers to obtain a recovery order in respect of the property.
- (5) In their application the Scottish Ministers must nominate a suitably qualified person for appointment as a receiver.
- (6) The person nominated may be a member of staff of the Scottish Ministers.
- (7) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of the remuneration and expenses of a receiver appointed under this section.
- (8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the Scottish Ministers (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the Scottish Ministers).

396Q Powers of receivers appointed under section 396P

- (1) If the Court of Session appoints a receiver under section 396P, the court may act under this section on the application of the Scottish Ministers.
- (2) The court may by order authorise or require the receiver—
 - (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the receiver is appointed;
 - (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).
- (3) The court may by order require any person in respect of whose property the receiver is appointed—
 - (a) to bring the property to a place in Scotland specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);

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- (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.
- (4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place in Scotland specified by the receiver or to place them in the custody of the receiver.
- (5) In subsection (4) “document” means anything in which information of any description is recorded.
- (6) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (7) Subsection (8) applies in a case where—
 - (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 396P, but
 - (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of his or her appointment.
- (8) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (9) But subsection (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

396R Supervision of section 396P receiver and variations

- (1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a receiver appointed under section 396P—
 - (a) the receiver;
 - (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
 - (c) a person affected by an action taken by the receiver;
 - (d) a person who may be affected by an action proposed to be taken by the receiver.
- (2) Before it gives directions under subsection (1), the court must give an opportunity to be heard to—
 - (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;
 - (c) any person who may be interested in the application under subsection (1).
- (3) The court may at any time vary or recall—
 - (a) the appointment of a receiver under section 396P,
 - (b) an order under section 396Q, or
 - (c) directions under this section.

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- (4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—
- (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 396Q or (as the case may be) for the directions under this section;
 - (c) the parties to the proceedings for the interim freezing order concerned;
 - (d) any person who may be affected by the court's decision.

396S Compensation

- (1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.
- (2) The application must be made within the period of three months beginning with the recall of the interim freezing order.
- (3) The court may order compensation to be paid to the applicant only if satisfied that—
 - (a) the applicant has suffered loss as a result of the making of the interim freezing order,
 - (b) there has been a serious default on the part of the Scottish Ministers in applying for the order, and
 - (c) the order would not have been made had the default not occurred.
- (4) Where the court orders the payment of compensation—
 - (a) the compensation is payable by the Scottish Ministers, and
 - (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.”

Commencement Information

I3 S. 5 in force at Royal Assent for specified purposes, see s. 58

I4 S. 5 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(a)

6 External assistance

After section 396S of the Proceeds of Crime Act 2002 (inserted by section 5 above) insert—

“Unexplained wealth orders: enforcement abroad

396T Enforcement abroad: Scottish Ministers

- (1) This section applies if—
 - (a) the Court of Session makes an unexplained wealth order in respect of any property,

Changes to legislation: There are currently no known outstanding effects for the Criminal Finances Act 2017, Cross Heading: Unexplained wealth orders: Scotland. (See end of Document for details)

- (b) it appears to the Scottish Ministers that the risk mentioned in section 396J(2) applies in relation to the property, and
 - (c) the Scottish Ministers believe that the property is in a country outside the United Kingdom (the receiving country).
- (2) The Scottish Ministers may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (3) The Secretary of State may forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
 - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

396U Enforcement abroad: receiver

- (1) This section applies if—
- (a) an interim freezing order has effect in relation to property, and
 - (b) the receiver appointed under section 396P in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).
- (2) The receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (3) The Secretary of State must forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
 - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.”

Commencement Information

I5 S. 6 in force at Royal Assent for specified purposes, see s. 58

I6 S. 6 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(a)

Changes to legislation:

There are currently no known outstanding effects for the Criminal Finances Act 2017, Cross
Heading: Unexplained wealth orders: Scotland.