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STATUTORY INSTRUMENTS

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**2005 No. 3181**

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005

PART 5

GIVING EFFECT IN THE UNITED KINGDOM TO EXTERNAL ORDERS BY MEANS OF CIVIL RECOVERY

CHAPTER 1

INTRODUCTION

**Action to give effect to an order**

**142.**—(1) The Secretary of State may forward an external order to the enforcement authority.

(2) This Part has effect for the purpose of enabling the enforcement authority to realise recoverable property (within the meaning of article 202) in civil proceedings before the High Court or Court of Session for the purpose of giving effect to an external order.

(3) The powers conferred by this Part are exercisable in relation to any property whether or not proceedings have been brought in the country from which the external order was sent for criminal conduct (within the meaning of section 447(8) of the Act) in connection with the property.

CHAPTER 2

CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

*Proceedings for recovery orders*

**Proceedings for recovery orders in England and Wales or Northern Ireland**

**143.**—(1) Proceedings for a recovery order pursuant to the registration of an external 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) In the case of an external order which is for the recovery of property other than a sum of money which is specified in the external order (“the specified property”), that property must also be specified in the claim form.

(4) Paragraph (5) applies in the case of an external order which is for the recovery of a specified sum of money.

(5) 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.

(6) The references above to the claim form include the particulars of claim, where they are served subsequently.

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

**144.**—(1) Proceedings for a recovery order pursuant to the registration of an external 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) In the case of an external order which is for the recovery of property other than a sum of money which is specified in the external order (“the specified property”), the property must also be specified in the application.

(4) Paragraph (5) applies in the case of an external order which is for the recovery of a specified sum of money.

(5) 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.

### **Sums in a currency other than sterling**

**145.**—(1) This article applies where the external order in respect of which proceedings for a recovery order are taken specifies a sum of money.

(2) If the sum of money which is specified in an external order is expressed in a currency other than sterling, the sum of money to be recovered is to be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of day on which the external order was made.

(3) This amount must be specified—

(a) in England and Wales or Northern Ireland, in the claim form or the particulars of claim where they are served subsequently, or

(b) in Scotland, in the application.

### **“Associated property”**

**146.**—(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 articles 184 to 186).

*Property freezing orders (England and Wales and Northern Ireland)*

**Application for property freezing order**

**147.**—(1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that—

- (a) specifies or describes the property to which it applies, and
- (b) subject to any exclusions (see article 149(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with property.

(3) An application for a property freezing 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 a property freezing order on an application if it is satisfied that the condition in paragraph (5) is met and, where applicable, that the condition in paragraph (6) is 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.

**Variation and setting aside of property freezing order**

**148.**—(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising the power to vary or set aside a property 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.

(6) Paragraph (5) does not apply where the court is acting as required by paragraph (2) or (3).

### **Property freezing orders: exclusions**

**149.**—(1) The power to vary a property freezing order includes (in particular) 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, 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.

(4) An exclusion may be made subject to conditions.

(5) 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 article 198) in addition to any conditions imposed under paragraph (4).

(6) 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.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to paragraph (6), 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 which satisfies the tests in article 202(1) and (2) is not unduly prejudiced.

(9) Paragraph (8) does not apply where the court is acting as required by article 148(3) or (4).

### **Property freezing orders: restrictions on proceedings and remedies**

**150.**—(1) While a property freezing 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, and

(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 a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the 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 article, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

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

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

**151.**—(1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external 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.

(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 paragraphs (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 articles 152 to 160.

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

**152.**—(1) An interim receiving order may authorise or require the interim receiver—

- (a) to exercise any of the powers mentioned in Schedule 2,

(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 paragraph (2).

(2) An interim receiving order—

- (a) must require the interim receiver to take any steps which the court thinks necessary to establish whether or not the property to which the order applies is recoverable property or associated property, and
- (b) may require him to take any steps which the court thinks necessary to establish whether or not any other property is recoverable property (which satisfies the tests in article 202(1) and (2) or 203) 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 negligence.

#### *Property freezing orders and interim receiving orders: registration*

### **Registration of property freezing orders and interim receiving orders**

**153.**—(1) The registration Acts—

- (a) apply in relation to property freezing orders, and 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 judgments or recognisances,
- (b) apply in relation to applications for property freezing orders and in relation to applications for interim receiving orders as they apply in relation to other pending land actions.

(2) The registration Acts are—

- (a) the Land Charges Act 1972(1), and
- (b) the Land Registration Act 2002(2).

(3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a property freezing order or an interim receiving order.

### **Registration (Northern Ireland) of such orders**

**154.**—(1) A person applying for a property freezing order or an interim receiving order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970(3) (cautions) as a person interested in relation to any registered land to which—

- (a) the application relates, or
- (b) a property freezing order or an interim receiving order made in pursuance of the application relates.

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(1) 1972 c. 61

(2) 2002 c. 9.

(3) 1970 c. 18 (N.I.).

(2) 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.

(3) 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.

(4) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under paragraph (2) or (3) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(5) Where a property freezing order or 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 property freezing order or interim receiving order may require that entry to be vacated.

(6) In this article—

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

“Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954(4).

#### *Interim receiving orders: further provisions*

#### **Interim receiving orders: duties of respondent etc.**

**155.**—(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.

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

**156.**—(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 paragraph (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.

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(4) 1954 c. 33 (N.I.).

(4) Before exercising any power 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.

#### **Interim receiving orders: restrictions on dealing etc. with property**

**157.**—(1) An interim receiving order must, subject to any exclusions made in accordance with this article, 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,
- (c) and may be made subject to conditions.

(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 article 198) in addition to any conditions imposed under paragraph (3).

(5) The court, in deciding whether to make an exclusion for the purposes 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.

(6) If the excluded property is not specified in the order it must be described in the order in general terms.

(7) The power to make exclusions must, subject to paragraph (5), 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 conduct which satisfies the test in article 202(2) is not unduly prejudiced.

#### **Interim receiving orders: restriction on proceedings and remedies**

**158.**—(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 article, 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.

### **Exclusion of property which is not recoverable etc. under interim receiving order**

**159.**—(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 which satisfies the tests in article 202(1) and (2) will not be prejudiced.

(3) The court may exclude any property within paragraph (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

### **Reporting under interim receiving order**

**160.**—(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 (which satisfies the tests in article 202(1) and (2)) 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.

### *Prohibitory property orders (Scotland)*

### **Application for prohibitory property order**

**161.**—(1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).

(2) A prohibitory property order is an order that—

- (a) specifies or describes the property to which it applies, and

- (b) subject to any exclusions (see article 163(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a prohibitory property 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 a prohibitory property order on an application if it is satisfied that the condition in paragraph (5) is met and, where applicable, that the condition in paragraph (6) is 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 so.

#### **Variation and recall of prohibitory property order**

- 162.**—(1) The court may at any time vary or recall a prohibitory property order.
- (2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.
- (3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.
- (4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or recall a prohibitory property 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.
- (6) Paragraph (5) does not apply where the court is acting as required by paragraph (2) or (3).

#### **Prohibitory property orders: exclusions**

- 163.**—(1) The power to vary a prohibitory property order includes (in particular) power to make exclusion 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, 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.
- (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 Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

(7) 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 which satisfies the tests in article 202(1) and (2) is not unduly prejudiced.

(8) Paragraph (7) does not apply where the court is acting as required by article 162(3) or (4).

### **Prohibitory property orders: restriction on proceedings and remedies**

**164.**—(1) While a prohibitory property 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 a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

### **Arrestment of property affected by prohibitory property order**

**165.**—(1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under paragraph (1) may be made at the same time as the application for the prohibitory property 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 paragraph (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this article ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of paragraph (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

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

**166.**—(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in paragraph (2), grant warrant for inhibition against any person specified in a prohibitory property order.

(2) That property is heritable property situated in Scotland to which the prohibitory property 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 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 inhibition and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868<sup>(5)</sup> (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under paragraph (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this article ceases to have effect when, or in so far as, the prohibitory property 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 paragraph (5) 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.

#### *Interim administration orders (Scotland)*

#### **Application for interim administration order**

**167.**—(1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external 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 paragraphs (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
- (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.

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(5) [1868 c. 101](#).

(8) The extent of the power to make an interim administration order is not limited by articles 168 to 175.

### **Functions of interim administrator**

**168.**—(1) An interim administrator order may authorise or require the interim administrator—

- (a) to exercise any of the powers mentioned in Schedule 2,
- (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 paragraph (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 (which satisfies the tests in article 202(1) and (2) or 203), 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.

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

**169.**—(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in paragraph (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<sup>(6)</sup> (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under paragraph (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) The execution of an inhibition under this article 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 under this article 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.

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(6) 1868 c. 101.

(7) If an inhibition ceases to have effect to any extent by virtue of paragraph (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.

#### **Interim administration orders: duties of respondent etc.**

**170.**—(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.

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

**171.**—(1) The interim administrator, any party to the proceedings and any person affected by an 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 paragraph (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 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.

#### **Interim administration orders: restrictions on dealing etc. with property**

**172.**—(1) An interim administration order must, subject to any exclusions made in accordance with this article, 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 conduct which satisfies the test in article 202(2) is not unduly prejudiced.

#### **Interim administration orders: restrictions on proceedings and remedies**

**173.**—(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 article, 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.

#### **Exclusion of property which is not recoverable etc. under interim administration order**

**174.**—(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 which satisfies the tests in article 202(1) and (2) will not be prejudiced.

(3) The court may exclude any property within paragraph (2) on any terms or conditions, applying while the interim administration order has effect, which the court thinks necessary or expedient.

#### **Reporting under interim administration order**

**175.**—(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 (which satisfies the tests in article 202(1) and (2)) 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.

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

**176.**—(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 paragraph (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 paragraph (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 article 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 article 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 paragraph (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, restrict the arrestment.

### *Vesting and realisation of recoverable property*

#### **Recovery orders**

**177.**—(1) The court must decide to give effect to an external order which falls within the meaning of section 447(2) of the Act by registering it and making a recovery order if it determines that any property or sum of money which is specified in it is recoverable property.

(2) In making such a determination the court must have regard to—

- (a) the definitions in subsections (2), (4), (5), (6), (8) and (10) of section 447 of the Act, and
- (b) articles 202 to 207.

(3) The recovery order must vest the recoverable property in the trustee for civil recovery.

(4) 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 paragraph (5) or (as the case may be) (6) 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(7)).

(5) In relation to a court in England and Wales or Northern Ireland, the conditions referred to in paragraph (4)(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,

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(7) 1998 c. 42.



- (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.
- (6) In relation to a court in Scotland, the conditions referred to in paragraph (4)(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 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.
- (7) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in paragraph (5) or (as the case may be) (6) 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.
- (8) A recovery order may sever any property.
- (9) 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.
- (10) A recovery order made by a court in England and Wales or Northern Ireland may provide for payment under article 191 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.
- (11) If regulations under article 199 apply to an item of expenditure, a sum in respect of the item is not payable under article 199 in pursuance of provision under paragraph (10) 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.
- (12) This article is subject to articles 181 to 189.

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

**178.**—(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 3.

(7) References in this article to a recovery order include an order under article E46 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under article 187.

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

**179.**—(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 paragraph (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.

### **Rights of pre-emption etc.**

**180.**—(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 paragraphs (2) and (3) do not include any rights in respect of which the recovery order was made.

(5) This article 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.

### **Associated and joint property**

**181.**—(1) Articles 182 and 183 apply if the court makes a recovery order in respect of any recoverable property in a case within paragraph (2) or (3).

(2) A case is within this paragraph 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 paragraph 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) Paragraphs (3) and (4) do not extend to Scotland.

### **Agreements about associated and joint property**

**182.**—(1) Where—

(a) this article 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 paragraph (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 article 181(2), the value of the recoverable property,

(b) in a case within article 181(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if—

(a) a property freezing order, an interim receiving order, a prohibitory property order or an 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 order mentioned in sub-paragraph (a),

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 paragraph (1) must make provision for any recoverable property to cease to be recoverable.

### **Associated and joint property: default of agreement**

**183.**—(1) Where this article applies, the court may make the following provision if—

(a) there is no agreement under article 182, and

(b) the court thinks it just and equitable to do so.

(2) The recovery order may provide—

(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 paragraph (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 paragraph (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) a property freezing order, an interim receiving order, a prohibitory property order or an 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 order mentioned in subparagraph (a),
 a recovery order making any provision by virtue of paragraph (2) or (3) may require the enforcement authority to pay compensation to that person.
- (6) The amount of compensation to be paid under paragraph (5) is the amount the court thinks reasonable, having regard to the person’s loss and to any other relevant circumstances.

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

- 184.**—(1) This article 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 the period determined in accordance with paragraph 5 of Schedule 4 (“the 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 article and the two following articles in respect of the scheme.
- This paragraph is subject to articles 187 to 189.
- (3) A recovery order made by virtue of paragraph (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 paragraph (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 paragraph (2)—

- (a) any provision of section 159 of the Pension Schemes Act 1993<sup>(8)</sup>, section 155 of the Pension Schemes (Northern Ireland) Act 1993<sup>(9)</sup>, section 91 of the Pensions Act 1995<sup>(10)</sup> or Article 89 of the Pensions (Northern Ireland) Order 1995<sup>(11)</sup> (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 sub-paragraph (a),
- (c) any provision of the pension scheme in question corresponding to any to those provisions.

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

**185.**—(1) A recovery order made by virtue of article 184(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 paragraph.

(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 article 184 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 article 184 applies to cease, their powers include (in particular) power to reduce the amount of—

- (a) any benefit or future benefit to which the respondent 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.

### **Pension schemes: supplementary**

**186.**—(1) Schedule 4 has effect for the purposes of the exercise by trustees or managers of their powers under articles 184 and 185, including provision about the calculation and verification of the value at any time of rights and liabilities.

(2) 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 or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993.

(3) 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.

(4) 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<sup>(12)</sup> or, in relation to Northern Ireland, Part 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999<sup>(13)</sup>),

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<sup>(8)</sup> 1993 c. 48

<sup>(9)</sup> 1993 c. 49.

<sup>(10)</sup> 1995 c. 26

<sup>(11)</sup> S.I. 1995/3213 (N.I. 22).

<sup>(12)</sup> 1999 c. 30.

<sup>(13)</sup> S.I. 1999/3147 (N.I. 11).

- (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 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 or, in relation to Northern Ireland, Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.
- (5) 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.
- (6) Paragraphs (2) to (5) have effect for the purposes of this group of articles (that is, articles 184, 185 and this article).

### **Consent orders**

**187.**—(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 paragraph (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) Article 191 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 article 182.

### **Consent orders: pensions**

**188.**—(1) This article applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.

- (2) An order made under article 187—
- (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 article 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 article 187 may stay (in Scotland, sist) the proceedings.

(5) The following provisions apply in respect of an order under article 187, so far as it includes the requirement mentioned in paragraph (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—

- (a) complying with the order, or
- (b) providing information, before the order was made, to the enforcement authority, interim receiver or interim administrator.

(8) Articles 184(5) and 185 (read with article 186) apply as if the requirement were included in an order made by virtue of article 184(2).

(9) Paragraphs (4) to (7) of article 186 have effect for the purposes of this article.

### **Limit on recovery**

**189.**—(1) This article applies if the enforcement authority seeks a recovery order—

- (a) in respect of both property which is or represents property which satisfies the tests in article 202(1) or (2) and related property, or
- (b) in respect of property which is or represents property which satisfies those tests where such an order, or an order under article 187, has previously been made in respect of related property.

(2) For the purposes of this article—

- (a) the original property means the property specified in the external order or a sum of money so specified,
- (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 article 187.

(4) Subject to paragraph (3), the court may act under paragraph (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 article 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 of the Act for the forfeiture of recoverable property, and
- (b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the order under section 298 is to be treated, for the purposes of this article 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 within the meaning of section 242 of the Act, 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 article 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 article as if it were a recovery order obtained by the enforcement authority in respect of the property referred to in sub-paragraph (a).

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

- (a) an order under section 6, 92 or 156 of the Act or an external order registered under Parts 2, 3 or 4 of this Order,
- (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act,

and, in relation to an order mentioned in sub-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.

### **Article 189: supplementary**

**190.**—(1) Paragraphs (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.

(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 article—

- (a) a part disposal means a disposal to which article 211(1) applies,
- (b) the original property has the same meaning as in article 189.



### **Applying realised proceeds**

**191.**—(1) This article 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 article 183,
- (b) next, any payment of legal expenses which, after giving effect to article 177(11), are payable under this paragraph in pursuance of provision under article 177(10) contained in the recovery order,
- (c) next, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this paragraph by virtue of article 3(10),

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

(3) The Director may apply a sum received by him under paragraph (2) in making payment of the remuneration and expenses of—

- (a) the trustee, or
- (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) Paragraph (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Agency.

### *Exemptions etc.*

### **Victims of theft etc.**

**192.**—(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 article.

(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 within the meaning of section 241 of the Act,
- (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 article applies is not recoverable property.

### **Other exemptions**

**193.**—(1) Proceedings for a recovery order may not be taken against the Financial Services Authority in respect of any recoverable property held by the authority.

(2) 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<sup>(14)</sup>,
  - (b) a market charge, within the meaning of Part 7 of the Companies Act 1989<sup>(15)</sup>,
  - (c) a money market charge, within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995<sup>(16)</sup>,
  - (d) a system charge, within the meaning of the Financial Markets and Insolvency Regulations 1996<sup>(17)</sup> or the Financial Markets and Insolvency Regulations (Northern Ireland) 1996<sup>(18)</sup>.
- (3) 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 article 4.

### *Miscellaneous*

#### **Compensation**

**194.**—(1) If, in the case of any property to which a property freezing order, an interim receiving order, a prohibitory property order or an 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.

(2) Paragraph (1) does not apply if the court—

- (a) has made a declaration in respect of the property by virtue of article 192, or
- (b) makes an order under article 187.

(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 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 order mentioned in paragraph (1), it may require the enforcement authority to pay compensation to him.

(6) If, but for article 180(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.

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<sup>(14)</sup> S.I. 1999/2979.

<sup>(15)</sup> 1989 c. 40.

<sup>(16)</sup> S.I. 1995/2049.

<sup>(17)</sup> S.I. 1996/1469.

<sup>(18)</sup> S.R. (N.I.) 1996/252.

(7) The application for compensation under paragraph (6) must be made within the period of three months beginning with the vesting referred to in article 180(2).

(8) If the court is satisfied that, in consequence of the operation of article 180, 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 article is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

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

**195.**—(1) 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.

(2) The Scottish Ministers may apply a sum received by them under article 191(2) in making payment of such fees or expenses.

(3) Paragraph (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff.

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

**196.**—(1) An arrestment or poinding of any recoverable property executed on or after the appointment of the trustee for civil recovery is ineffectual in a question with the trustee.

(2) Any recoverable property so arrested or poinded, or (if the property has been sold) the proceeds of sale, must be handed over to the trustee for civil recovery.

(3) A poinding 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 paragraph (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 provision of this article 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 poinding.

#### **Scope of powers (Scotland)**

**197.**—(1) Orders under this Chapter may be made by the Court of Session in respect of a person wherever domiciled, resident or present.

(2) 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 conduct which satisfies the test in article 202(2) took place in Scotland.

### **Legal expenses excluded from freezing: required conditions**

**198.**—(1) The Lord Chancellor may by regulations specify the required conditions for the purposes of article 149(5) or 157(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 paragraph (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 article 199 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 article 199 in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this article, the Lord Chancellor must consult such persons as he considers appropriate.

### **Legal expenses: regulations for purposes of article 177(11) or 198(3)**

**199.**—(1) The Lord Chancellor may by regulations—

- (a) make provision for the purposes of article 177(11);
- (b) make provision for the purposes of required conditions that make provision of the kind mentioned in article 198(3)(b) or (c).

(2) Regulations under this article 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 article, the Lord Chancellor must consult such persons as he considers appropriate.

### **Financial threshold**

**200.**—(1) The enforcement authority may not start proceedings for a recovery order unless the authority reasonably believes that the aggregate value of the recoverable property which the authority wishes to be subject to a recovery order is not less than £10,000.

(2) If the authority applies for a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order before starting the proceedings, paragraph (1) applies to the application instead of to the start of the proceedings.

(3) This article does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order which has been properly applied for.

## Limitation

**201.**—(1) After section 27A of the Limitation Act 1980(19) there is inserted—

### “Actions for recovery of property for purposes of an external order

**27B.**—(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 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(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 a property freezing order, or
- (c) an application is made for an interim receiving order,

whichever is earliest.

(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, or believed to have been obtained, as a result of or in connection with criminal 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, or believed to have been obtained, as a result of or in connection with criminal 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,
- (c) section 3(2) of this Act does not prevent his asserting on an application under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.

(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.

(7) In this section—

- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and

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(19) 1980 c. 58; section 27A was inserted by section 288(1) of the Proceeds of Crime Act 2002.

- (b) expressions used in this section which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.

(2) After section 19B of the Prescription and Limitation (Scotland) Act 1973<sup>(20)</sup> there is inserted—

**“Actions for recovery of property for the purposes of an external order**

**19C.**—(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 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(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,
- (b) an application is made for a prohibitory property order, or
- (c) an application is made for an interim administration order,

whichever is the earliest.

(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, or believed to have been obtained, as a result of or in connection with criminal 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, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained.

(5) In this section—

- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
- (b) expressions used in this section which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.

(3) After Article 72A of the Limitation (Northern Ireland) Order 1989<sup>(21)</sup> there is inserted—

**“Actions for recovery of property for purposes of an external order**

**72B.**—(1) None of the time limits fixed by Parts 2 and 3 of this Order applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(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—

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<sup>(20)</sup> 1973 c. 52; section 19B was inserted by section 288(2) of the Proceeds of Crime Act 2002.

<sup>(21)</sup> S.I. 1989/1339 (N.I. 11); Article 72A was inserted by section 288(3) of the Proceeds of Crime Act 2002.

- (a) a claim form is issued, or
- (b) an application is made for a property freezing order, or
- (c) an application is made for an interim receiving order,

whichever is earliest.

- (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, or believed to have been obtained, as a result of or in connection with criminal 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, or believed to have been obtained, as a result of or in connection with criminal 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) of this Order does not prevent his asserting on an application under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.

(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) of this Order.

(7) In this Article—

- (a) "criminal conduct" is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
- (b) expressions used in this Article which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this Article as in that Part."

## CHAPTER 3

### GENERAL

#### *Recoverable property*

#### **Recoverable property: property or sum of money specified in the external order**

**202.**—(1) Property or a sum of money is recoverable property if it is specified in an external order (within the meaning of section 447(2) of the Act).

(2) Accordingly, the property (including money) must have been found to have been obtained as a result of or in connection with criminal conduct (within the meaning of section 447(8) of the Act) or must have been believed to have been so obtained.

(3) But if property (including money) which is specified in the external order 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.

(4) Recoverable property specified in an external order 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 paragraph) be followed.

(5) Where an external order specifies property other than a sum of money, only that property is recoverable property.

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

**203.**—(1) This article applies only where an external order specifies a sum of money.

(2) Where property which satisfies the tests in article 202(1) and (2) (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.

(3) 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.

(4) 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).

### **Mixing property**

**204.**—(1) This article applies only where an external order specifies a sum of money.

(2) Paragraph (3) applies if a person’s recoverable property is mixed with other property (whether his property or another’s).

(3) The portion of the mixed property which is attributable to the recoverable property represents the property which satisfies the tests in article 202(1) and (2).

(4) 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.

### **Recoverable property: general exceptions**

**205.**—(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 any conduct by the defendant which satisfies the test in article 202(2), and
- (c) apart from this paragraph, 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(22), section 249 of the Criminal Procedure (Scotland) Act 1995(23) or section 130 of the Powers of Criminal Court (Sentencing) Act 2000(24), and
- (b) apart from this paragraph, the sum received would be recoverable property,

the property ceases to be recoverable.

(5) If—

- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969(25) 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 paragraph, 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 (restitution orders)(26), an amount is paid to or distributed among any persons in accordance with the court's directions, and
- (b) apart from this paragraph, 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 pursue restitution), an amount is paid to or distributed among any persons and
- (b) apart from this paragraph, 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 of the Act or article 8, 58 or 95 of this Order, or
- (b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act.

(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—

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(22) S.I. 1994/2795 (N.I. 15).

(23) 1995 c. 46.

(24) 2000 c. 6.

(25) 1969 c. 16 (N.I.).

(26) 2000 c. 8.

- (a) an order under section 6, 92 or 156 of the Act or an external order registered under Part 2, 3 or 4 of this Order, or
- (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act,

and, in relation to an order mentioned in sub-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 article 203(3) applies, and
- (b) the disposal is one to which paragraph (1) or (2) applies,

this article does not affect the recoverability (by virtue of article 203(3)) of any property obtained on the transaction in place of the property disposed of.

### **Other exemptions**

**206.**—(1) Property, which apart from this article, would be recoverable property and is—

- (a) forfeited in pursuance of powers conferred by the customs and excise Acts, as defined by section 1(1) of the Customs and Excise Management Act 1979(27), or
- (b) disposed of in pursuance of an enactment prescribed in Schedule 5,

is not recoverable or (as the case may be) associated property.

(2) But where particular circumstances are prescribed in Schedule 5 in relation to an enactment, paragraph (1)(b) applies only in those circumstances.

### **Granting interests**

**207.**—(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 which satisfies the tests in article 202(1) and (2), the interest is also to be treated as satisfying those tests,
- (b) where the property in question represents in his hands property which satisfies the tests in article 202(1) and (2), the interest is also to be treated as representing in his hands property which satisfies those tests.

## *Insolvency*

### **Insolvency**

**208.**—(1) Proceedings for a recovery order may not be taken or continued in respect of property to which paragraph (2) 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) This paragraph 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,
- (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.

(3) An application under this article, 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.

(4) Paragraph (3) 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).

(5) 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 paragraphs (1) and (2) above.

(6) In this article—

- (a) the 1985 Act means the Bankruptcy (Scotland) Act 1985**(28)**,
- (b) the 1986 Act means the Insolvency Act 1986**(29)**,
- (c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989**(30)**,

and in paragraph (7) “the applicable enactment” means whichever enactment mentioned in subparagraphs (a) to (c) is relevant to the resolution, arrangement, order or trust deed mentioned in paragraph (2).

(7) In this article—

- (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 paragraph (2), 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 article 4,
- (d) other expressions used in this article and in the applicable enactment have the same meaning as in that enactment.

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**(28)** 1985 c. 66.

**(29)** 1986 c. 45.

**(30)** S.I. 1989/2405 (N.I. 19).

### *Delegation of enforcement functions*

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

**209.**—(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) articles 144(1) and (2) and 167(1) and (7) (proceedings in the Court of Session),
  - (b) article 178(2) (trustee for civil recovery),
  - (c) articles 182(3) and (4) and 183(5) (agreements about associated and joint property),
  - (d) article 186(3) (pension schemes),
  - (e) article 193(1) (exemptions),
  - (f) article 194(5) and (8) (compensation),
  - (g) article 200(2) (financial threshold).

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

**210.**—(1) In spite of section 1(6) of the Act, 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<sup>(31)</sup>,
  - (d) a person appointed as a police member of the National Crime Squad under section 55(1)(b) of that Act.
- (2) In this article—
- (a) “member of a police force” has the same meaning as in the Police Act 1996<sup>(32)</sup> 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<sup>(33)</sup> (members of that service engaged on other police service).

### *Interpretation*

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

**211.** 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,

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<sup>(31)</sup> 1997 c. 50; sections 9 and 55 are prospectively repealed by Schedule 17 to the Serious Organised Crime and Police Act 2005.

<sup>(32)</sup> 1996 c. 16.

<sup>(33)</sup> 1998 c. 32.

(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.

(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.

### **Northern Ireland courts**

**212.** 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.

### **General interpretation**

**213.—**(1) In this Part—

“associated property” has the meaning given by article 146,

“constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000<sup>(34)</sup>,

“the court” except in articles 158(2) and (3) and 173(2) and (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,

“Director” means Director of the Agency,

“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 article 181(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 article 167(2),

“interim receiving order” has the meaning given by article 151(2),

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

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984<sup>(35)</sup>,

“prohibitory property order” has the meaning given in article 171(2),

“property freezing order” has the meaning given in article 147(2),

“recoverable property” is to be read in accordance with articles 202 to 207,

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<sup>(34)</sup> 2000 c. 32.

<sup>(35)</sup> 1984 c. 60.

“recovery order” means an order made under article 177,

“respondent” means—

- (a) where proceedings are brought by the enforcement authority, the person against whom the proceedings are brought,
- (b) where no such proceedings have been brought but the enforcement authority has applied for a property freezing order, an interim receiving order, a prohibitory property order or an 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 article 181(4),

“specified property” means property other than a sum of money that is specified in an external order,

“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 any property which satisfies the tests in article 202(1) and (2) are to read in accordance with article 189.