

*This draft Order supersedes the draft Proceeds of Crime Act 2002 (Exemptions from Civil Recovery) Order 2003 laid before Parliament on 16th January 2003 which has been withdrawn from being published. Draft Order laid before Parliament under section 459(6)(a) of the Proceeds of Crime Act 2002, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Exemptions  
from Civil Recovery) Order 2003**

*Made - - - - February 2003*

*Coming into force in accordance with article 1*

Whereas a draft of this Order has been laid before Parliament and approved by a resolution of each House, in accordance with section 459(6)(a) of the Proceeds of Crime Act 2002(1);

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 309 of the Proceeds of Crime Act 2002 and after consultation with the Scottish Ministers, hereby makes the following Order:

1. This Order may be cited as the Proceeds of Crime Act 2002 (Exemptions from Civil Recovery) Order 2003 and shall come into force on 24th February 2003, or if this Order has not been made by 23rd February 2003, on the day after the day on which it is made.

2.—(1) Property which, apart from this Order, would be recoverable property and is—  
(a) prescribed in Part 1 of the Schedule to this Order; or  
(b) disposed of in pursuance of an enactment prescribed in Part 2 of the Schedule to this Order, is not recoverable or (as the case may be) associated property.

(2) But where particular circumstances are prescribed in Part 2 of the Schedule to this Order in relation to an enactment, paragraph (1)(b) applies only in those circumstances.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Proceeds of Crime Act 2002 (Exemptions from Civil Recovery) Order 2003 No. 336

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Home Office  
2003

Parliamentary Under-Secretary of State

## THE SCHEDULE

Article 2

### PART 1

#### PRESCRIBED PROPERTY

Property 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(2).

### PART 2

#### PRESCRIBED ENACTMENTS—PROPERTY WHICH IS NOT RECOVERABLE PROPERTY

Section 31 of the Salmon Fisheries (Scotland) Act 1868(3) (forfeiture of articles found in possession of any offender).

Section 8 of the Diseases of Fish Act 1937(4) (penalties and legal proceedings).

Sections 19 and 20 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951(5).

Section 138 of the Army Act 1955(6) (restitution or compensation for theft etc.) (including where it has effect by virtue of paragraph 17 of Schedule 3 to the Armed Forces Act 1976(7)), in circumstances other than where the disposal is of money which is paid as or towards compensation under section 138(5) of that Act or the disposal is the restitution of property given in exchange under section 138(6) of that Act.

Section 138 of the Air Force Act 1955(8) (restitution or compensation for theft etc.), in circumstances other than where the disposal is of money which is paid as or towards compensation under section 138(5) of that Act or the disposal is the restitution of property given in exchange under section 138(6) of that Act.

Section 76 of the Naval Discipline Act 1957(9) (restitution or compensation on conviction of larceny etc.), in circumstances other than where the disposal is the restitution of property given in exchange under section 76(2)(a) of that Act or the disposal is of money which is paid as or towards compensation under section 76(2)(b) or (3) of that Act.

Section 3 of the Obscene Publications Act 1959(10) (powers of search and seizure).

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- (2) 1979 c. 2.
- (3) 1868 c. 123 (31 & 32 Vict); section 31 was amended by the Sheriff Courts (Scotland) Act 1971 (c. 58).
- (4) 1937 c. 63 (1 Edw 8 & 1 Geo 6).
- (5) 1951 c. 26 (14 & 15 Geo VI); section 19 was amended by section 41 of and Schedule 4 to the Salmon Act 1986 (c. 62) and section 20 was extended by section 18 of the Sea Fish (Conservation) Act 1967 (c. 84) and sections 7 and 10 of the Inshore Fishing (Scotland) Act 1984 (c. 26).
- (6) 1955 c. 18 (3 & 4 Eliz 2); section 138 was amended by section 33(2) of and Part II of Schedule 2 to the Theft Act 1968 (c. 60), section 58 of and Schedule 4 to the Courts-Martial (Appeals) Act 1968 (c. 20), section 77(1) of and Part I of Schedule 4 to the Armed Forces Act 1971 (c. 33), and section 14 of and Schedule 7 to the Armed Forces Act 1976 (c. 52).
- (7) 1976 c. 52.
- (8) 1955 c. 19 (3 & 4 Eliz 2); section 138 was amended by section 33(2) of and Part II of Schedule 2 to the Theft Act 1968 (c. 60), section 58 of and Schedule 4 to the Courts-Martial (Appeals) Act 1968 (c. 20), section 77(1) of and Part I of Schedule 4 to the Armed Forces Act 1971 (c. 33), and section 14 of and Schedule 7 to the Armed Forces Act 1976 (c. 52).
- (9) 1957 c. 53 (5 & 6 Eliz 2); section 76 was amended by S.I.1964/488, section 33(2) of and Part II of Schedule 2 to the Theft Act 1968 (c. 60), section 77(1) of and Part I of Schedule 4 to the Armed Forces Act 1971 (c. 33), sections 14 and 22(6) of and Schedules 7 and 10 to the Armed Forces Act 1976 (c. 52), Schedules 1 and 7 to the Armed Forces Act 1996 (c. 46), and section 38 of and Schedule 7 to the Armed Forces Act 2001 (c. 19).
- (10) 1959 c. 66 (7 & 8 Eliz 2); section 3 was amended by section 56(2) of and Schedules 8 and 9 to the Courts Act 1971 (c. 23), sections 53(5) and 65(4) of and Schedule 12 to the Criminal Law Act 1977 (c. 45), and section 119(2) of and Schedule 7 to the Police and Criminal Evidence Act 1984 (c. 60).

Section 11(2) of the Sea Fish (Conservation) Act 1967(**11**) (penalties for offences).

Section 46(4) of the Courts-Martial (Appeals) Act 1968(**12**) (restitution of property), in circumstances where if the order had been made by the court-martial or Defence Council this Order would have provided that the property was not recoverable or (as the case may be) associated property.

Section 52 of the Firearms Act 1968(**13**) (forfeiture and disposal of firearms).

Section 27 of the Misuse of Drugs Act 1971(**14**) (forfeiture).

Sections 7 and 24 of the Forgery and Counterfeiting Act 1981(**15**) (powers of search, forfeiture etc).

Section 4(4) of the Inshore Fishing (Scotland) Act 1984(**16**).

Section 25 of the Public Order Act 1986(**17**) (power to order forfeiture).

Section 66 of the Criminal Justice and Public Order Act 1994(**18**) (power of court to forfeit sound equipment) in the circumstances where no order is made under section 66(5) or by virtue of section 66(6) of that Act for the delivery of property to a person appearing to be the owner of the property.

Section 43 of the Drug Trafficking Act 1994(**19**) (forfeiture).

Section 22 of the Proceeds of Crime (Scotland) Act 1995(**20**) (forfeiture: district court).

Section 24 of the Proceeds of Crime (Scotland) Act 1995 (forfeiture of property subject to suspended forfeiture order), in the circumstances where no order is made under section 26 of that Act in relation to the property.

Paragraph 3 of the Schedule to the Noise Act 1996(**21**) (forfeiture), in the circumstances where no order is made under paragraph 4 of that Schedule for the delivery of the equipment to a person appearing to be the owner of the equipment.

Section 6 of the Knives Act 1997(**22**) (forfeiture of knives and publications), in the circumstances where no order is made under section 7 of that Act for the delivery of the property to a person appearing to be the owner of the property.

Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000(**23**) (powers to deprive offender of property used etc for purposes of crime), in the circumstances where no order is made under the Police (Property) Act 1987(**24**), as applied by section 144 of the Powers of Criminal Courts (Sentencing) Act 2000 for the delivery of the property to a person appearing to be the owner of the property.

Section 23 of the Terrorism Act 2000(**25**) (forfeiture).

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(11) 1967 c. 84; section 11(2) was substituted by section 24(1) of the Fisheries Act 1981 (c. 29).

(12) 1968 c. 20.

(13) 1968 c. 27; section 52 was amended by sections 123(6) and 170(2) of and Schedules 8 and 16 to the Criminal Justice Act 1988 (c. 33), section 168 of and Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), and section 119 of and Schedule 8 to the Crime and Disorder Act 1998 (c. 37).

(14) 1971 c. 38; section 27 was amended by section 70 of the Criminal Justice Act 1988 (c. 33), section 31(1) of and Schedule 4 to the Criminal Justice (International Co-operation) Act 1990 (c. 5), section 65(1) of and Schedule 1 to the Drug Trafficking Act 1994 (c. 37), and Schedule 11 to the Proceeds of Crime Act 2002 (c. 29).

(15) 1981 c. 45.

(16) 1984 c. 26.

(17) 1986 c. 64.

(18) 1994 c. 33.

(19) 1994 c. 37; section 43 was repealed by Schedule 12 to the Proceeds of Crime Act 2002 (c. 29) but continues to have effect in relation to cash seized before 30th December 2002 by virtue of article 3 of S.I. 2002/3015.

(20) 1995 c. 43.

(21) 1996 c. 37.

(22) 1997 c. 21.

(23) 2000 c. 6; section 143 was amended by section 56(6) of the Police Reform Act 2002 (c. 30).

(24) 1897 c. 30 (60 & 61 Vict.)

(25) 2000 c. 11.

Section 6 of the Royal Parks (Trading) Act 2000<sup>(26)</sup> (seizure, retention, disposal and forfeiture of property).

Paragraph 6 of Schedule 1 to the Anti-terrorism, Crime and Security, Act 2001<sup>(27)</sup> (forfeiture).

Regulations 15 (disposal of vehicles) and 17 (disposal of contents) of the Goods Vehicles (Enforcement Powers) Regulations 2001<sup>(28)</sup>, in the circumstances where the proceeds of sale have not been applied in meeting a claim to the proceeds of sale established under regulation 18(2) of those Regulations.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides that certain property is not recoverable property for the purposes of Part 5 of the Proceeds of Crime Act 2002. Part 5 permits the recovery of recoverable property in civil proceedings. Recoverable property is defined at sections 304 to 310 of the Proceeds of Crime Act 2002 as property obtained through unlawful conduct and property which represents such property.

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<sup>(26)</sup> 2000 c. 13.

<sup>(27)</sup> 2001 c. 24.

<sup>(28)</sup> S.I. 2001/3981.