

# PROCEEDS OF CRIME ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Civil Recovery of the Proceeds etc. of Unlawful Conduct**

#### **Chapter 2: Civil recovery in the High Court or Court of Session**

#### *Proceedings for recovery orders*

#### ***Section 243: Proceedings for recovery orders in England and Wales or Northern Ireland***

297. *Section 243* explains where court proceedings for civil recovery in England, Wales and Northern Ireland are to take place and how they are to be initiated.
298. Under *subsection (1)* the enforcement authority (for England, Wales and Northern Ireland this means the Director of the ARA – see *section 316(1)*) may take proceedings against any person who he thinks holds recoverable property. ‘Recoverable property’ is property that has been obtained through unlawful conduct or property that represents such property. Detailed provisions regarding recoverable property are set out at *sections 304 to 310* and *sections 305 to 307* define what is meant by representative property. Civil recovery proceedings are to take place in the High Court.
299. As with normal civil procedure, the High Court will issue a claim form in respect of the property at the request of the enforcement authority. Under *subsection (2)*, the enforcement authority must serve the claim form on the person who it thinks holds the recoverable property (the respondent) and, unless the court dispenses with service, on any person who holds associated property which the enforcement authority wishes to be subject to a recovery action. Holding property includes holding an interest in property – see *section 316(5) to (7)*. Associated property is defined in *section 245* and the circumstances in which it may be the subject of a recovery order are set out in *sections 270-272*. Under *subsection (3)* the claim form must either specify the property to which it relates or describe it in general terms, and state whether it is alleged to be recoverable property or associated property.