

PROCEEDS OF CRIME ACT 2002

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 271: Agreements about associated and joint property

360. *Subsection (1)* provides for the situation where a person who holds associated property, or an excepted joint owner, comes to an agreement with the enforcement authority to make a payment to the trustee in lieu of the recoverable property. Where an agreement is reached, the recovery order may then require the person to make the payment to the trustee, rather than vesting the property in the trustee. The order may reflect the agreement by including provision for vesting, creating or extinguishing an interest in the property (*subsection (2)*). For example, title to the recoverable property may be transferred to the owner of the associated property or the excepted joint owner in exchange for a payment – in effect, he buys out the enforcement authority’s interest.
361. Provisions relating to the amount to be paid are at *subsection (3)*. *Subsection (4)* provides that where the enforcement authority has agreed that a person has suffered loss as a result of an interim receiving order or interim administration order applying to the property, the payment may take account of the loss and any other relevant circumstances. *Subsection (5)* establishes that where there is more than one item of associated property or excepted joint owner, the payment to be made is to be agreed between all of them and the enforcement authority. The recovery order must provide that the property concerned ceases to be recoverable (*subsection (6)*).