

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

Exemptions etc.

Section 282: Other exemptions

388. This section provides that proceedings for civil recovery may not be taken in respect of certain people in prescribed circumstances.
389. *Subsection (1)* provides for a power to make an order to exempt a person from having civil recovery proceedings brought against them. The power can be exercised by reference to any sort of description of the person and by reference to specified circumstances. The power to make exemption orders under this section will be exercised by the Secretary of State, but the Secretary of State is to consult with Scottish Ministers before making the order. Any order made under these provisions will be subject to approval by both Houses of Parliament (*section 459(6)(a)*).
390. Under *subsection (2)*, the Director or the Scottish Ministers may not take civil recovery proceedings in respect of cash unless they are simultaneously taking proceedings against other property held by the same person. Proceedings involving cash only may be brought under the summary proceedings in Chapter 3.
391. *Subsections (3) to (5)* specify particular types of property and persons against whom proceedings may not be taken. These include property held by the Financial Services Authority (*subsection (3)*). The Authority may hold recoverable property, in the form of levies and civil penalties it may impose on people engaging in market abuse. The charges in *subsection (4)* relate to assets which are intended as security for financial markets. *Subsection (5)* protects a person acting as an insolvency practitioner from proceedings in respect of recoverable property he holds or has held in connection with his role as a practitioner.