

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

Interim receiving orders (England and Wales and Northern Ireland)

Section 246: Application for interim receiving order

305. *Sections 246* to 255 make provision for ‘interim receiving orders’ in England, Wales and Northern Ireland; equivalent provisions for Scotland are at *sections 256* to 265. Under *subsection (1)* interim receivership procedure may – but need not always – form the preliminary stage of civil recovery procedure.
306. An ‘interim receiving order’ is, as *subsection (2)* explains, a court order for:
- the detention, custody or preservation of property which is claimed to be recoverable property or associated property, and
 - the appointment of an interim receiver in respect of that property.
307. Under *subsection (1)*, the first step in the procedure is for the Director to make an application to the High Court for an interim receiving order. The Director may do this even though he has not yet issued the claim form. And he may do so without putting any interested party on notice that he is doing so, if giving notice would prejudice the Director’s right to recover the property (*subsection (3)*). It may be necessary to act swiftly and without alerting potential parties, for example, to prevent property from being concealed or disposed of.
308. The court may make an interim receiving order only if the conditions set out in *subsections (5)* and *(6)* are satisfied. The Director must satisfy the court that:
- there is a ‘good arguable case’ that the property in question is either recoverable or associated property (the ‘good arguable case’ test is already used by the civil courts for applications for injunctions to freeze disputed property during litigation so that ultimate enforcement of judgment cannot be frustrated. Freezing injunctions were formerly known as ‘*Mareva*’ injunctions (and this is still the appropriate term for such orders in Northern Ireland)), and
 - if the property in relation to which the order is sought includes associated property, he has either identified or has taken all reasonable steps to establish the identities of the person(s) holding that property (if the interim receiving order is made or the proceedings otherwise go ahead, the Director will have to put these persons immediately on notice under *section 243(2)*).

309. The Director must also, under *subsection (7)*, nominate someone suitably qualified to act as interim receiver. But the Director may not nominate a member of his own staff. This is because the interim receiver on appointment becomes an officer of the court and has investigatory duties (see *section 247(1) and (2)*) and it is thought appropriate that the interim receiver should be independent of the Director, who is a party to the litigation. The characteristics of an interim receiving order are spelled out more fully at *sections 247 to 255*, but under *subsection (8)* these sections do not limit the extent of the power to make the order. *Subsection (8)* has been included to make clear that the High Court retains the inherent discretion which it has in civil litigation to make appropriate orders when making interlocutory injunctions.