Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 5

CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

CHAPTER 1

INTRODUCTORY

240 General purpose of this Part

(1) This Part has effect for the purposes of—

(a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,

(b) enabling **[**[F1]cash**]**[[F1]property**]** which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff **[**[F2]and, in certain circumstances, to be forfeited by the giving of a notice**]**.

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

Textual Amendments

F1 Word in s. 240(1)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 28(a)**; S.I. 2018/78, reg. 5(1)(e)

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F2 Words in s. 240(1)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 28(b)**; S.I. 2018/78, reg. 5(1)(e)

241 "Unlawful conduct"

(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.

(2) Conduct which—

(a) occurs in a country **[**[F3]or territory **]** outside the United Kingdom and is unlawful under the criminal law **[**[F4]applying in that country or territory**]**, and

(b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,

is also unlawful conduct.

[[F5](2A) Conduct which—

(a) occurs in a country or territory outside the United Kingdom,

(b) constitutes, or is connected with, the commission of a gross human rights abuse or violation (see section 241A), and

(c) if it occurred in a part of the United Kingdom, would be an offence triable under the criminal law of that part on indictment only or either on indictment or summarily,

is also unlawful conduct.**]**

(3) The court or sheriff must decide on a balance of probabilities whether it is proved—

(a) that any matters alleged to constitute unlawful conduct have occurred, or

(b) that any person intended to use any **[**[F6]cash**][**[F6]property**]** in unlawful conduct.

Textual Amendments

F3 Words in s. 241(2)(a) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 8(a)**; S.I. 2005/3136, art. 3(c)

F4 Words in s. 241(2)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 8(b)**; S.I. 2005/3136, art. 3(c)

F5 S. 241(2A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 13(2)**, 58(1)(6) (with s. 13(4)); S.I. 2018/78, reg. 3(c); S.I. 2021/724, reg. 2(1)(d)

F6 Word in s. 241(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 29**; S.I. 2018/78, reg. 5(1)(e); S.I. 2021/724, reg. 4(g)

[[F7]241A "Gross human rights abuse or violation"

(1) Conduct constitutes the commission of a gross human rights abuse or violation if each of the following three conditions is met.

(2) The first condition is that—

(a) the conduct constitutes the torture of a person who has sought—

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(i) to expose illegal activity carried out by a public official or a person acting in an official capacity, or

(ii) to obtain, exercise, defend or promote human rights and fundamental freedoms, or

(b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.

(3) The second condition is that the conduct is carried out in consequence of that person having sought to do anything falling within subsection (2)(a)(i) or (ii).

(4) The third condition is that the conduct is carried out—

(a) by a public official, or a person acting in an official capacity, in the performance or purported performance of his or her official duties, or

(b) by a person not falling within paragraph (a) at the instigation or with the consent or acquiescence—

(i) of a public official, or

(ii) of a person acting in an official capacity,

who in instigating the conduct, or in consenting to or acquiescing in it, is acting in the performance or purported performance of his or her official duties.

(5) Conduct is connected with the commission of a gross human rights abuse or violation if it is conduct by a person that involves—

(a) acting as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation,

(b) directing, or sponsoring, such activities,

(c) profiting from such activities, or

(d) materially assisting such activities.

(6) Conduct that involves the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture for the purposes of subsection (2)(a).

(7) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission.

(8) The cases in which a person materially assists activities for the purposes of subsection (5)(d) include those where the person—

(a) provides goods or services in support of the carrying out of the activities, or

(b) otherwise provides any financial or technological support in connection with their carrying out.**]**

Textual Amendments

F7 S. 241A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 13(3)**, 58(1)(6) (with s. 13(4)); S.I. 2018/78, reg. 3(c)

242 "Property obtained through unlawful conduct"

(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

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(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

CHAPTER 2

CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

Modifications etc. (not altering text)

C1 Pt. 5 Ch. 2: power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 7**

Proceedings for recovery orders

243 Proceedings for recovery orders in England and Wales or Northern Ireland

(1) Proceedings for a recovery order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property.

(2) The enforcement authority must serve the claim form—

(a) on the respondent, and

(b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the claim form it must be described in the form in general terms; and the form must state whether it is alleged to be recoverable property or associated property.

(4) The references above to the claim form include the particulars of claim, where they are served subsequently.

[[F8](5) Nothing in sections 245A to 255 limits any power of the court apart from those sections to grant interim relief in connection with proceedings (including prospective proceedings) under this Chapter.**]**

Textual Amendments

F8 S. 243(5) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 9**; S.I. 2005/3136, art. 3(c)

Commencement Information

I1 S. 243 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

244 Proceedings for recovery orders in Scotland

(1) Proceedings for a recovery order may be taken by the enforcement authority in the Court of Session against any person who the authority thinks holds recoverable property.

(2) The enforcement authority must serve the application—

(a) on the respondent, and

(b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the application it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property.

Commencement Information

I2 S. 244 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

245 "Associated property"

(1) "Associated property" means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

(a) any interest in the recoverable property,

(b) any other interest in the property in which the recoverable property subsists,

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,

(d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner,

(e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly.

(3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of sections 273 to 275).

Commencement Information

I3 S. 245 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F9 245ZA Notice to local authority: Scotland

(1) This section applies if, in proceedings under this Chapter for a recovery order, the enforcement authority applies under section 266(8ZA) for decree of removing and

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warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse.

(2) The enforcement authority must give notice of the application to the local authority in whose area the dwellinghouse is situated.

(3) Notice under subsection (2) must be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

(4) In this section—

"dwellinghouse" has the meaning given by section 11(8) of the Homelessness etc. (Scotland) Act 2003;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and "area", in relation to a local authority, means the local government area for which the authority is constituted.**]**

Textual Amendments

F9 S. 245ZA inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(2)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

[F10*Property freezing orders (England and Wales and Northern Ireland)*

Textual Amendments

F10 Ss. 245A-245D and cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 98(1)**, 178(8); S.I. 2005/3136, art. 3(a)

245A Application for property freezing order

(1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that—

(a) specifies or describes the property to which it applies, and

(b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case—

(a) that the property to which the application for the order relates is or includes recoverable property, and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—

(a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

245B Variation and setting aside of order

(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

245C Exclusions

(1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be **[**[F11]made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by**][**[F12]the Department of Justice**]**.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Subsection (8) does not apply where the court is acting as required by section 245B(3) or (4).

Textual Amendments

F11 Words in s. 245C(6)(b) substituted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 para. 59**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

F12 Words in s. 245C(6)(b) substituted (N.I.) (1.4.2015) by Legal Aid and Coroners‘ Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), **Sch. 2 para. 4** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

245D Restriction on proceedings and remedies

(1) While a property freezing order has effect—

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distress may be levied**[**[F13], and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.**]**

Textual Amendments

F13 Words in s. 245D(1)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(5)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

[F14 245E Receivers in connection with property freezing orders

(1) Subsection (2) applies if—

(a) the High Court makes a property freezing order on an application by an enforcement authority, and

(b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the property freezing order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any property to which the property freezing order applies.

(3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this section, the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the enforcement authority.

(6) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

Textual Amendments

F14 Ss. 245E-245G inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

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245F Powers of receivers appointed under section 245E

(1) If the High Court appoints a receiver under section 245E on an application by an enforcement authority, the court may act under this section on the application of the authority.

(2) The court may by order authorise or require the receiver—

(a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the receiver is appointed,

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed—

(a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place it in the custody of the receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place them in the custody of the receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(7) If—

(a) the receiver deals with any property which is not property in respect of which he is appointed under section 245E, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Textual Amendments

F14 Ss. 245E-245G inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

245G Supervision of section 245E receiver and variations

(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under section 245E—

(a) the receiver,

(b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned,

(c) any person affected by any action taken by the receiver,

(d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to—

(a) the receiver,

(b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned,

(c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or set aside the appointment of a receiver under section 245E, any order under section 245F or any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—

(a) the receiver,

(b) the parties to the proceedings for the appointment of the receiver, for the order under section 245F or, as the case may be, for the directions under this section;

(c) the parties to the proceedings for the property freezing order concerned,

(d) any person who may be affected by the court's decision.**]**

Textual Amendments

F14 Ss. 245E-245G inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

Interim receiving orders (England and Wales and Northern Ireland)

246 Application for interim receiving order

(1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for an interim receiving order (whether before or after starting the proceedings).

(2) An interim receiving order is an order for—

(a) the detention, custody or preservation of property, and

(b) the appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a good arguable case—

(a) that the property to which the application for the order relates is or includes recoverable property, and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—

(a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

(7) In its application for an interim receiving order, the enforcement authority must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the **[**[F15]enforcement authority**]** .

(8) The extent of the power to make an interim receiving order is not limited by sections 247 to 255.

Textual Amendments

F15 Words in s. 246(7) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 86**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I4 S. 246 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

247 Functions of interim receiver

(1) An interim receiving order may authorise or require the interim receiver—

(a) to exercise any of the powers mentioned in Schedule 6,

(b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order must require the interim receiver to take any steps which the court thinks necessary to establish—

(a) whether or not the property to which the order applies is recoverable property or associated property,

(b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If—

(a) the interim receiver deals with any property which is not property to which the order applies, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Commencement Information

I5 S. 247 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F16 Property freezing orders and interim receiving orders: registration]

Textual Amendments

F16 S. 248 cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 10**; S.I. 2005/3136, art. 3(c)

248 Registration

(1) The registration Acts—

(a) apply in relation to **[**F17property freezing orders, and in relation to interim receiving orders,**]** as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgements or recognisances,

(b) apply in relation to applications for **[**F18property freezing orders, and in relation to applications for interim receiving orders, **]** as they apply in relation to other pending land actions.

(2) The registration Acts are—

(a) **[**F19the Land Registration Act 1925 (c. 21),**]**

(b) the Land Charges Act 1972 (c. 61), and

(c) the Land Registration Act 2002 (c. 9).

(3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of **[**F20a property freezing order or**]**an interim receiving order.

(4) **[**F21A person applying for an interim receiving order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which—

(a) the application relates, or

(b) an interim receiving order made in pursuance of the application relates.**]**

Textual Amendments

F17 Words in s. 248(1)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 11(2)**; S.I. 2005/3136, art. 3(c)

F18 Words in s. 248(1)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 11(3)**; S.I. 2005/3136, art. 3(c)

F19 S. 248(2)(a) repealed (prosp.) by Proceeds of Crime Act 2002 (c. 29), ss. 457, 458(1), **Sch. 12**

F20 Words in s. 248(3) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 11(4)**; S.I. 2005/3136, art. 3(c)

F21 S. 248(4) repealed (prosp.) by Proceeds of Crime Act 2002 (c. 29), ss. 457, 458(1), **Sch 12**

Commencement Information

I6 S. 248 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

249 Registration (Northern Ireland)

(1) A person applying for**[**[F22]a property freezing order or **]** an interim receiving order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which—

(a) the application relates, or

(b) **[**[F23]a property freezing order, or an interim receiving order,**]** made in pursuance of the application relates.

[[F24](1A) Upon being served with a copy of a property freezing order, the Registrar must, in respect of any registered land to which a property freezing order or an application for a property freezing order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.**]**

(2) Upon being served with a copy of an interim receiving order, the Registrar must, in respect of any registered land to which an interim receiving order or an application for an interim receiving order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under subsection**[**[F25](1A) or**]** (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(4) Where **[**[F26]a property freezing order or **]**an interim receiving order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order setting aside the**[**[F27]property freezing order or **]** interim receiving order may require that entry to be vacated.

(5) In this section—

"Registrar" and "entry" have the same meanings as in the Land Registration Act (Northern Ireland) 1970, and

"Registration of Deeds Acts" has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Textual Amendments

F22 Words in s. 249(1) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(2)**; S.I. 2005/3136, art. 3(c)

F23 Words in s. 249(1)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(3)**; S.I. 2005/3136, art. 3(c)

F24 S. 249(1A) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(4)**; S.I. 2005/3136, art. 3(c)

F25 Words in s. 249(3) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(5)**; S.I. 2005/3136, art. 3(c)

F26 Words in s. 249(4) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(6)(a)**; S.I. 2005/3136, art. 3(c)

F27 Words in s. 249(4) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 12(6)(b)**; S.I. 2005/3136, art. 3(c)

Commencement Information

I7 S. 249 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F28 Interim receiving orders: further provisions]

Textual Amendments

F28 S. 250 cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 13**; S.I. 2005/3136, art. 3(c)

250 Duties of respondent etc.

(1) An interim receiving order may require any person to whose property the order applies—

(a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.

(2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or to place them in the custody of the interim receiver.

"Document" means anything in which information of any description is recorded.

Commencement Information

I8 S. 250 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

251 Supervision of interim receiver and variation of order

(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.

(3) The court may at any time vary or set aside an interim receiving order.

(4) Before exercising any power under this Chapter to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an

opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court's decision.

Commencement Information

I9 S. 251 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

252 Restrictions on dealing etc. with property

(1) An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

[[F29](4) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (3).

(4A) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be **[**[F30]made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by**]**[F31]the Department of Justice**].]**

(5) If the excluded property is not specified in the order it must be described in the order in general terms.

(6) The power to make exclusions must **[**[F32], subject to subsection (4A),**]** be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

Textual Amendments

F29 S. 252(4)(4A) substituted for s. 252(4) (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 14(2)**; S.I. 2005/3136, art. 3(c)

F30 Words in s. 252(4A)(b) substituted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 para. 60**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

F31 Words in s. 252(4A)(b) substituted (N.I.) (1.4.2015) by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), **Sch. 2 para. 4** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

F32 Words in s. 252(6) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 14(3)**; S.I. 2005/3136, art. 3(c)

Commencement Information

I10 S. 252 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

253 Restriction on proceedings and remedies

(1) While an interim receiving order has effect—

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,

(b) no distress may be levied **[**[F33], and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

Textual Amendments

F33 Words in s. 253(1)(b) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 146** (with s. 89); S.I. 2014/768, art. 2(1)(b)

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I11 S. 253 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

254 Exclusion of property which is not recoverable etc.

(1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

Commencement Information

I12 S. 254 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

255 Reporting

(1) An interim receiving order must require the interim receiver to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—

(a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,

(b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,

(c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or

(d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if he thinks that there has been any other material change of circumstances.

(2) An interim receiving order must require the interim receiver—

(a) to report his findings to the court,

(b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Commencement Information

I13 S. 255 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F34 Prohibitory property orders (Scotland)

Textual Amendments

F34 Ss. 255A-255F and cross-heading inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 98(2)**, 178(7)(a); S.I. 2005/3136, art. 2(a)

255A Application for prohibitory property order

(1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).

(2) A prohibitory property order is an order that—
- (a) specifies or describes the property to which it applies, and
- (b) subject to any exclusions (see section 255C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make a prohibitory property order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case—
- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—
- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

255B Variation and recall of prohibitory property order

(1) The court may at any time vary or recall a prohibitory property order.

(2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.

(3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

255C Exclusions

(1) The power to vary a prohibitory property order includes (in particular) power to make exclusions as follows—
  (a) power to exclude property from the order, and
  (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  (a) to meet his reasonable living expenses, or
  (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

(7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(8) Subsection (7) does not apply where the court is acting as required by section 255B(3) or (4).

255D Restriction on proceedings and remedies

(1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.

(2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

255E Arrestment of property affected by prohibitory property order

(1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under subsection (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.

(3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

255F Inhibition of property affected by prohibitory property order

(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a prohibitory property order.

(2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).

(3) The warrant for inhibition—
   (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
   (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(6) If an inhibition ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must—

(a) apply for the recall or, as the case may be, the restriction of the inhibition, and

(b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.**]**

[[F35]255GReceivers in connection with prohibitory property orders

(1) Subsection (2) applies if—

(a) the Court of Session makes a prohibitory property order on an application by an enforcement authority, and

(b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the prohibitory property order or at any time afterwards).

(2) The Court of Session may by order appoint a person (a "PPO receiver") in respect of any property to which the prohibitory property order applies.

(3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this section, the enforcement authority must nominate a suitably qualified person for appointment as a PPO receiver.

(5) Such a person may be a member of staff of the enforcement authority.

(6) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a PPO receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the PPO receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the PPO receiver is a person providing services under arrangements made by the enforcement authority).

Textual Amendments

F35 Ss. 255G-255I inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(2)**, 88(1); S.I. 2016/148, reg. 3(b)

255H Powers of receivers appointed under section 255G

(1) If the Court of Session appoints a PPO receiver under section 255G on an application by an enforcement authority, the court may act under this section on the application of the authority.

(2) The court may by order authorise or require the PPO receiver—

(a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the PPO receiver is appointed,

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the PPO receiver is appointed—

(a) to bring the property to a place in Scotland specified by the PPO receiver or to place it in the custody of the PPO receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the PPO receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the PPO receiver is appointed to bring any documents relating to the property which are in his possession or control to a place in Scotland specified by the PPO receiver or to place them in the custody of the PPO receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a prohibitory property order does not prevent a person from complying with any requirements imposed by virtue of this section.

(7) If—

(a) the PPO receiver deals with any property which is not property in respect of which he is appointed under section 255G, and

(b) at the time he deals with the property the PPO receiver believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the PPO receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Textual Amendments

F35 Ss. 255G-255I inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(2)**, 88(1); S.I. 2016/148, reg. 3(b)

255I Supervision of PPO receiver and variations

(1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a PPO receiver—

(a) the PPO receiver,

(b) any party to the proceedings for the appointment of the PPO receiver or the prohibitory property order concerned,

(c) any person affected by any action taken by the PPO receiver,

(d) any person who may be affected by any action proposed to be taken by the PPO receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to—

(a) the PPO receiver,

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the parties to the proceedings for the appointment of the PPO receiver and for the prohibitory property order concerned,

(c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or recall—

(a) an order appointing a PPO receiver,

(b) any order under section 255H, or

(c) any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—

(a) the PPO receiver,

(b) the parties to the proceedings for—

(i) the appointment of the PPO receiver,

(ii) the order under section 255H, or

(iii) (as the case may be) the directions under this section,

(c) the parties to the proceedings for the prohibitory property order concerned,

(d) any person who may be affected by the court's decision.**]**

Textual Amendments

F35 Ss. 255G-255I inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(2)**, 88(1); S.I. 2016/148, reg. 3(b)

Interim administration orders (Scotland)

256 Application for interim administration order

(1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for an interim administration order (whether before or after starting the proceedings).

(2) An interim administration order is an order for—

(a) the detention, custody or preservation of property, and

(b) the appointment of an interim administrator.

(3) An application for an interim administration order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make an interim administration order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a probabilis causa litigandi—

(a) that the property to which the application for the order relates is or includes recoverable property, and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—

(a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

(7) In its application for an interim administration order, the enforcement authority must nominate a suitably qualified person for appointment as interim administrator, but the nominee may not be a member of the staff of the Scottish Administration.

(8) The extent of the power to make an interim administration order is not limited by sections 257 to 264.

Commencement Information

I14 S. 256 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

257 Functions of interim administrator

(1) An interim administration order may authorise or require the interim administrator—

(a) to exercise any of the powers mentioned in Schedule 6,

(b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim administration order must require the interim administrator to take any steps which the court thinks necessary to establish—

(a) whether or not the property to which the order applies is recoverable property or associated property,

(b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If—

(a) the interim administrator deals with any property which is not property to which the order applies, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim administrator is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Commencement Information

I15 S. 257 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

258 Inhibition of property affected by order

(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in an interim administration order.

(2) That property is heritable property situated in Scotland to which the interim administration order applies (whether generally or such of it as is specified in the application).

(3) The warrant for inhibition—

(a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and

(b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.

(6) An inhibition executed under this section ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the enforcement authority must—

(a) apply for the recall or, as the case may be, the restriction of the inhibition, and

(b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

Commencement Information

I16 S. 258 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

259 Duties of respondent etc.

(1) An interim administration order may require any person to whose property the order applies—

(a) to bring the property to a place (in Scotland) specified by the interim administrator or place it in the custody of the interim administrator (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the interim administrator for the preservation of the property.

(2) An interim administration order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in Scotland) specified by the interim administrator or to place them in the custody of the interim administrator.

"Document" means anything in which information of any description is recorded.

Commencement Information

I17 S. 259 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

260 Supervision of interim administrator and variation of order

(1) The interim administrator, any party to the proceedings and any person affected by any action taken by the interim administrator, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim administrator's functions.

(2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be interested in the application.

(3) The court may at any time vary or recall an interim administration order.

(4) Before exercising any power under this Chapter to vary or set aside an interim administration order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be affected by the court's decision.

Commencement Information

I18 S. 260 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

261 Restrictions on dealing etc. with property

(1) An interim administration order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim administration order is made or on an application to vary the order.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

(4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(5) If the excluded property is not specified in the order it must be described in the order in general terms.

(6) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I19 S. 261 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

262 Restriction on proceedings and remedies

(1) While an interim administration order has effect, the court may sist any action, execution or other legal process in respect of the property to which the order applies.

(2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that an interim administration order has been applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim administrator (if appointed) and any person who may be affected by the court's decision.

Commencement Information

I20 S. 262 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

263 Exclusion of property which is not recoverable etc.

(1) If the court decides that any property to which an interim administration order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim administration order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim administration order has effect, which the court thinks necessary or expedient.

Commencement Information

I21 S. 263 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

264 Reporting

(1) An interim administration order must require the interim administrator to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—

(a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,

(b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,

(c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or

(d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if he thinks that there has been any other material change of circumstances.

(2) An interim administration order must require the interim administrator—

(a) to report his findings to the court,

(b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Commencement Information

I22 S. 264 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

265 Arrestment of property affected by interim administration order

(1) On the application of the enforcement authority or the interim administrator the Court of Session may, in relation to moveable recoverable property to which an interim administration order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.

(2) An application by the enforcement authority under subsection (1) may be made at the same time as the application for the interim administration order or at any time thereafter.

(3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority or, as the case may be, the interim administrator against the person and may be executed, recalled, loosed or restricted accordingly.

(5) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.

(6) An arrestment executed under this section ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(7) If an arrestment ceases to have effect to any extent by virtue of subsection (6) the enforcement authority or, as the case may be, the interim administrator must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

Commencement Information

I23 S. 265 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Vesting and realisation of recoverable property

266 Recovery orders

(1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.

(2) The recovery order must vest the recoverable property in the trustee for civil recovery.

(3) But the court may not make in a recovery order—

(a) any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so, or

(b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).

(4) In relation to a court in England and Wales or Northern Ireland, the conditions referred to in subsection (3)(a) are that—

(a) the respondent obtained the recoverable property in good faith,

(b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,

(c) when he took the steps, he had no notice that the property was recoverable,

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(5) In relation to a court in Scotland, the conditions referred to in subsection (3)(a) are that—

(a) the respondent obtained the recoverable property in good faith,

(b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,

(c) when he took the steps, he had no reasonable grounds for believing that the property was recoverable,

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) or (as the case may be) (5) are met, the court must have regard to—

(a) the degree of detriment that would be suffered by the respondent if the provision were made,

(b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.

(7) A recovery order may sever any property.

(8) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.

[[F36](8ZA) If the recoverable property in respect of which the Court of Session makes a recovery order includes heritable property, the Court of Session must, on the application of the enforcement authority, also grant decree of removing and warrant for ejection, enforceable by the trustee for civil recovery, in relation to any persons occupying the heritable property.**]**

[[F37](8A) A recovery order made by a court in England and Wales or Northern Ireland may provide for payment under section 280 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings under this Part in which the order is made, or

(b) any related proceedings under this Part.

(8B) If regulations under section 286B apply to an item of expenditure, a sum in respect of the item is not payable under section 280 in pursuance of provision under subsection (8A) unless—

(a) the enforcement authority agrees to its payment, or

(b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.**]**

(9) This section is subject to sections 270 to 278.

Textual Amendments

F36 S. 266(8ZA) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(3)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

F37 S. 266(8A)(8B) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 15**; S.I. 2005/3136, art. 3(c)

Commencement Information

I24 S. 266 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

267 Functions of the trustee for civil recovery

(1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.

(2) The enforcement authority must nominate a suitably qualified person for appointment as the trustee.

(3) The functions of the trustee are—

(a) to secure the detention, custody or preservation of any property vested in him by the recovery order,

(b) in the case of property other than money, to realise the value of the property for the benefit of the enforcement authority, and

[[F38](ba) if decree of removing and warrant for ejection is granted by the Court of Session under section 266(8ZA), to enforce the decree and warrant,**]**

(c) to perform any other functions conferred on him by virtue of this Chapter.

(4) In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.

(5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the enforcement authority.

(6) The trustee has the powers mentioned in Schedule 7.

(7) References in this section to a recovery order include an order under section 276 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under section 276.

Textual Amendments

F38 S. 267(3)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(4)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

Commencement Information

I25 S. 267 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

268 Recording of recovery order (Scotland)

(1) The clerk of the court must immediately after the making of a recovery order which relates to heritable property situated in Scotland send a certified copy of it to the keeper of the register of inhibitions and adjudications for recording in that register.

(2) Recording under subsection (1) is to have the effect, as from the date of the recovery order, of an inhibition at the instance of the trustee for civil recovery against the person in whom the heritable property was vest prior to that date.

Commencement Information

I26 S. 268 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

269 Rights of pre-emption, etc.

(1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(3) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(4) References to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.

(5) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Commencement Information

I27 S. 269 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F39 269A Leases and occupancy rights: Scotland

(1) This section applies where, in making a recovery order, the Court of Session also grants decree of removing and warrant for ejection under section 266(8ZA) in relation to any persons occupying the heritable property.

(2) Any lease under which a person has the right to occupy the heritable property (or part of it) for residential or commercial purposes is terminated on the granting of decree of removing and warrant for ejection.

(3) Any other right to occupy the heritable property (or part of it) which subsists immediately before the granting of decree of removing and warrant for ejection is extinguished on the granting of the decree and warrant.

(4) Subsection (3) does not apply in relation to a right under a lease to occupy or use the property other than those mentioned in subsection (2).

(5) Where the heritable property is vested in the trustee for civil recovery under the recovery order, the following enactments do not apply in relation to the heritable property—

(a) sections 34 to 38A of the Sheriff Courts (Scotland) Act 1907 (removings, notice of termination of tenancy and notice of removal);

(b) the Tenancy of Shops (Scotland) Act 1949;

(c) the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

(d) Parts 2 and 3 of the Rent (Scotland) Act 1984 (security of tenure and protection against harassment and unlawful eviction);

(e) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (termination of certain leases);

(f) Part 2 of the Housing (Scotland) Act 1988 (rented accommodation: security of tenure etc.);

(g) Chapter 3 of Part 3 of the Civil Partnership Act 2004 (occupancy rights and tenancies);

(h) Part 5 of the Private Housing (Tenancies) (Scotland) Act 2016 (security of tenure, termination of tenancy and eviction).**]**

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F39 S. 269A inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 29(5)**, 58(1)(6); S.I. 2018/78, reg. 3(l)

270 Associated and joint property

(1) Sections 271 and 272 apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).

(2) A case is within this subsection if—

(a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form or (in Scotland) application, and

(b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service.

(3) A case is within this subsection if—

(a) the recoverable property belongs to joint tenants, and

(b) one of the tenants is an excepted joint owner.

(4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

(5) Subsections (3) and (4) do not extend to Scotland.

Commencement Information

I28 S. 270(4)(5) in force (30.12.2002) by S.I. 2002/3015, **art. 2**, Sch.

I29 S. 270(1)(2)(3) in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

271 Agreements about associated and joint property

(1) Where—

(a) this section applies, and

(b) the enforcement authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment is to be the amount which the enforcement authority and that person agree represents—

(a) in a case within section 270(2), the value of the recoverable property,

(b) in a case within section 270(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if—

(a) **[**[F40]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order applied at any time to the associated property or joint tenancy, and

(b) the enforcement authority agrees that the person has suffered loss as a result of the **[**[F41]order mentioned in paragraph (a)**]**,

the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the enforcement authority.

(6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

Textual Amendments

F40 Words in s. 271(4)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 16(a)**; S.I. 2005/3136, art. 3(c)

F41 Words in s. 271(4)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 16(b)**; S.I. 2005/3136, art. 3(c)

Commencement Information

I30 S. 271 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

272 Associated and joint property: default of agreement

(1) Where this section applies, the court may make the following provision if—

(a) there is no agreement under section 271, and

(b) the court thinks it just and equitable to do so.

(2) The recovery order may provide—

(a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished, or

(b) in the case of an excepted joint owner, for the severance of his interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide—

(a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or

(b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,

or for both.

(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court must have regard to—

(a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),

(b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.

(5) If—

(a) **[**[F42]a property freezing order, an interim receiving order, a prohibitory property order or an **]** interim administration order applied at any time to the associated property or joint tenancy, and

(b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the **[**[F43]order mentioned in paragraph (a) **]**,

a recovery order making any provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

[[F44](7) In subsection (5) the reference to the enforcement authority is, in the case of an enforcement authority in relation to England and Wales or Northern Ireland, a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned.**]**

Textual Amendments

F42 Words in s. 272(5)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 17(a)**; S.I. 2005/3136, art. 3(c)

F43 Words in s. 272(5)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 17(b)**; S.I. 2005/3136, art. 3(c)

F44 S. 272(7) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 87**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I31 S. 272 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

273 Payments in respect of rights under pension schemes

(1) This section applies to recoverable property consisting of rights under a pension scheme.

(2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme—

(a) to pay to the trustee for civil recovery within a prescribed period the amount determined by the trustees or managers to be equal to the value of the rights, and

(b) to give effect to any other provision made by virtue of this section and the two following sections in respect of the scheme.

This subsection is subject to sections 276 to 278.

(3) A recovery order made by virtue of subsection (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.

(4) A recovery order made by virtue of subsection (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in—

(a) complying with the recovery order, or

(b) providing information, before the order was made, to the enforcement authority, **[**[F45]receiver appointed under section 245E,**][**[F46] PPO receiver, **]** interim receiver or interim administrator.

(5) None of the following provisions applies to a court making a recovery order by virtue of subsection (2)—

(a) any provision of section 159 of the Pension Schemes Act 1993 (c. 48), section 155 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), section 91 of the Pensions Act 1995 (c. 26) or Article 89 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),

(b) any provision of any enactment (whenever passed or made) corresponding to any of the provisions mentioned in paragraph (a),

(c) any provision of the pension scheme in question corresponding to any of those provisions.

Textual Amendments

F45 Words in s. 273(4)(b) inserted (E.W.N.I.) (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(2)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F46 Words in s. 273(4)(b) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 52**; S.I. 2015/820, reg. 3(q)(iv)

Commencement Information

I32 S. 273 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

274 Consequential adjustment of liabilities under pension schemes

(1) A recovery order made by virtue of section 273(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that subsection.

(2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 273 applies to cease.

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) So far as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 273 applies to cease, their powers include (in particular) power to reduce the amount of—

(a) any benefit or future benefit to which the respondent is or may be entitled under the scheme,

(b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

Commencement Information

I33 S. 274 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

275 Pension schemes: supplementary

(1) Regulations may make provision as to the exercise by trustees or managers of their powers under sections 273 and 274, including provision about the calculation and verification of the value at any time of rights or liabilities.

(2) The power conferred by subsection (1) includes power to provide for any values to be calculated or verified—

(a) in a manner which, in the particular case, is approved by a prescribed person, or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(3) Regulations means regulations made by the Secretary of State after consultation with the Scottish Ministers **[**[F47]or, in relation to Northern Ireland, regulations made by the Department of Justice**]** ; and prescribed means prescribed by regulations.

(4) A pension scheme means an occupational pension scheme or a personal pension scheme; and those expressions have the same meaning as in the Pension Schemes Act 1993 (c. 48) or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993 (c. 49).

(5) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means—

(a) in the case of a scheme established under a trust, the trustees,

(b) in any other case, the managers.

(6) References to a pension scheme include—

(a) a retirement annuity contract (within the meaning of Part 3 of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland, Part 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999),

(b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme,

(c) an annuity purchased, or entered into, for the purpose of discharging any liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland,

Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(7) References to the trustees or managers—

(a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,

(b) in relation to an insurance policy, are to the insurer.

(8) Subsections (3) to (7) have effect for the purposes of this group of sections (that is, sections 273 and 274 and this section).

Textual Amendments

F47 Words in s. 275(3) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 54** (with arts. 28-31)

Commencement Information

I34 S. 275 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

276 Consent orders

(1) The court may make an order staying (in Scotland, sisting) any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying (or sisting) the proceedings on terms—

(a) make provision for any property which may be recoverable property to cease to be recoverable,

(b) make any further provision which the court thinks appropriate.

(3) Section 280 applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under section 271.

Commencement Information

I35 S. 276 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

277 Consent orders: pensions

(1) This section applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.

(2) An order made under section 276—

(a) may not stay (in Scotland, sist) the proceedings on terms that the rights are vested in any other person, but

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) may include provision imposing the following requirement, if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.

(3) The requirement is that the trustees or managers of the pension scheme—

(a) make a payment in accordance with the agreement, and

(b) give effect to any other provision made by virtue of this section in respect of the scheme.

(4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under section 276 may stay (in Scotland, sist) the proceedings.

(5) The following provisions apply in respect of an order under section 276, so far as it includes the requirement mentioned in subsection (3).

(6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.

(7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in—

(a) complying with the order, or

(b) providing information, before the order was made, to the enforcement authority, **[**[F48]receiver appointed under section 245E,**][**[F49] PPO receiver, **]** interim receiver or interim administrator.

(8) Sections 273(5) and 274 (read with section 275) apply as if the requirement were included in an order made by virtue of section 273(2).

(9) Section 275(4) to (7) has effect for the purposes of this section.

Textual Amendments

F48 Words in s. 277(7)(b) inserted (E.W.N.I.) (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 83(2)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F49 Words in s. 277(7)(b) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 53**; S.I. 2015/820, reg. 3(q)(iv)

Commencement Information

I36 S. 277 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

278 Limit on recovery

(1) This section applies if the enforcement authority seeks a recovery order—

(a) in respect of both property which is or represents property obtained through unlawful conduct and related property, or

(b) in respect of property which is or represents property obtained through unlawful conduct where such an order, or an order under section 276, has previously been made in respect of related property.

(2) For the purposes of this section—

(a) the original property means the property obtained through unlawful conduct,
(b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The court is not to make a recovery order if it thinks that the enforcement authority's right to recover the original property has been satisfied by a previous recovery order or order under section 276.

(4) Subject to subsection (3), the court may act under subsection (5) if it thinks that—
(a) a recovery order may be made in respect of two or more related items of recoverable property, but
(b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the enforcement authority's right to recover the original property.

(5) The court may in order to satisfy that right to the extent required make a recovery order in respect of—
(a) only some of the related items of property, or
(b) only a part of any of the related items of property,
or both.

(6) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

[[F50](6A) If—
(a) recoverable property is forfeited in pursuance of a forfeiture notice under section 297A **[**[F51]or an account forfeiture notice under section 303Z9**]**, and
(b) the enforcement authority subsequently seeks a recovery order in respect of related property,
the **[**[F52]forfeiture notice**]**[[F52]notice**]** is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.**]**

(7) If—
(a) an order is made under section 298 **[**[F53], 303O **[**[F54], 303R**]** or 303Z14**]** for the forfeiture of recoverable property, and
(b) the enforcement authority subsequently seeks a recovery order in respect of related property,
the order under **[**[F55]section 298**]**[[F55]that section**]** is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.

[[F56](7A) If—
(a) an order is made under section 303Q instead of an order being made under section 303O for the forfeiture of recoverable property, and
(b) the enforcement authority subsequently seeks a recovery order in respect of related property,
the order under section 303Q is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property that was the forfeitable property in relation to the order under section 303Q.**]**

(8) If—

(a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the claimant has obtained property from the defendant ("the judgment property"),

(b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct, and

(c) the enforcement authority subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the judgment property.

In relation to Scotland, "claimant" and "defendant" are to be read as "pursuer" and "defender".

(9) If—

(a) property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property referred to in paragraph (a).

(10) In subsection (9), a confiscation order means—

(a) an order under section 6, 92 or 156, or

(b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

Textual Amendments

F50 S. 278(6A) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 106**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

F51 Words in s. 278(6A)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(2)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F52 Words in s. 278(6A) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(2)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F53 Words in s. 278(7)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(3)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F54 Word in s. 278(7)(a) inserted (31.1.2018) by The Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018 (S.I. 2018/80), regs. 1, **2**

F55 Words in s. 278(7) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(3)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F56 S. 278(7A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 30(4)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

Commencement Information

I37 S. 278 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

279 Section 278: supplementary

(1) Subsections (2) and (3) give examples of the satisfaction of the enforcement authority's right to recover the original property.

(2) If—

(a) there is a disposal, other than a part disposal, of the original property, and

(b) other property (the representative property) is obtained in its place,

the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If—

(a) there is a part disposal of the original property, and

(b) other property (the representative property) is obtained in place of the property disposed of,

the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section—

(a) a part disposal means a disposal to which section 314(1) applies,

(b) the original property has the same meaning as in section 278.

Commencement Information

I38 S. 279 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

280 Applying realised proceeds

(1) **[**[F57]Subsection (2) applies to sums which are in the hands of the trustee for civil recovery if they are**]**—

(a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order,

(b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.

(2) The trustee is to make out of the sums—

(a) first, any payment required to be made by him by virtue of section 272,

[[F58](aa) next, any payment of legal expenses which, after giving effect to section 266(8B), are payable under this subsection in pursuance of provision under section 266(8A) contained in the recovery order,**]**

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) **[**[F59]then**]**, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 432(10),

and any sum which remains is to be paid to the enforcement authority.

[[F60](3) The **[**[F61]enforcement authority (unless it is the Scottish Ministers)**]** may apply a sum received by **[**[F62]it**]** under subsection (2) in making payment of the remuneration and expenses of—

(a) the trustee, or

(b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the **[**[F63]enforcement authority concerned **[**[F64](but it does apply in relation to such remuneration if the trustee is a person providing services under arrangements made by that enforcement authority)**]]**.**]**

Textual Amendments

F57 Words in s. 280(1) substituted (E.W.S.) (retrospectively) by Crime and Courts Act 2013 (c. 22), ss. 48(7), 61(11)(d), **Sch. 18 para. 5** (with s. 48(8), Sch. 25); this amendment extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

F58 S. 280(2)(aa) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 18(a)**; S.I. 2005/3136, art. 3(c)

F59 Word in s. 280(2)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 18(b)**; S.I. 2005/3136, art. 3(c)

F60 S. 280(3)(4) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 99(2)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(b)

F61 Words in s. 280(3) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 88(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F62 Word in s. 280(3) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 88(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F63 Words in s. 280(4) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 88(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F64 Words in s. 280(4) inserted (1.4.2008) by Serious Crime Act 2007 (Amendment of the Proceeds of Crime Act 2002) Order 2008 (S.I. 2008/949), arts. 1, **2**

Commencement Information

I39 S. 280 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Exemptions etc.

281 Victims of theft, etc.

(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that—

(a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct,

(b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and

(c) the property he claims belongs to him.

(4) Property to which a declaration under this section applies is not recoverable property.

Commencement Information

I40 S. 281 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

282 Other exemptions

(1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person himself or to the property or to any other matter.

In this subsection, prescribed means prescribed by an order made by the Secretary of State after consultation with the Scottish Ministers **[**[F65]or, in relation to Northern Ireland, prescribed by an order made by the Department of Justice**]**.

(2) Proceedings for a recovery order may not be taken in respect of cash found at any place in the United Kingdom unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(3) Proceedings for a recovery order may not be taken against the **[**[F66]Financial Conduct Authority or the Prudential Regulation Authority**]** in respect of any recoverable property held by **[**[F67]it**]**.

(4) Proceedings for a recovery order may not be taken in respect of any property which is subject to any of the following charges—

(a) a collateral security charge, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979),

(b) a market charge, within the meaning of Part 7 of the Companies Act 1989 (c. 40),

(c) a money market charge, within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995 (S.I. 1995/2049),

(d) a system charge, within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469) or the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252).

(5) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as an insolvency practitioner.

Acting as an insolvency practitioner has the same meaning as in section 433.

Textual Amendments

F65 Words in s. 282(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 55** (with arts. 28-31)

F66 Words in s. 282(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F67 Word in s. 282(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I41 S. 282 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F68 Scope of powers

Textual Amendments

F68 S. 282A and cross-heading inserted (retrospectively) by Crime and Courts Act 2013 (c. 22), **ss. 48(2)(7)**, 61(11)(c) (with s. 48(8), Sch. 25); this insertion extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

282A Scope of powers

(1) An order under this Chapter may be made by the High Court [F69]... or the Court of Session—

(a) in respect of property wherever situated, and

(b) in respect of a person wherever domiciled, resident or present,

subject to subsection (2).

(2) Such an order may not be made by the High Court [F70]... or the Court of Session in respect of—

(a) property that is outside the United Kingdom, or

(b) property that is in the United Kingdom but outside the relevant part of the United Kingdom,

unless there is or has been a connection between the case and the relevant part of the United Kingdom.

(3) The circumstances in which there is or has been such a connection include those described in Schedule 7A.

(4) "The relevant part of the United Kingdom" means—

(a) in relation to an order made by the High Court in England and Wales, England and Wales, [F71]...

(b) in relation to an order made by the Court of Session, Scotland.**][**[F72], and

(c) in relation to an order made by the High Court in Northern Ireland, Northern Ireland.**]**

Textual Amendments

F69 Words in s. 282A(1) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(a)**

F70 Words in s. 282A(2) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(b)**

F71 Word in s. 282A(4)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(c)**

F72 S. 282A(4)(c) and word inserted (retrospective to 20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(2)(c)**

Modifications etc. (not altering text)

C2 S. 282A: power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 4(2)(a)**

[F73 Enforcement outside the United Kingdom

Textual Amendments

F73 Ss. 282B-282F and cross-heading inserted (retrospectively) by Crime and Courts Act 2013 (c. 22), ss. 48(7), 61(11)(d), **Sch. 18 para. 6** (with s. 48(8), Sch. 25); this insertion extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

282B Enforcement abroad before recovery order: enforcement authority

(1) This section applies if—

(a) the property freezing conditions are met in relation to property,

(b) the property is not property to which a recovery order applies, and

(c) an enforcement authority [F74]... believes that the property is in a country outside the United Kingdom (the receiving country).

(2) The property freezing conditions are—

(a) in England and Wales [F75and Northern Ireland] , the conditions in section 245A(5) and (6), and

(b) in Scotland, the conditions in section 255A(5) and (6),

and, for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).

(3) The enforcement authority may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(4) The Secretary of State may forward the request for assistance to the government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Textual Amendments

F74 Words in s. 282B(1)(c) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(3)(a)**

F75 Words in s. 282B(2)(a) inserted (retrospective to 20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(3)(b)**

282C Enforcement abroad before recovery order: receiver or administrator

(1) This section applies if—

(a) a property freezing order [F76]... has effect in relation to property, and

(b) the receiver appointed under section 245E in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).

(2) This section also applies if—

(a) an interim receiving order [F77]... or an interim administration order has effect in relation to property, and

(b) the interim receiver or interim administrator believes that the property is in a country outside the United Kingdom (the receiving country).

(3) The receiver or administrator may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(4) The Secretary of State must forward the request for assistance to the government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Textual Amendments

F76 Words in s. 282C(1)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(4)(a)**

F77 Words in s. 282C(2)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(4)(b)**

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F78 282CA Enforcement abroad before recovery order: PPO receiver

(1) This section applies if—

(a) a prohibitory property order made by the Court of Session has effect in relation to property, and

(b) the PPO receiver appointed under section 255G in respect of the property believes that it is in a country outside the United Kingdom (the "receiving country").

(2) The PPO receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State must forward the request for assistance to the government of the receiving country.

(4) A request for assistance under this section is a request to the government of the receiving country—

(a) to secure that any person is prohibited from dealing with the property,

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.**]**

Textual Amendments

F78 S. 282CA inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), **ss. 23(3)**, 88(1); S.I. 2016/148, reg. 3(b)

282D Evidence overseas: interim receiver or interim administrator

(1) This section applies if—

(a) an interim receiving order [F79]... or an interim administration order has effect in relation to property, and

(b) the order requires the interim receiver or interim administrator to take steps to establish a matter described in section 247(2)(a) or (b) or 257(2)(a) or (b).

(2) The interim receiver or interim administrator may request assistance under this section if the interim receiver or interim administrator thinks that there is relevant evidence in a country outside the United Kingdom.

(3) A judge of the High Court [F80]... may request assistance under this section if—

(a) an application is made by the interim receiver or by a person subject to investigation by the interim receiver, and

(b) the judge thinks that there is relevant evidence in a country outside the United Kingdom.

(4) A judge of the Court of Session may request assistance under this section if—

(a) an application is made by the interim administrator or by a person subject to investigation by the interim administrator, and

(b) the judge thinks that there is relevant evidence in a country outside the United Kingdom.

(5) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.

(6) Relevant evidence is—

(a) in relation to an application or request made for the purposes of an investigation by an interim receiver, evidence as to a matter described in section 247(2)(a) or (b);

(b) in relation to an application or request made for the purposes of an investigation by an interim administrator, evidence as to a matter described in section 257(2)(a) or (b).

(7) A request for assistance under this section may be sent—

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,

(b) to the government of the country concerned, or

(c) to an authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.

(8) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (7).

(9) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.

(10) In a case of urgency, a request for assistance under this section may be sent to—

(a) the International Criminal Police Organisation, or

(b) any person competent to receive it under any provisions adopted under the EU Treaties,

for forwarding to the court, tribunal, government or authority mentioned in subsection (7).

(11) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

(12) "Evidence" includes documents, information in any other form and material.

Textual Amendments

F79 Words in s. 282D(1)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(5)(a)**

F80 Words in s. 282D(3) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(5)(b)**

282E Evidence overseas: restrictions on use

(1) This section applies to evidence obtained by means of a request for assistance under section 282D.

(2) The evidence must not be used for any purpose other than—

(a) for the purposes of carrying out the functions of the interim receiver or interim administrator, or

(b) for the purposes of proceedings under this Chapter of this Part in respect of property described in subsection (3) or any proceedings arising out of such proceedings.

(3) That property is—

(a) the property that is the subject of the interim receiving order or interim administration order, or

(b) other property that is recoverable property in respect of the same unlawful conduct.

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

(5) In Scotland, the evidence may be received in evidence without being sworn to by anyone, so far as that may be done without unfairness to any party.

282F Enforcement abroad: after recovery order

(1) This section applies if—

(a) a recovery order [F81]... has effect in relation to property, and

(b) the enforcement authority or the trustee for civil recovery believes that the property is in a country outside the United Kingdom (the receiving country).

(2) The enforcement authority or trustee for civil recovery may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.

(3) The Secretary of State may forward a request for assistance from the enforcement authority to the government of the receiving country.

(4) The Secretary of State must forward a request for assistance from the trustee for civil recovery to the government of the receiving country.

(5) A request for assistance is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and includes a request—

(a) to secure the detention, custody or preservation of the property;

(b) in the case of money, to secure that it is applied in accordance with the law of the receiving country;

(c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country.

(6) A certificate purporting to be issued by or on behalf of the government of the receiving country is admissible as evidence of the facts it states if it states—

(a) that property has been realised in pursuance of a request under this section,

(b) the date of realisation, and

(c) the proceeds of realisation.**]**

Status: *Point in time view as at 16/04/2018.*
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Textual Amendments

F81 Words in s. 282F(1)(a) omitted (retrospective to 20.3.2015) by virtue of The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(6)**

Miscellaneous

283 Compensation

(1) If, in the case of any property to which **[**[F82]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.

(2) Subsection (1) does not apply if the court—

(a) has made a declaration in respect of the property by virtue of section 281, or

(b) makes an order under section 276.

(3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning—

(a) in relation to a decision of the High Court in England and Wales, with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded,

(b) in relation to a decision of the Court of Session or of the High Court in Northern Ireland, with the date of the decision or, if there is an appeal against the decision, with the date on which any proceedings on appeal are finally concluded.

(4) If, in England and Wales or Northern Ireland, the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.

(5) If the court is satisfied that the applicant has suffered loss as a result of the **[**[F83]order mentioned in subsection (1) **]**, it may require the enforcement authority to pay compensation to him.

(6) If, but for section 269(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 269(2).

(8) If the court is satisfied that, in consequence of the operation of section 269, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the enforcement authority to pay compensation to him.

(9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

[[F84](10) In the case of an enforcement authority in relation to England and Wales or Northern Ireland—

(a) the reference in subsection (5) to the enforcement authority is a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned, and

(b) the reference in subsection (8) to the enforcement authority is a reference to the enforcement authority which obtained the recovery order concerned.**]**

Textual Amendments

F82 Words in s. 283(1) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 19(a)**; S.I. 2005/3136, art. 3(c)

F83 Words in s. 283(5) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 19(b)**; S.I. 2005/3136, art. 3(c)

F84 S. 283(10) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 89**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

Commencement Information

I42 S. 283 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

284 Payment of interim administrator or trustee (Scotland)

[[F85](1)**]** Any fees or expenses incurred by an interim administrator, or a trustee for civil recovery appointed by the Court of Session, in the exercise of his functions are to be reimbursed by the Scottish Ministers as soon as is practicable after they have been incurred.

[[F86](2) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of such fees or expenses.

(3) Subsection (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff.**]**

Textual Amendments

F85 S. 284(1): s. 284 renumbered as s. 284(1) (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 99(3)(a)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(b)

F86 S. 284(2)(3) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 99(3)(b)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(b)

Commencement Information

I43 S. 284 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

285 Effect on diligence of recovery order (Scotland)

(1) An arrestment or **[**[F87]attachment**]** of any recoverable property executed on or after the appointment of the trustee for civil recovery is ineffectual in a question with the trustee.

(2) Any recoverable property so arrested or **[**[F88]attached.**]** , or (if the property has been sold) the proceeds of sale, must be handed over to the trustee for civil recovery.

(3) A poinding of the ground in respect of recoverable property on or after such an appointment is ineffectual in a question with the trustee for civil recovery except for the interest mentioned in subsection (4).

(4) That interest is—

(a) interest on the debt of a secured creditor for the current half yearly term, and

(b) arrears of interest on that debt for one year immediately before the commencement of that term.

(5) On and after such appointment no other person may raise or insist in an adjudication against recoverable property or be confirmed as an executor-creditor on that property.

(6) An inhibition on recoverable property shall cease to have effect in relation to any heritable property comprised in the recoverable property on such appointment.

(7) **[**[F89]The provisions of this section apply in relation to—

(a) an action of maills and duties, and

(b) an action for sequestration of rent,

as they apply in relation to an arrestment or **[**[F90]attachment**]** .**]**

Textual Amendments

F87 Words in s. 285(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1** {para. 29(1)(a)} (with s. 59)

F88 Words in s. 285(2) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1** {para. 29(1)(b)} (with s. 59)

F89 S. 285(7) repealed (S.) (1.4.2008 for specified purposes) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 2 (with arts. 4-691015)

F90 Words in s. 285(7)(b) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 Pt. 1** {para 29(1)(a)} (with s. 59)

Commencement Information

I44 S. 285 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

[F91]286 Scope of powers (Scotland)

. . . . . .

Textual Amendments

F91 S. 286 omitted (retrospectively) by virtue of Crime and Courts Act 2013 (c. 22), **ss. 48(4)**(7), 61(11)(c) (with s. 48(8), Sch. 25)

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F92 286A Legal expenses excluded from freezing: required conditions

(1) The Lord Chancellor may by regulations specify the required conditions for the purposes of section 245C(5) or 252(4).

(2) A required condition may (in particular)—
- (a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers), or
- (b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.

(3) A required condition made for the purpose mentioned in subsection (2)(b) may (for example)—
- (a) provide for sums to be released only with the agreement of the enforcement authority;
- (b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under section 286B in respect of that item and the sum is released for payment of the assessed amount;
- (c) provide for a sum to be released in respect of an item of expenditure only if—
  - (i) the enforcement authority agrees to its release, or
  - (ii) the court has assessed the amount allowed by regulations under section 286B in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this section, the Lord Chancellor must consult such persons as he considers appropriate.

Textual Amendments

F92 Ss. 286A, 286B inserted (1.8.2005) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 20**; S.I. 2005/2026, art. 2(b)

286B Legal expenses: regulations for purposes of section 266(8B) or 286A(3)

(1) The Lord Chancellor may by regulations—
- (a) make provision for the purposes of section 266(8B);
- (b) make provision for the purposes of required conditions that make provision of the kind mentioned in section 286A(3)(b) or (c).

(2) Regulations under this section may (in particular)—
- (a) limit the amount of remuneration allowable to representatives for a unit of time worked;
- (b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;
- (c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.

(3) Before making regulations under this section, the Lord Chancellor must consult such persons as he considers appropriate.**]**

Textual Amendments

F92 Ss. 286A, 286B inserted (1.8.2005) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 20**; S.I. 2005/2026, art. 2(b)

287 Financial threshold

(1) At any time when an order specifying an amount for the purposes of this section has effect, the enforcement authority may not start proceedings for a recovery order unless the authority reasonably believes that the aggregate value of the recoverable property which the authority wishes to be subject to a recovery order is not less than the specified amount.

(2) The power to make an order under subsection (1) is exercisable by the Secretary of State after consultation with the Scottish Ministers **[**[F93]or, in relation to Northern Ireland, exercisable by the Department of Justice**]** .

(3) If the authority applies for **[**[F94]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of **[**[F95]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order which has been properly applied for.

Textual Amendments

F93 Words in s. 287(2) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 56** (with arts. 28-31)

F94 Words in s. 287(3) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 21**; S.I. 2005/3136, art. 3(c)

F95 Words in s. 287(4) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 21**; S.I. 2005/3136, art. 3(c)

Commencement Information

I45 S. 287 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

288 Limitation

(1) After section 27 of the Limitation Act 1980 (c. 58) there is inserted—

"27A Actions for recovery of property obtained through unlawful conduct etc.

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director's cause of action accrued.

(3) Proceedings under that Chapter are brought when—
  (a) a claim form is issued, or
  (b) an application is made for an interim receiving order,
  whichever is the earlier.

(4) The Director's cause of action accrues in respect of any recoverable property—
  (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,
  (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) If—
  (a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel, and
  (b) proceedings are started under that Chapter for a recovery order in respect of the chattel,
  section 3(2) of this Act does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 3(2) of this Act.

(7) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part."

(2) After section 19A of the Prescription and Limitation (Scotland) Act 1973 (c. 52) there is inserted—

"**19B Actions for recovery of property obtained through unlawful conduct etc.**

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be commenced after the expiration of the period of twelve years from the date on which the Scottish Ministers' right of action accrued.

(3) Proceedings under that Chapter are commenced when—
  (a) the proceedings are served, or
  (b) an application is made for an interim administration order,
  whichever is the earlier.

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(4) The Scottish Ministers' right of action accrues in respect of any recoverable property—

(a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,

(b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part."

(3) After Article 72 of the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (N.I. 11)) there is inserted—

"72A **Actions for recovery of property obtained through unlawful conduct etc.**

(1) None of the time limits fixed by Parts II and III applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director's cause of action accrued.

(3) Proceedings under that Chapter are brought when—

(a) a claim form is issued, or

(b) an application is made for an interim receiving order,

whichever is the earlier.

(4) The Director's cause of action accrues in respect of any recoverable property—

(a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,

(b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) If—

(a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and

(b) proceedings are started under that Chapter for a recovery order in respect of the chattel,

Article 17(2) does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2).

(7) Expressions used in this Article and Part 5 of that Act have the same meaning in this Article as in that Part."

Commencement Information

I46 S. 288 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

CHAPTER 3

RECOVERY OF CASH IN SUMMARY PROCEEDINGS

Modifications etc. (not altering text)

C3 Pt. 5 Ch. 3 applied (1.4.2010) by UK Borders Act 2007 (c. 30), **ss. 24(1)**, 59(2); S.I. 2010/606, art. 2

C4 Pt. 5 Ch. 3 applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

C5 Pt. 5 Ch. 3 modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 3, **Sch. para. 3**

Searches

289 Searches

(1) If **[**[F96]an officer of Revenue and Customs**]** or constable **[**[F97], an SFO officer**]** who **[**[F98], a constable or an accredited financial investigator**]** is lawfully on any premises **[**[F99] and**]** has reasonable grounds for suspecting that there is on the premises cash—

(a) which is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of which is not less than the minimum amount,

he may search for the cash there.

[[F100](1A) The powers specified in subsection (1D) are exercisable if—

(a) **[**[F101]an officer of Revenue and Customs**]**, a constable **[**[F102], an SFO officer**]** or an accredited financial investigator has reasonable grounds for suspecting that there is cash falling within subsection (1E) in a vehicle, and

(b) it appears to the officer **[**[F103]of Revenue and Customs**]**, constable **[**[F104], SFO officer**]** or investigator that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle.

(1B) The powers are exercisable only if the vehicle is—

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(1C) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the **[**[F105]officer of Revenue and Customs**]**, constable **[**[F106], SFO officer**]**[F107]of Revenue and Customs**]** or accredited financial investigator may exercise

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the powers under subsection (1D) only if the officer, constable **[**[F106], SFO officer**]** or investigator has reasonable grounds for believing—

(a) that the suspect does not reside in the dwelling, and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(1D) The **[**[F105]officer of Revenue and Customs**]**, constable **[**[F108], SFO officer**]****[**[F109]of Revenue and Customs**]** or accredited financial investigator may, so far as the officer, constable **[**[F108], SFO officer**]** or investigator thinks it necessary or expedient, require the suspect to—

(a) permit entry to the vehicle,

(b) permit a search of the vehicle.

(1E) Cash falls within this subsection if—

(a) it is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of it is not less than the minimum amount.**]**

(2) If **[**[F110]an officer of Revenue and Customs**]****[**[F111], a constable **[**[F112], an SFO officer**]** or an accredited financial investigator**]** has reasonable grounds for suspecting that a person (the suspect) is carrying cash—

(a) which is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of which is not less than the minimum amount,

he may exercise the following powers.

(3) The officer **[**[F113], constable **[**[F114], SFO officer**]** or accredited financial investigator**]** may, so far as he thinks it necessary or expedient, require the suspect—

(a) to permit a search of any article he has with him,

(b) to permit a search of his person.

(4) An officer **[**[F115], constable **[**[F116], SFO officer**]** or accredited financial investigator**]****[**[F117]may—

(a) in exercising powers by virtue of subsection (1D), detain the vehicle for so long as is necessary for their exercise,

(b) in exercising powers by virtue of subsection (3)(b), detain the suspect for so long as is necessary for their exercise.**]**

(5) The powers conferred by this section—

(a) are exercisable only so far as reasonably required for the purpose of finding cash,

(b) are exercisable by **[**[F118]a customs officer**]****[**[F118]an officer of Revenue and Customs**]** only if he has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979 (c. 2)).

[F119](ba) . . . . . .

(c) are exercisable by an **[**[F120]SFO officer or**]** accredited financial investigator only in relation to **[**[F121]the following—

(i) premises in England, Wales or Northern Ireland (in the case of subsection (1)),

(ii) vehicles and suspects in England, Wales or Northern Ireland (in the case of subsections (1D) and (4)(a)),

(iii) suspects in England, Wales or Northern Ireland (in the case of subsections (2), (3) and (4)(b)).**]**

[F122](5A) . . . . . .

(6) Cash means—

(a) notes and coins in any currency,

(b) postal orders,

(c) cheques of any kind, including travellers' cheques,

(d) bankers' drafts,

(e) bearer bonds and bearer shares,

[[F123](f) gaming vouchers,

(g) fixed-value casino tokens,

(h) betting receipts**]**

found at any place in the United Kingdom.

(7) Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by an order made after consultation with the Scottish Ministers **[**[F124]or, in relation to Northern Ireland, is specified by the Department of Justice by an order**]**.

[[F125](7A) For the purposes of subsection (6)—

(a) "gaming voucher" means a voucher in physical form issued by a gaming machine that represents a right to be paid the amount stated on it;

(b) "fixed-value casino token" means a casino token that represents a right to be paid the amount stated on it;

(c) "betting receipt" means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

(7B) In subsection (7A)—

"bet"—

(a) in relation to England and Wales and Scotland, has the same meaning as in section 9(1) of the Gambling Act 2005;

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)) (see Article 2 of that Order);

"betting licence"—

(a) in relation to England and Wales and Scotland, means a general betting operating licence issued under Part 5 of the Gambling Act 2005;

(b) in relation to Northern Ireland, means a bookmaker's licence as defined in Article 2 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985;

"gaming machine"—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Gambling Act 2005 (see section 235 of that Act);

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (see Article 2 of that Order).

(7C) In the application of subsection (7A) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).**]**

(8) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979 (c. 2)).

Textual Amendments

F96 Words in s. 289(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(2)**

F97 Words in s. 289(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(2)**; S.I. 2018/78, reg. 3(aa)

F98 Words in s. 289(1) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(2)(a)**; S.I. 2008/755, art. 17(1)(f)

F99 Word in s. 289(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(2)(b)**; S.I. 2008/755, art. 17(1)(f)

F100 S. 289(1A)-(1E) inserted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 63(2)**, 116(1); S.I. 2015/983, art. 2(2)(b); S.I. 2016/147, art. 3(d)

F101 Words in s. 289(1A)(a) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(2)**

F102 Words in s. 289(1A)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(3)(a)**; S.I. 2018/78, reg. 3(aa)

F103 Words in s. 289(1A)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(3)(b)(i)**; S.I. 2018/78, reg. 3(aa)

F104 Words in s. 289(1A)(b) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(3)(b)(ii)**; S.I. 2018/78, reg. 3(aa)

F105 Words in s. 289(1C)(1D) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(3)**

F106 Words in s. 289(1C) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(4)(a)**; S.I. 2018/78, reg. 3(aa)

F107 Words in s. 289(1C) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(4)(b)**; S.I. 2018/78, reg. 3(aa)

F108 Words in s. 289(1D) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(5)(a)**; S.I. 2018/78, reg. 3(aa)

F109 Words in s. 289(1D) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(5)(b)**; S.I. 2018/78, reg. 3(aa)

F110 Words in s. 289(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 2(2)**

F111 Words in s. 289(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(3)**; S.I. 2008/755, art. 17(1)(f)

F112 Words in s. 289(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(6)**; S.I. 2018/78, reg. 3(aa)

F113 Words in s. 289(3) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(4)**; S.I. 2008/755, art. 17(1)(f)

F114 Words in s. 289(3) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(7)**; S.I. 2018/78, reg. 3(aa)

F115 Words in s. 289(4) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 2(4)**; S.I. 2008/755, art. 17(1)(f)

F116 Words in s. 289(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(8)**; S.I. 2018/78, reg. 3(aa)

F117 Words in s. 289(4) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 63(3)**, 116(1); S.I. 2015/983, art. 2(2)(b); S.I. 2016/147, art. 3(d)

F118 Words in s. 289(5)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 31**; S.I. 2018/78, reg. 5(1)(e)

F119 S. 289(5)(ba) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(a)**, 58(4)(6)

F120 Words in s. 289(5)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 11(9)**; S.I. 2018/78, reg. 3(aa)

F121 Words in s. 289(5)(c) substituted (1.6.2015 for E.W.S. for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 63(4)**, 116(1); S.I. 2015/983, art. 2(2)(b); S.I. 2016/147, art. 3(d)

F122 S. 289(5A) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(a)**, 58(4)(6)

F123 S. 289(6)(f)-(h) inserted (27.4.2017 for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 14(1)**, 58(1)(6); S.I. 2018/78, reg. 4(a)

F124 Words in s. 289(7) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 57** (with arts. 28-31)

F125 S. 289(7A)-(7C) inserted (27.4.2017 for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 14(2)**, 58(1)(6); S.I. 2018/78, reg. 4(a)

290 Prior approval

(1) The powers conferred by section 289 may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.

(3) A judicial officer means—

(a) in relation to England and Wales and Northern Ireland, a justice of the peace,

(b) in relation to Scotland, the sheriff.

(4) A senior officer means—

(a) in relation to the exercise of the power by **[**[F126]an officer of Revenue and Customs, such an officer**]** of a rank designated by the Commissioners of Customs and Excise as equivalent to that of a senior police officer,

[[F127](aa) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office,**]**

[[F128](ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,**]**

(b) in relation to the exercise of the power by a constable, a senior police officer.

[[F129](ba) in relation to the exercise of a power by an accredited financial investigator who is—

(i) a member of the civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011,

(ii) a member of staff of the City of London police force, or

(iii) a member of staff of the Police Service of Northern Ireland,

a senior police officer,**]**

[[F130](c) in relation to the exercise of the power by an accredited financial investigator **[**[F131]who does not fall within any of the preceding paragraphs**]**, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State **[**[F132]or the Welsh Ministers**]** under section 453.**]**

(5) A senior police officer means a police officer of at least the rank of inspector.

(6) If the powers are exercised without the approval of a judicial officer in a case where—

(a) no cash is seized by virtue of section 294, or

(b) any cash so seized is not detained for more than 48 hours **[**[F133](calculated in accordance with section 295(1B))**]**,

the **[**[F134]officer of Revenue and Customs**]**[F135], constable **[**[F136], SFO officer**]** or accredited financial investigator**]** who exercised the powers must give a written report to the appointed person.

[[F137](6A) But the duty in subsection (6) does not apply if, during the course of exercising the powers conferred by section 289, the relevant officer seizes property by virtue of section 303J and the property so seized is detained for more than 48 hours (calculated in accordance with section 303K(5)).**]**

(7) The report must give particulars of the circumstances which led him to believe that—

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of a judicial officer.

(8) In this section and section 291, the appointed person means—

(a) in relation to England and Wales [F138]..., a person appointed by the Secretary of State,

(b) in relation to Scotland, a person appointed by the Scottish Ministers.

[[F139](c) in relation to Northern Ireland, a person appointed by the Department of Justice.**]**

(9) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of his appointment, including any remuneration or expenses to be paid to him, are to be determined by the person appointing him.

Textual Amendments

F126 Words in s. 290(4)(a) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 3(a)**

F127 S. 290(4)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 12(2)**; S.I. 2018/78, reg. 3(aa)

F128 S. 290(4)(ab) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(6)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F129 S. 290(4)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 31(4)**, 58(1)(6); S.I. 2018/78, reg. 3(n)

F130 S. 290(4)(c) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 3(2)**; S.I. 2008/755, art. 17(1)(f)

F131 Words in s. 290(4)(c) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 32(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F132 Words in s. 290(4)(c) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(d)**

F133 Words in s. 290(6) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(3)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F134 Words in s. 290(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 3(b)**

F135 Words in s. 290(6) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 3(3)**; S.I. 2008/755, art. 17(1)(f)

F136 Words in s. 290(6) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 12(3)**; S.I. 2018/78, reg. 3(aa)

F137 S. 290(6A) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 32(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F138 Words in s. 290(8)(a) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 58(a)** (with arts. 28-31)

F139 S. 290(8)(c) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 58(b)** (with arts. 28-31)

Modifications etc. (not altering text)

C6 S. 290(4)(c) modified (E.W.) (1.4.2018) by The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (S.I. 2018/196), arts. 1(2), 4, **Sch. para. 11**

291 Report on exercise of powers

(1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.

"Financial year" means—

(a) the period beginning with the day on which this section comes into force and ending with the next 31 March (which is the first financial year), and

(b) each subsequent period of twelve months beginning with 1 April.

(2) The report must give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised in cases where the **[**[F140]officer of Revenue and Customs**][**[F141], constable **[**[F142], SFO officer**]** or accredited financial investigator**]** who exercised them is required to give a report under section 290(6).

(3) In the report, he may make any recommendations he considers appropriate.

(4) He must send a copy of his report to the Secretary of State or, as the case may be, the Scottish Ministers **[**[F143]or the Department of Justice**]**, who must arrange for it to be published.

(5) The Secretary of State must lay a copy of any report he receives under this section before Parliament; and the Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament **[**[F144]; and the Department of Justice must lay a copy of any report it receives under this section before the Northern Ireland Assembly**]**.

[[F145](6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (5) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.**]**

Textual Amendments

F140 Words in s. 291(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 4**

F141 Words in s. 291(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 4**; S.I. 2008/755, art. 17(1)(f)

F142 Words in s. 291(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 13**; S.I. 2018/78, reg. 3(aa)

F143 Words in s. 291(4) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 59(2)** (with arts. 28-31)

F144 Words in s. 291(5) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 59(3)** (with arts. 28-31)

F145 S. 291(6) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 59(4)** (with arts. 28-31)

292 Code of practice

(1) The Secretary of State must make a code of practice in connection with the exercise by **[**[F146]officers of Revenue and Customs**]**[[F147], SFO officers**]** and (in relation to England and Wales [F148]...) constables **[**[F149]and accredited financial investigators**]** of the powers conferred by virtue of section 289.

(2) Where he proposes to issue a code of practice he must—

(a) publish a draft,

(b) consider any representations made to him about the draft by the Scottish Ministers **[**[F150], the Department of Justice**]** or any other person,

(c) if he thinks it appropriate, modify the draft in the light of any such representations.

[[F151](2A) The Secretary of State must also consult the Attorney General about the draft in its application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.**]**

(3) He must lay a draft of the code before Parliament.

(4) When he has laid a draft of the code before Parliament he may bring it into operation by order.

(5) He may revise the whole or any part of the code issued by him and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by **[**[F152]an officer of Revenue and Customs**][**[F153]an SFO officer,**][**[F154], a constable or an accredited financial investigator**]** to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Textual Amendments

F146 Words in s. 292(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 5(a)**

F147 Words in s. 292(1) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 14(2)**; S.I. 2017/991, reg. 2(l)

F148 Words in s. 292(1) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 60(2)** (with arts. 28-31)

F149 Words in s. 292(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 5(2)**; S.I. 2008/755, art. 17(1)(f)

F150 Words in s. 292(2)(b) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 60(3)** (with arts. 28-31)

F151 S. 292(2A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 14(3)**; S.I. 2017/991, reg. 2(l)

F152 Words in s. 292(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 5(b)**

F153 Words in s. 292(6) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 14(4)**; S.I. 2017/991, reg. 2(l)

F154 Words in s. 292(6) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 5(3)**; S.I. 2008/755, art. 17(1)(f)

Modifications etc. (not altering text)

C7 S. 292 modified (1.4.2010) by UK Borders Act 2007 (c. 30), **ss. 24(2)(d)**, 59(2); S.I. 2010/606, art. 2 (as amended (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **16(2)** (with arts. 24-28))

293 Code of practice (Scotland)

(1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by virtue of section 289.

(2) Where they propose to issue a code of practice they must—

(a) publish a draft,

(b) consider any representations made to them about the draft,

(c) if they think it appropriate, modify the draft in the light of any such representations.

(3) They must lay a draft of the code before the Scottish Parliament.

(4) When they have laid a draft of the code before the Scottish Parliament they may bring it into operation by order.

(5) They may revise the whole or any part of the code issued by them and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by a constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Modifications etc. (not altering text)

C8 S. 293 excluded (1.4.2010) by UK Borders Act 2007 (c. 30), **ss. 24(2)(e)**, 59(2); S.I. 2010/606, art. 2 (as amended (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **16(3)** (with arts. 24-28))

[F155 293A Code of practice (Northern Ireland)

(1) The Department of Justice must make a code of practice in connection with the exercise by constables and accredited financial investigators, in relation to Northern Ireland, of the powers conferred by virtue of section 289.

(2) Where the Department of Justice proposes to issue a code of practice it must—
  (a) publish a draft,
  (b) consider any representations made to the Department of Justice about the draft,
  (c) if the Department of Justice thinks it appropriate, modify the draft in the light of any such representations.

(3) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.

(4) When the Department of Justice has laid a draft of the code before the Northern Ireland Assembly, the Department of Justice may bring it into operation by order.

(5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsections (3) and (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

(6) The Department of Justice may revise the whole or any part of the code issued by it and issue the code as revised; and subsections (2) to (5) apply to such a revised code as they apply to the original code.

(7) A failure by a constable or accredited financial investigator to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(8) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.**]**

Textual Amendments

F155 S. 293A inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 61** (with arts. 28-31)

Seizure and detention

294 Seizure of cash

(1) **[**[F156]An officer of Revenue and Customs**]**[F157], a constable **[**[F158], an SFO officer**]** or an accredited financial investigator**]** may seize any cash if he has reasonable grounds for suspecting that it is—

(a) recoverable property, or

(b) intended by any person for use in unlawful conduct.

(2) **[**[F156]An officer of Revenue and Customs**]**[F159], a constable **[**[F160], an SFO officer**]** or an accredited financial investigator**]** may also seize cash part of which he has reasonable grounds for suspecting to be—

(a) recoverable property, or

(b) intended by any person for use in unlawful conduct,

if it is not reasonably practicable to seize only that part.

[F161](2A) . . . . . .

[F162](2B) . . . . . .

[F163](2C) . . . . . .

(3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than the minimum amount.

[[F164](4) This section does not authorise the seizure by **[**[F165]an SFO officer or**]** an accredited financial investigator of cash found in Scotland.**]**

Textual Amendments

F156 Words in s. 294(1)(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 6(2)**

F157 Words in s. 294(1) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 6(2)**; S.I. 2008/755, art. 17(1)(f)

F158 Words in s. 294(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 15(2)**; S.I. 2018/78, reg. 3(aa)

F159 Words in s. 294(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 6(2)**; S.I. 2008/755, art. 17(1)(f)

F160 Words in s. 294(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 15(3)**; S.I. 2018/78, reg. 3(aa)

F161 S. 294(2A) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(b)**, 58(4)(6)

F162 S. 294(2B) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(b)**, 58(4)(6)

F163 S. 294(2C) omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), **ss. 18(4)(b)**, 58(4)(6)

F164 S. 294(4) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 6(3)**; S.I. 2008/755, art. 17(1)(f)

F165 Words in s. 294(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 15(4)**; S.I. 2018/78, reg. 3(aa)

Modifications etc. (not altering text)

C9 S. 294 restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 2 para. 13**; S.I. 2005/1126, art. 2(2)(d)

295 Detention of seized cash

(1) While the **[**[F166]officer of Revenue and Customs**]**[F167] , constable **[**[F168], SFO officer**]** or accredited financial investigator**]** continues to have reasonable grounds for his suspicion, cash seized under section 294 may be detained initially for a period of 48 hours.

[[F169](1A) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (1B).

(1B) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the cash is seized, or

(e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the cash is seized.**]**

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash—

(a) beyond the end of the period of **[**[F170]six months**]** beginning with the date of the order,

(b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.

(3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (2) extending the period.

(4) An application for an order under subsection (2)—

(a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise **[**[F171], a constable **[**[F172], an SFO officer**]** or an accredited financial investigator**]**,

(b) in relation to Scotland, may be made by the Scottish Ministers in connection with their functions under section 298 or by a procurator fiscal,

and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.

(5) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either—

(a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(6) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—

(a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(7) An application for an order under subsection (2) may also be made in respect of any cash seized under section 294(2), and the court, sheriff or justice may make the order if satisfied that—

(a) the condition in subsection (5) or (6) is met in respect of part of the cash, and

(b) it is not reasonably practicable to detain only that part.

(8) An order under subsection (2) must provide for notice to be given to persons affected by it.

Textual Amendments

F166 Words in s. 295(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 7**

F167 Words in s. 295(1) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 7(2)**; S.I. 2008/755, art. 17(1)(f)

F168 Words in s. 295(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 16(2)**; S.I. 2018/78, reg. 3(aa)

F169 S. 295(1A)(1B) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(2)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F170 Words in s. 295(2)(a) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 64(1)**, 116(1) (with s. 64(2); S.I. 2009/3096, art. 3(i)

F171 Words in s. 295(4)(a) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 7(3)**; S.I. 2008/755, art. 17(1)(f)

F172 Words in s. 295(4)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 16(3)**; S.I. 2018/78, reg. 3(aa)

296 Interest

(1) If cash is detained under section 295 for more than 48 hours **[**[F173](calculated in accordance with section 295(1B))**]**, it is at the first opportunity to be paid into an interest-bearing account and held there; and the interest accruing on it is to be added to it on its forfeiture or release.

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In the case of cash detained under section 295 which was seized under section 294(2), the **[**[F174]officer of Revenue and Customs**]**[F175] , constable **[**[F176], SFO officer**]** or accredited financial investigator**]** must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Chapter.

Textual Amendments

F173 Words in s. 296(1) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(3)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F174 Words in s. 296(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 8**

F175 Words in s. 296(2) substituted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 8**; S.I. 2008/755, art. 17(1)(f)

F176 Words in s. 296(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 17**; S.I. 2018/78, reg. 3(aa)

297 Release of detained cash

(1) This section applies while any cash is detained under section 295.

(2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 295 for the detention of the cash are no longer met in relation to the cash to be released.

(4) **[**[F177]An officer of Revenue and Customs**]**, constable **[**[F178], SFO officer**]**[F179]or accredited financial investigator**]** or (in Scotland) procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Textual Amendments

F177 Words in s. 297(4) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 9**

F178 Words in s. 297(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 18**; S.I. 2018/78, reg. 3(aa)

F179 Words in s. 297(4) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 9**; S.I. 2008/755, art. 17(1)(f)

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F180 Forfeiture without court order

Textual Amendments

F180 Ss. 297A-297G and cross-heading inserted (22.11.2014 for the insertion of s. 297A(3)-(5) for specified purposes, 1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), **ss. 65(1)**, 116(1) (with s. 65(4)); S.I. 2014/3101, art. 3; S.I. 2015/983, art. 2(2)(c); S.I. 2016/147, art. 3(e)

297A Forfeiture notice

(1) Subsection (2) applies while any cash is detained in pursuance of an order under section 295(2) made by a magistrates' court in England and Wales or Northern Ireland.

(2) A senior officer may give a notice for the purpose of forfeiting the cash or any part of it if satisfied that the cash or part—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) The Secretary of State must make regulations about how a notice is to be given.

(4) The regulations may provide—

(a) for a notice to be given to such person or persons, and in such manner, as may be prescribed;

(b) for a notice to be given by publication in such manner as may be prescribed;

(c) for circumstances in which, and the time at which, a notice is to be treated as having been given.

(5) The regulations must ensure that where a notice is given it is, if possible, given to every person to whom notice of an order under section 295(2) in respect of the cash has been given.

(6) A senior officer means—

(a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

[F181(aa) an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,**]**

(b) a senior police officer, **[**F182or**]**

[F183(ba) the Director of the Serious Fraud Office, or**]**

[F184(bb) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,**]**

(c) an accredited financial investigator.

(7) A senior police officer means a police officer of at least the rank of inspector.

(8) A notice under this section is referred to in this Chapter as a forfeiture notice.

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F181 S. 297A(6)(aa) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 28** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F182 Word in s. 297A(6)(b) omitted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by virtue of Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 19(a)**; S.I. 2018/78, reg. 3(aa)

F183 S. 297A(6)(ba) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 19(b)**; S.I. 2018/78, reg. 3(aa)

F184 S. 297A(6)(bb) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(7)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

297B Content

(1) A forfeiture notice must—

(a) state the amount of cash in respect of which it is given,

(b) state when and where the cash was seized,

(c) confirm that the senior officer is satisfied as mentioned in section 297A(2),

(d) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and

(e) explain that the cash will be forfeited unless an objection is received at that address within the period for objecting.

(2) The period for objecting must be at least 30 days starting with the day after the notice is given.

297C Effect

(1) This section applies if a forfeiture notice is given in respect of any cash.

(2) The cash is to be detained until—

(a) the cash is forfeited under this section,

(b) the notice lapses under this section, or

(c) the cash is released under a power conferred by this Chapter.

(3) If no objection is made within the period for objecting, and the notice has not lapsed, the cash is forfeited (subject to section 297E).

(4) If an objection is made within the period for objecting, the notice lapses.

(5) If an application is made for the forfeiture of the whole or any part of the cash under section 298, the notice lapses.

(6) If the cash or any part of it is released under a power conferred by this Chapter, the notice lapses or (as the case may be) lapses in relation to that part.

(7) An objection may be made by anyone, whether a recipient of the notice or not.

(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the cash under section 298.

(10) Nothing in this section affects the validity of an order under section 295(2).

297D Detention following lapse of notice

(1) This section applies if—
- (a) a forfeiture notice is given in respect of any cash,
- (b) the notice lapses under section 297C(4), and
- (c) the period for which detention of the cash was authorised under section 295(2) has expired.

(2) The cash may be detained for a further period of up to 48 hours (calculated in accordance with section 295(1B)).

(3) But if within that period the Commissioners for Her Majesty's Revenue and Customs, a constable **[**[F185], an SFO officer**]** or an accredited financial investigator decides that neither of the applications mentioned in subsection (4) ought to be made, the cash must be released.

(4) The applications are—
- (a) an application for a further order under section 295(2);
- (b) an application for forfeiture of the cash under section 298.

(5) " If within that period an application is made for a further order under section 295(2) the cash may be detained until the application is determined or otherwise disposed of. "

Textual Amendments

F185 Words in s. 297D(3) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 20**; S.I. 2018/78, reg. 3(aa)

297E Application to set aside forfeiture

(1) This section applies if any cash is forfeited in pursuance of a forfeiture notice.

(2) A person aggrieved by the forfeiture may apply to a magistrates' court in England and Wales or Northern Ireland for an order setting aside the forfeiture of the cash or any part of it.

(3) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended.

(4) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—
- (a) failed to object to the forfeiture within the period for objecting, and
- (b) failed to make an application within the 30-day period.

(5) On an application under this section the court must consider whether the cash to which the application relates could be forfeited under section 298 (ignoring the forfeiture mentioned in subsection (1) above).

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) If the court is satisfied that the cash to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that cash or part.

(7) Where the court sets aside the forfeiture of any cash—
  (a) it must order the release of that cash, and
  (b) that cash is to be treated as never having been forfeited.

297F Release of cash subject to forfeiture notice

(1) This section applies while any cash is detained under section 297C or 297D.

(2) A magistrates' court may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the court is not satisfied, on an application by the person from whom the cash was seized, that the cash to be released—
  (a) is recoverable property, or
  (b) is intended by any person for use in unlawful conduct.

(4) An officer of Revenue and Customs, **[**[F186]immigration officer,**]** constable **[**[F187], SFO officer**]** or accredited financial investigator may release the cash or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Textual Amendments

F186 Words in s. 297F(4) inserted (22.11.2014) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 29** (with Sch. 21 para. 40); S.I. 2014/3098, art. 2(e)

F187 Words in s. 297F(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 21**; S.I. 2018/78, reg. 3(aa)

297G Application of forfeited cash

(1) Cash forfeited in pursuance of a forfeiture notice, and any accrued interest on it, is to be paid into the Consolidated Fund.

(2) But it is not to be paid in—
  (a) before the end of the period within which an application under section 297E may be made (ignoring the possibility of an application by virtue of section 297E(4)), or
  (b) if an application is made within that period, before the application is determined or otherwise disposed of.**]**

Forfeiture

298 Forfeiture

(1) While cash is detained under section 295 **[**[F188], 297C or 297D **]**, an application for the forfeiture of the whole or any part of it may be made—

(a) to a magistrates' court by the Commissioners of Customs and Excise **[**[F189], an accredited financial investigator**][**[F190]or a constable**][**[F190], a constable or an SFO officer**]**,

(b) (in Scotland) to the sheriff by the Scottish Ministers.

(2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

Textual Amendments

F188 Words in s. 298(1) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 65(2)**, 116(1); S.I. 2015/983, art. 2(2)(c)

F189 Words in s. 298(1)(a) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 10**; S.I. 2008/755, art. 17(1)(f)

F190 Words in s. 298(1)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 22**; S.I. 2018/78, reg. 3(aa)

[[F191]**299 Appeal against decision under section 298**

(1) Any party to proceedings for an order for the forfeiture of cash under section 298 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—

(a) in relation to England and Wales, to the Crown Court;

(b) in relation to Scotland, to the Sheriff Principal;

(c) in relation to Northern Ireland, to a county court.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the cash, it may **[**[F192]order the release of the whole or any part of the cash**] .]**

Textual Amendments

F191 S. 299 substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 101(1)**, 178(7)(a) (with s. 101(2)); S.I. 2005/1521, art. 2(1)(d) (with art. 2(2))

F192 Words in s. 299(4) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), **ss. 65(3)**, 116(1); S.I. 2015/983, art. 2(2)(c)

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

300 Application of forfeited cash

(1) Cash forfeited under **[**[F193]section 298**]**, and any accrued interest on it—

(a) if forfeited by a magistrates' court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,

(b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.

(2) But it is not to be paid in—

(a) before the end of the period within which an appeal under section 299 may be made, or

(b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Textual Amendments

F193 Words in s. 300(1) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 107**; S.I. 2015/983, arts. 2(2)(e), 3(ff)

Supplementary

301 Victims and other owners

(1) A person who claims that any cash detained under this Chapter, or any part of it, belongs to him may apply to a magistrates' court or (in Scotland) the sheriff for the cash or part to be released to him.

(2) The application may be made in the course of proceedings under section 295 or 298 or at any other time.

(3) If it appears to the court or sheriff concerned that—

(a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,

(b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property, and

(c) that cash belongs to him,

the court or sheriff may order the cash to which the application relates to be released to the applicant.

(4) If—

(a) the applicant is not the person from whom the cash to which the application relates was seized,

(b) it appears to the court or sheriff that that cash belongs to the applicant,

(c) the court or sheriff is satisfied that **[**[F194]the release condition is met**]** in relation to that cash, and

(d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the court or sheriff may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

[[F195](5) The release condition is met—

(a) in relation to cash detained under section 295, if the conditions in that section for the detention of the cash are no longer met,

(b) in relation to cash detained under section 297C or 297D, if the cash is not recoverable property and is not intended by a person for use in unlawful conduct, and

(c) in relation to cash detained under 298, if the court or sheriff decides not to make an order under that section in relation to the cash.**]**

Textual Amendments

F194 Words in s. 301(4)(c) substituted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 108(2)**; S.I. 2015/983, arts. 2(2)(e), 3(ff); S.I. 2016/147, art. 3(j)

F195 S. 301(5) inserted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 108(3)**; S.I. 2015/983, arts. 2(2)(e), 3(ff); S.I. 2016/147, art. 3(j)

302 Compensation

[[F196](1) If cash detained under this Chapter was seized in England, Wales or Northern Ireland the person to whom the cash belongs or from whom it was seized may make an application to a magistrates' court for compensation if—

(a) the cash is not forfeited in pursuance of a forfeiture notice, and

(b) no forfeiture order is made in respect of the cash.

(1A) If cash detained under this Chapter was seized in Scotland the person to whom the cash belongs or from whom it was seized may make an application to the sheriff for compensation if no forfeiture order is made in respect of the cash.**]**

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours **[**[F197](calculated in accordance with section 295(1B))**]**, the cash was not held in an interest-bearing account while detained, the court or sheriff may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the court or sheriff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court or sheriff is satisfied that, taking account of any interest to be paid under section 296 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subsection (4) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) If the cash was seized by **[**[F198]an officer of Revenue and Customs**]**, the compensation is to be paid by the Commissioners of Customs and Excise.

(7) If the cash was seized by a constable, the compensation is to be paid as follows—

Status: *Point in time view as at 16/04/2018.*
Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met,

(b) in the case of a constable of a police force in Scotland, it is to be paid by the **[**[F199]Scottish Police Authority**]**,

[[F200](ba) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority,**]**

(c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.

[[F201](7ZA) If the cash was seized by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.**]**

[[F202](7ZB) If the cash was seized by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.**]**

[[F203](7A) If the cash was seized by an accredited financial investigator who was not an officer of Revenue and Customs **[**[F204]or a constable**]**[F204], a constable, an SFO officer or a National Crime Agency officer**]**, the compensation is to be paid as follows—

(a) in the case of an investigator—

[[F205](i) who was a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of **[**[F206]that Part of that Act**]**[F206]Part 1 of the Police Reform and Social Responsibility Act 2011**]**), or**]**

(ii) who was a member of staff of the City of London police force,

it is to be paid out of the police fund from which the expenses of the police force are met,

(b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable,

(c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department,

(d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,

[[F207](da) in the case of an investigator who was exercising a function of the Welsh Revenue Authority, it is to be paid by the Welsh Revenue Authority,**]**

(e) in any other case, it is to be paid by the employer of the investigator.

(7B) The Secretary of State may by order amend subsection (7A).**]**

[[F208](7C) If any cash is detained under this Chapter and part only of the cash is forfeited in pursuance of a forfeiture notice, this section has effect in relation to the other part.**]**

(8) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.

[[F209](9) The power in subsection (7B) is exercisable by the Department of Justice (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).**]**

Textual Amendments

F196 S. 302(1)(1A) substituted for s. 302(1) (1.6.2015 for E.W.S. for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 109(2)**; S.I. 2015/983, arts. 2(2)(e), 3(gg); S.I. 2016/147, art. 3(j)

F197 Words in s. 302(2) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 100(3)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(c)

F198 Words in s. 302(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 48 para. 10**

F199 Words in s. 302(7)(b) substituted (S.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 19(3)(a)**

F200 S. 302(7)(ba) inserted (S.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), art. 1, **sch. 1 para. 19(3)(b)**

F201 S. 302(7ZA) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(1)(6), **Sch. 1 para. 23**; S.I. 2018/78, reg. 3(aa)

F202 S. 302(7ZB) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(8)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F203 S. 302(7A)(7B) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 11**; S.I. 2008/755, art. 17(1)(f)

F204 Words in s. 302(7A) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 33**; S.I. 2018/78, reg. 5(1)(e)

F205 S. 302(7A)(a)(i) substituted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), **Sch. 16 para. 306**; S.I. 2011/3019, art. 3, Sch. 1

F206 Words in s. 302(7A)(a)(i) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(9)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

F207 S. 302(7A)(da) inserted (25.1.2018) by Tax Collection and Management (Wales) Act 2016 (anaw 6), ss. 186(1)(3), 194(2): S.I. 2018/33, **art. 2(j)**

F208 S. 302(7C) inserted (1.6.2015 for E.W.S., 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 109(3)**; S.I. 2015/983, arts. 2(2)(e), 3(gg); S.I. 2016/147, art. 3(j)

F209 S. 302(9) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 62(2)** (with arts. 28-31)

[F210 302A Powers for prosecutors to appear in proceedings

(1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable [F211 or an accredited financial investigator] in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, a constable [F212 or (as the case may be) an accredited financial investigator] to do so, and

(b) considers it appropriate to do so.

(2) [F213 The Director of Public Prosecutions] may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

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Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The Directors may charge fees for the provision of services under this section.**]**

[[F214](4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.**]**

Textual Amendments

F210 S. 302A inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 84(1)**, 94(1); S.I. 2008/755, art. 17(1)(h)

F211 Words in s. 302A(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 12(2)(a)**; S.I. 2008/755, art. 17(1)(f)

F212 Words in s. 302A(1) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 12(2)(b)**; S.I. 2008/755, art. 17(1)(f)

F213 Words in s. 302A(2) substituted (27.3.2014) by The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 24**

F214 S. 302A(4) inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 12(3)**; S.I. 2008/755, art. 17(1)(f)

303 "The minimum amount"

(1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers **[**[F215]and the Department of Justice**]** .

(2) For that purpose the amount of any cash held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

Textual Amendments

F215 Words in s. 303(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 63** (with arts. 28-31)

[[F216]303A Financial investigators

(1) In this Chapter (apart from this section) any reference in a provision to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State **[**[F217]or the Welsh Ministers**]** under section 453.

(2) Subsection (1) does not apply to the second reference to an accredited financial investigator in section 290(4)(c).

(3) Where an accredited financial investigator of a particular description—

(a) applies for an order under section 295,

(b) applies for forfeiture under section 298, or

(c) brings an appeal under, or relating to, this Chapter,

any subsequent step in the application or appeal, or any further application or appeal relating to the same matter, may be taken, made or brought by a different accredited financial investigator of the same description.**]**

Textual Amendments

F216 S. 303A inserted (6.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 11 para. 13**; S.I. 2008/755, art. 17(1)(f)

F217 Words in s. 303A(1) inserted (E.W.) (1.4.2018) by The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018 (S.I. 2018/285), regs. 1(2), **5(e)**

[F218CHAPTER 3A

RECOVERY OF LISTED ASSETS IN SUMMARY PROCEEDINGS

Textual Amendments

F218 Pt. 5 Ch. 3A inserted (27.4.2017 for specified purposes, 31.10.2017 for the insertion of ss. 303G, 303H for E.W.S. so far as not already in force, 30.1.2018 for the insertion of s. 303E(4) for E.W.S. so far as not already in force, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 15**, 58(1)(6); S.I. 2017/991, reg. 2(d); S.I. 2018/78, regs. 2(a), 4(b)

Modifications etc. (not altering text)

C10 Pt. 5 Ch. 3A applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

Definition of listed asset

303B "Listed asset"

(1) In this Chapter, a "listed asset" means an item of property that falls within one of the following descriptions of property—
- (a) precious metals;
- (b) precious stones;
- (c) watches;
- (d) artistic works;
- (e) face-value vouchers;
- (f) postage stamps.

(2) The Secretary of State may by regulations amend subsection (1)—
- (a) by removing a description of property;
- (b) by adding a description of tangible personal (or corporeal moveable) property.

(3) The Secretary of State must consult the Scottish Ministers and the Department of Justice before making regulations under subsection (2).

(4) In this section—

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(a) "precious metal" means gold, silver or platinum (whether in an unmanufactured or a manufactured state);
(b) "artistic work" means a piece of work falling within section 4(1)(a) of the Copyright, Designs and Patents Act 1988;
(c) "face-value voucher" means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it.

Searches

303C Searches

(1) If a relevant officer is lawfully on any premises and has reasonable grounds for suspecting that there is on the premises a seizable listed asset, the relevant officer may search for the listed asset there.

(2) The powers conferred by subsection (5) are exercisable by a relevant officer if—
(a) the relevant officer has reasonable grounds for suspecting that there is a seizable listed asset in a vehicle,
(b) it appears to the officer that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle, and
(c) the vehicle is in a place falling within subsection (3).

(3) The places referred to in subsection (2)(c) are—
(a) a place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, and
(b) any other place to which at that time people have ready access but which is not a dwelling.

(4) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the relevant officer may exercise the powers conferred by subsection (5) only if the relevant officer has reasonable grounds for believing—
(a) that the suspect does not reside in the dwelling, and
(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) The powers conferred by this subsection are—
(a) power to require the suspect to permit entry to the vehicle;
(b) power to require the suspect to permit a search of the vehicle.

(6) If a relevant officer has reasonable grounds for suspecting that a person (the suspect) is carrying a seizable listed asset, the relevant officer may require the suspect—
(a) to permit a search of any article the suspect has with him or her;
(b) to permit a search of the suspect's person.

(7) The powers conferred by subsections (5) and (6) are exercisable only so far as the relevant officer thinks it necessary or expedient.

(8) A relevant officer may—
(a) in exercising powers conferred by subsection (5), detain the vehicle for so long as is necessary for their exercise;

(b) in exercising powers conferred by subsection (6)(b), detain the suspect for so long as is necessary for their exercise.

(9) In this Chapter, a "relevant officer" means—

(a) an officer of Revenue and Customs,

(b) a constable,

(c) an SFO officer, or

(d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State under section 453.

(10) For the purposes of this section a listed asset is a seizable listed asset if—

(a) all or part of it is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the value of the asset, or the part of it that falls within paragraph (a), is not less than the minimum value.

(11) Where a power conferred by this section is being exercised in respect of more than one seizable listed asset, this section is to apply as if the value of each asset or (as the case may be) part of an asset was equal to the aggregate value of all of those assets or parts.

303D Searches: supplemental provision

(1) The powers conferred by section 303C—

(a) are exercisable only so far as reasonably required for the purpose of finding a listed asset;

(b) include the power to carry out (or arrange for the carrying out of) tests on anything found during the course of the search for the purpose of establishing whether it is a listed asset;

(c) are exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979);

(d) are exercisable by an SFO officer or an accredited financial investigator only in relation to the following—

(i) premises in England, Wales or Northern Ireland (in the case of section 303C(1));

(ii) vehicles and suspects in England, Wales or Northern Ireland (in the case of section 303C(5) and (8)(a));

(iii) suspects in England, Wales or Northern Ireland (in the case of section 303C(6) and (8)(b)).

(2) Section 303C does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979).

303E Prior approval

(1) The powers conferred by section 303C may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

Status: *Point in time view as at 16/04/2018.*
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(2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.

(3) A judicial officer means—
- (a) in relation to England and Wales and Northern Ireland, a justice of the peace;
- (b) in relation to Scotland, the sheriff.

(4) A senior officer means—
- (a) in relation to the exercise of a power by an officer of Revenue and Customs, such an officer of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer;
- (b) in relation to the exercise of a power by a constable, a senior police officer;
- (c) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office;
- (d) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose;
- (e) in relation to the exercise of a power by an accredited financial investigator who is—
  - (i) a member of the civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011,
  - (ii) a member of staff of the City of London police force, or
  - (iii) a member of staff of the Police Service of Northern Ireland,

  a senior police officer;
- (f) in relation to the exercise of a power by an accredited financial investigator who does not fall within any of the preceding paragraphs, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under section 453.

(5) A senior police officer means a police officer of at least the rank of inspector.

(6) If the powers are exercised without the approval of a judicial officer in a case where—
- (a) no property is seized by virtue of section 303J, or
- (b) any property so seized is not detained for more than 48 hours (calculated in accordance with section 303K(5)),

the relevant officer who exercised the power must give a written report to the appointed person.

(7) But the duty in subsection (6) does not apply if, during the course of exercising the powers conferred by section 303C, the relevant officer seizes cash by virtue of section 294 and the cash so seized is detained for more than 48 hours (calculated in accordance with section 295(1B)).

(8) A report under subsection (6) must give particulars of the circumstances which led the relevant officer to believe that—
- (a) the powers were exercisable, and
- (b) it was not practicable to obtain the approval of a judicial officer.

(9) In this section and section 303F, the appointed person means—

(a) in relation to England and Wales, a person appointed by the Secretary of State;
(b) in relation to Scotland, a person appointed by the Scottish Ministers;
(c) in relation to Northern Ireland, a person appointed by the Department of Justice.

(10) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of the person's appointment, including any remuneration or expenses to be paid to the person, are to be determined by the person making the appointment.

303F Report on exercise of powers

(1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.

(2) "Financial year" means—
(a) the period beginning with the day on which section 15 of the Criminal Finances Act 2017 (which inserted this section) came into force and ending with the next 31 March (which is the first financial year), and
(b) each subsequent period of 12 months beginning with 1 April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by section 303C are being exercised in cases where the relevant officer who exercised them is required to give a report under section 303E(6).

(4) In the report, the appointed person may make any recommendations he or she considers appropriate.

(5) The appointed person must send a copy of the report to whichever of the Secretary of State, the Scottish Administration or the Department of Justice appointed the person.

(6) The Secretary of State must lay a copy of any report the Secretary of State receives under this section before Parliament and arrange for it to be published.

(7) The Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament and arrange for it to be published.

(8) The Department of Justice must lay a copy of any report it receives under this section before the Northern Ireland Assembly and arrange for it to be published.

(9) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (8) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.

303G Code of practice: Secretary of State

(1) The Secretary of State must make a code of practice in connection with the exercise by officers of Revenue and Customs, SFO officers and (in relation to England and Wales) constables and accredited financial investigators of the powers conferred by section 303C.

(2) Where the Secretary of State proposes to issue a code of practice, the Secretary of State must—
(a) publish a draft,

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(b) consider any representations made about the draft by the Scottish Ministers, the Department of Justice or any other person, and

(c) if the Secretary of State thinks it appropriate, modify the draft in the light of any such representations.

(3) The Secretary of State must also consult the Attorney General about the draft in its application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office.

(4) The Secretary of State must lay a draft of the code before Parliament.

(5) When the Secretary of State has laid a draft of the code before Parliament, the Secretary of State may bring it into operation by regulations.

(6) The Secretary of State may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (5) apply to such a revised code as they apply to the original code.

(7) A failure by an officer of Revenue and Customs, an SFO officer, a constable or an accredited financial investigator to comply with a provision of the code does not of itself make him or her liable to criminal or civil proceedings.

(8) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

303H Code of practice: Scotland

(1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by section 303C.

(2) Where the Scottish Ministers propose to issue a code of practice, they must—

(a) publish a draft,

(b) consider any representations made about the draft, and

(c) if they think it appropriate, modify the draft in the light of any such representations.

(3) The Scottish Ministers must lay a draft of the code before the Scottish Parliament.

(4) When the Scottish Ministers have laid a draft of the code before the Scottish Parliament, they may bring it into operation by order.

(5) The Scottish Ministers may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by a constable to comply with a provision of the code does not of itself make the constable liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

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Changes to legislation: *Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

303I Code of practice: Northern Ireland

(1) The Department of Justice must make a code of practice in connection with the exercise by constables and accredited financial investigators, in relation to Northern Ireland, of the powers conferred by section 303C.

(2) Where the Department of Justice proposes to issue a code of practice, it must—
- (a) publish a draft,
- (b) consider any representations made about the draft, and
- (c) if the Department of Justice thinks it appropriate, modify the draft in the light of any such representations.

(3) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.

(4) When the Department of Justice has laid a draft of the code before the Northern Ireland Assembly, the Department of Justice may bring it into operation by order.

(5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsections (3) and (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

(6) The Department of Justice may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (5) apply to such a revised code as they apply to the original code.

(7) A failure by a constable or accredited financial investigator to comply with a provision of the code does not of itself make him or her liable to criminal or civil proceedings.

(8) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Seizure and detention

303J Seizure of listed assets

(1) A relevant officer may seize any item of property if the relevant officer has reasonable grounds for suspecting that—
- (a) it is a listed asset,
- (b) it is recoverable property or intended by any person for use in unlawful conduct, and
- (c) the value of it is not less than the minimum value.

(2) A relevant officer may also seize any item of property if—
- (a) the relevant officer has reasonable grounds for suspecting the item to be a listed asset,
- (b) the relevant officer has reasonable grounds for suspecting that part of the item is recoverable property or intended by any person for use in unlawful conduct,
- (c) the relevant officer has reasonable grounds for suspecting that the value of the part to which the suspicion relates is not less than the minimum value, and
- (d) it is not reasonably practicable to seize only that part.

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(3) Where the powers conferred by this section are being exercised by a relevant officer in respect of more than one item of property, this section is to apply as if the value of each item was equal to the aggregate value of all of those items.

(4) The references in subsection (3) to the value of an item are to be read as including references to the value of part of an item where the power conferred by subsection (2) is being exercised (whether alone or in conjunction with the power conferred by subsection (1)).

(5) This section does not authorise the seizure by an SFO officer or an accredited financial investigator of an item of property found in Scotland.

303K Initial detention of seized property

(1) Property seized under section 303J may be detained for an initial period of 6 hours.

(2) Property seized under section 303J may be detained beyond the initial period of 6 hours only if its continued detention is authorised by a senior officer.

(3) If the continued detention of property seized under section 303J is authorised under subsection (2), the property may be detained for a further period of 42 hours.

(4) Subsections (1) to (3) authorise the detention of property only for so long as a relevant officer continues to have reasonable grounds for suspicion in relation to that property as described in section 303J(1) or (2) (as the case may be).

(5) In calculating a period of hours for the purposes of this section, no account shall be taken of—
   (a) any Saturday or Sunday,
   (b) Christmas Day,
   (c) Good Friday,
   (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the property is seized, or
   (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the property is seized.

(6) "Senior officer" has the same meaning in this section as it has in section 303E.

303L Further detention of seized property

(1) The period for which property seized under section 303J, or any part of that property, may be detained may be extended by an order made—
   (a) in England and Wales or Northern Ireland, by a magistrates' court;
   (b) in Scotland, by the sheriff.

(2) An order under subsection (1) may not authorise the detention of any property—
   (a) beyond the end of the period of 6 months beginning with the date of the order, and
   (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (1) extending a particular period of detention.

(4) An application for an order under subsection (1) may be made—
- (a) in relation to England and Wales and Northern Ireland, by a person specified in subsection (5);
- (b) in relation to Scotland, by the Scottish Ministers in connection with their functions under section 303O or by a procurator fiscal.

(5) The persons referred to in subsection (4)(a) are—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
- (b) a constable,
- (c) an SFO officer, or
- (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State under section 453.

(6) The court, sheriff or justice may make the order if satisfied, in relation to the item of property to be further detained, that—
- (a) it is a listed asset,
- (b) the value of it is not less than the minimum value, and
- (c) condition 1 or condition 2 is met.

(7) Subsection (6)(b) does not apply where the application is for a second or subsequent order under this section.

(8) Condition 1 is that there are reasonable grounds for suspecting that the property is recoverable property and that either—
- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the property is connected, or
- (b) proceedings against any person for an offence with which the property is connected have been started and have not been concluded.

(9) Condition 2 is that there are reasonable grounds for suspecting that the property is intended to be used in unlawful conduct and that either—
- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the property is connected, or
- (b) proceedings against any person for an offence with which the property is connected have been started and have not been concluded.

(10) Where an application for an order under subsection (1) relates to an item of property seized under section 303J(2), the court, sheriff or justice may make the order if satisfied that—
- (a) the item of property is a listed asset,
- (b) condition 1 or 2 is met in respect of part of the item,
- (c) the value of that part is not less than the minimum value, and
- (d) it is not reasonably practicable to detain only that part.

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(11) Subsection (10)(c) does not apply where the application is for a second or subsequent order under this section.

(12) Where an application for an order under subsection (1) is made in respect of two or more items of property that were seized at the same time and by the same person, this section is to apply as if the value of each item was equal to the aggregate value of all of those items.

(13) The references in subsection (12) to the value of an item are to be read as including references to the value of part of an item where subsection (10) applies in relation to one or more of the items in respect of which the application under subsection (1) is made.

(14) An order under subsection (1) must provide for notice to be given to persons affected by it.

303M Testing and safekeeping of property seized under section 303J

(1) A relevant officer may carry out (or arrange for the carrying out of) tests on any item of property seized under section 303J for the purpose of establishing whether it is a listed asset.

(2) A relevant officer must arrange for any item of property seized under section 303J to be safely stored throughout the period during which it is detained under this Chapter.

303N Release of detained property

(1) This section applies while any property is detained under section 303K or 303L.

(2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the property if the following condition is met.

(3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the property was seized, that the conditions in section 303K or 303L (as the case may be) for the detention of the property are no longer met in relation to the property to be released.

(4) A relevant officer or (in Scotland) a procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order property is being detained, release the whole or any part of it if satisfied that the detention of the property to be released is no longer justified.

Forfeiture

303O Forfeiture

(1) While property is detained under this Chapter, an application for the forfeiture of the whole or any part of it may be made—
  (a) to a magistrates' court by a person specified in subsection (2);
  (b) to the sheriff by the Scottish Ministers.

(2) The persons referred to in subsection (1)(a) are—
  (a) the Commissioners for Her Majesty's Revenue and Customs,

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(b) a constable,

(c) an SFO officer, or

(d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State under section 453.

(3) The court or sheriff may order the forfeiture of the property or any part of it if satisfied that—

(a) the property is a listed asset, and

(b) what is to be forfeited is recoverable property or intended by any person for use in unlawful conduct.

(4) An order under subsection (3) made by a magistrates' court may provide for payment under section 303U of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Chapter.

(5) A sum in respect of a relevant item of expenditure is not payable under section 303U in pursuance of provision under subsection (4) unless—

(a) the person who applied for the order under subsection (3) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(6) For the purposes of subsection (5)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B would apply if the order under subsection (3) had instead been a recovery order;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations;

(c) if the person who applied for the order under subsection (3) was a constable, an SFO officer or an accredited financial investigator, that person may not agree to the payment of a sum unless the person is a senior officer or is authorised to do so by a senior officer.

(7) "Senior officer" has the same meaning in subsection (6)(c) as it has in section 303E.

(8) Subsection (3) ceases to apply on the transfer of an application made under this section in accordance with section 303R(1)(a) or (b).

(9) Where an application for the forfeiture of any property is made under this section, the property is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

(10) Where the property to which the application relates is being detained under this Chapter as part of an item of property, having been seized under section 303J(2), subsection (9) is to be read as if it required the continued detention of the whole of the item of property.

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303P Associated and joint property

(1) Sections 303Q and 303R apply if—

(a) an application is made under section 303O in respect of property detained under this Chapter,

(b) the court or sheriff is satisfied that the property is a listed asset,

(c) the court or sheriff is satisfied that all or part of the property is recoverable property or intended by any person for use in unlawful conduct, and

(d) there exists property that is associated with the property in relation to which the court or sheriff is satisfied as mentioned in paragraph (c).

(2) Sections 303Q and 303R also apply in England and Wales and Northern Ireland if—

(a) an application is made under section 303O in respect of property detained under this Chapter,

(b) the court is satisfied that the property is a listed asset,

(c) the court is satisfied that all or part of the property is recoverable property, and

(d) the property in relation to which the court is satisfied as mentioned in paragraph (c) belongs to joint tenants and one of the tenants is an excepted joint owner.

(3) In this section and sections 303Q and 303R "associated property" means property of any of the following descriptions that is not itself the forfeitable property—

(a) any interest in the forfeitable property;

(b) any other interest in the property in which the forfeitable property subsists;

(c) if the forfeitable property is a tenancy in common, the tenancy of the other tenant;

(d) if (in Scotland) the forfeitable property is owned in common, the interest of the other owner;

(e) if the forfeitable property is part of a larger property, but not a separate part, the remainder of that property.

References to property being associated with forfeitable property are to be read accordingly.

(4) In this section and sections 303Q and 303R the "forfeitable property" means the property in relation to which the court or sheriff is satisfied as mentioned in subsection (1)(c) or (2)(c) (as the case may be).

303Q Agreements about associated and joint property

(1) Where—

(a) this section applies, and

(b) the person who applied for the order under section 303O (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other hand) agree,

the magistrates' court or sheriff may, instead of making an order under section 303O(3), make an order requiring the person who holds the associated property or who is the excepted joint owner to make a payment to a person identified in the order.

(2) The amount of the payment is (subject to subsection (3)) to be the amount which the persons referred to in subsection (1)(b) agree represents—

(a) in a case where this section applies by virtue of section 303P(1), the value of the forfeitable property;

(b) in a case where this section applies by virtue of section 303P(2), the value of the forfeitable property less the value of the excepted joint owner's share.

(3) The amount of the payment may be reduced if the person who applied for the order under section 303O agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 303J and its subsequent detention.

(4) The reduction that is permissible by virtue of subsection (3) is such amount as the parties to the agreement agree is reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) An order under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(6) An order under subsection (1) made by a magistrates' court may provide for payment under subsection (12) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Chapter.

(7) A sum in respect of a relevant item of expenditure is not payable under subsection (12) in pursuance of provision under subsection (6) unless—

(a) the person who applied for the order under section 303O agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(8) For the purposes of subsection (7)—

(a) a "relevant item of expenditure" is an item of expenditure to which regulations under section 286B would apply if the order under subsection (1) had instead been a recovery order;

(b) an amount is "allowed" in respect of a relevant item of expenditure if it would have been allowed by those regulations.

(9) For the purposes of section 308(2), on the making of an order under subsection (1), the forfeitable property is to be treated as if it had been forfeited.

(10) If there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the person who applied for the order under section 303O.

(11) If the person who applied for the order under section 303O was a constable, an SFO officer or an accredited financial investigator, that person may enter into an agreement for the purposes of any provision of this section only if the person is a senior officer or is authorised to do so by a senior officer.

"Senior officer" has the same meaning in this subsection as it has in section 303E.

(12) An amount received under an order under subsection (1) must be applied as follows—

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(a) first, it must be applied in making any payment of legal expenses which, after giving effect to subsection (7), are payable under this subsection in pursuance of provision under subsection (6);

(b) second, it must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the forfeitable property and any associated property whilst detained under this Part;

(c) third, it must be paid—

(i) if the order was made by a magistrates' court, into the Consolidated Fund;

(ii) if the order was made by the sheriff, into the Scottish Consolidated Fund.

303R Associated and joint property: default of agreement

(1) Where this section applies and there is no agreement under section 303Q, the magistrates' court or sheriff—

(a) must transfer the application made under section 303O to the relevant court if satisfied that the value of the forfeitable property and any associated property is £10,000 or more;

(b) may transfer the application made under section 303O to the relevant court if satisfied that the value of the forfeitable property and any associated property is less than £10,000.

(2) The "relevant court" is—

(a) the High Court, where the application under section 303O was made to a magistrates' court;

(b) the Court of Session, where the application under section 303O was made to the sheriff.

(3) Where (under subsection (1)(a) or (b)) an application made under section 303O is transferred to the relevant court, the relevant court may order the forfeiture of the property to which the application relates, or any part of that property, if satisfied that—

(a) the property is a listed asset, and

(b) what is to be forfeited is recoverable property or intended by any person for use in unlawful conduct.

(4) An order under subsection (3) made by the High Court may include provision of the type that may be included in an order under section 303O(3) made by a magistrates' court by virtue of section 303O(4).

(5) If provision is included in an order of the High Court by virtue of subsection (4) of this section, section 303O(5) and (6) apply with the necessary modifications.

(6) The relevant court may, as well as making an order under subsection (3), make an order—

(a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or

(b) providing for the excepted joint owner's interest to be severed.

(7) Where (under subsection (1)(b)) the magistrates' court or sheriff decides not to transfer an application made under section 303O to the relevant court, the magistrates' court or sheriff may, as well as making an order under section 303O(3), make an order—

(a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or

(b) providing for the excepted joint owner's interest to be severed.

(8) An order under subsection (6) or (7) may be made only if the relevant court, the magistrates' court or the sheriff (as the case may be) thinks it just and equitable to do so.

(9) An order under subsection (6) or (7) must provide for the payment of an amount to the person who holds the associated property or who is an excepted joint owner.

(10) In making an order under subsection (6) or (7), and including provision in it by virtue of subsection (9), the relevant court, the magistrates' court or the sheriff (as the case may be) must have regard to—

(a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or (as the case may) of that person's share (including any value that cannot be assessed in terms of money), and

(b) the interest of the person who applied for the order under section 303O in realising the value of the forfeitable property.

(11) If the relevant court, the magistrates' court or the sheriff (as the case may be) is satisfied that—

(a) the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 303J and its subsequent detention, and

(b) the circumstances are exceptional,

an order under subsection (6) or (7) may require the payment of compensation to that person.

(12) The amount of compensation to be paid by virtue of subsection (11) is the amount the relevant court, the magistrates' court or the sheriff (as the case may be) thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(13) Compensation to be paid by virtue of subsection (11) is to be paid in the same way that compensation is to be paid under section 303W.

303S Sections 303O to 303R: appeals

(1) Any party to proceedings for an order for the forfeiture of property under section 303O may appeal against—

(a) the making of an order under section 303O;

(b) the making of an order under section 303R(7);

(c) a decision not to make an order under section 303O unless the reason that no order was made is that an order was instead made under section 303Q;

(d) a decision not to make an order under section 303R(7).

Paragraphs (c) and (d) do not apply if the application for the order under section 303O was transferred in accordance with section 303R(1)(a) or (b).

(2) Where an order under section 303Q is made by a magistrates' court, any party to the proceedings for the order (including any party to the proceedings under section 303O that preceded the making of the order) may appeal against a decision to include, or not to include, provision in the order under subsection (6) of section 303Q.

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(3) An appeal under this section lies—
- (a) in relation to England and Wales, to the Crown Court;
- (b) in relation to Scotland, to the Sheriff Appeal Court;
- (c) in relation to Northern Ireland, to a county court.

(4) An appeal under this section must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(5) The court hearing the appeal may make any order it thinks appropriate.

(6) If the court upholds an appeal against an order forfeiting property, it may order the release of the whole or any part of the property.

303T Realisation of forfeited property

(1) If property is forfeited under section 303O or 303R, a relevant officer must realise the property or make arrangements for its realisation.

(2) But the property is not to be realised—
- (a) before the end of the period within which an appeal may be made (whether under section 303S or otherwise), or
- (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(3) The realisation of property under subsection (1) must be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

303U Proceeds of realisation

(1) The proceeds of property realised under section 303T must be applied as follows—
- (a) first, they must be applied in making any payment required to be made by virtue of section 303R(9);
- (b) second, they must be applied in making any payment of legal expenses which, after giving effect to section 303O(5) (including as applied by section 303R(5)), are payable under this subsection in pursuance of provision under section 303O(4) or, as the case may be, 303R(4);
- (c) third, they must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the property whilst detained under this Part and in realising the property;
- (d) fourth, they must be paid—
  - (i) if the property was forfeited by a magistrates' court or the High Court, into the Consolidated Fund;
  - (ii) if the property was forfeited by the sheriff or the Court of Session, into the Scottish Consolidated Fund.

(2) If what is realised under section 303T represents part only of an item of property seized under section 303J and detained under this Chapter, the reference in subsection (1)(c) to costs incurred in storing or insuring the property is to be read as a reference to costs incurred in storing or insuring the whole of the item of property.

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Supplementary

303V Victims and other owners

(1) A person who claims that any property detained under this Chapter, or any part of it, belongs to him or her may apply for the property or part to be released.

(2) An application under subsection (1) is to be made—
- (a) in England and Wales or Northern Ireland, to a magistrates' court;
- (b) in Scotland, to the sheriff.

(3) The application may be made in the course of proceedings under section 303L or 303O or at any other time.

(4) The court or sheriff may order the property to which the application relates to be released to the applicant if it appears to the court or sheriff that—
- (a) the applicant was deprived of the property to which the application relates, or of property which it represents, by unlawful conduct,
- (b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
- (c) the property belongs to the applicant.

(5) If subsection (6) applies, the court or sheriff may order the property to which the application relates to be released to the applicant or to the person from whom it was seized.

(6) This subsection applies where—
- (a) the applicant is not the person from whom the property to which the application relates was seized,
- (b) it appears to the court or sheriff that that property belongs to the applicant,
- (c) the court or sheriff is satisfied that the release condition is met in relation to that property, and
- (d) no objection to the making of an order under subsection (5) has been made by the person from whom that property was seized.

(7) The release condition is met—
- (a) in relation to property detained under section 303K or 303L, if the conditions in section 303K or (as the case may be) 303L for the detention of the property are no longer met, and
- (b) in relation to property detained under section 303O, if the court or sheriff decides not to make an order under that section in relation to the property.

303W Compensation

(1) If no order under section 303O, 303Q or 303R is made in respect of any property detained under this Chapter, the person to whom the property belongs or from whom it was seized may make an application for compensation.

(2) An application under subsection (1) is to be made—
- (a) in England and Wales or Northern Ireland, to a magistrates' court;
- (b) in Scotland, to the sheriff.

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(3) If the court or sheriff is satisfied that the applicant has suffered loss as a result of the detention of the property and that the circumstances are exceptional, the court or sheriff may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) If the property was seized by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.

(6) If the property was seized by a constable, the compensation is to be paid as follows—
- (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;
- (b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority;
- (c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.

(7) If the property was seized by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.

(8) If the property was seized by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.

(9) If the property was seized by an accredited financial investigator who was not an officer of Revenue and Customs, a constable, an SFO officer or a National Crime Agency officer, the compensation is to be paid as follows—
- (a) in the case of an investigator who was—
  - (i) a member of the civilian staff of a police force (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or
  - (ii) a member of staff of the City of London police force,

  it is to be paid out of the police fund from which the expenses of the police force are met,
- (b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland,
- (c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department,
- (d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,
- (e) in the case of an investigator who was exercising a function of the Welsh Revenue Authority, it is to be paid by the Welsh Revenue Authority, and
- (f) in any other case, it is to be paid by the employer of the investigator.

(10) The Secretary of State may by regulations amend subsection (9).

(11) The power in subsection (10) is exercisable by the Department of Justice (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998.)

(12) If an order under section 303O, 303Q or 303R is made in respect only of a part of any property detained under this Chapter, this section has effect in relation to the other part.

303X Powers for prosecutors to appear in proceedings

(1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable or an accredited financial investigator in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, a constable or (as the case may be) an accredited financial investigator to do so, and

(b) considers it appropriate to do so.

(2) The Director of Public Prosecutions may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this section.

(4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.

303Y "The minimum value"

(1) For the purposes of this Chapter, "the minimum value" is £1,000.

(2) The Secretary of State may by regulations amend the amount for the time being specified in subsection (1).

(3) The Secretary of State must consult the Scottish Ministers and the Department of Justice before making regulations under subsection (2).

303Z Financial investigators

Where an accredited financial investigator of a particular description—

(a) applies for an order under section 303L,

(b) applies for forfeiture under section 303O, or

(c) brings an appeal under, or relating to, this Chapter,

any subsequent step in the application or appeal, or any further application or appeal relating to the same matter, may be taken, made or brought by a different accredited financial investigator of the same description.**]**

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[F219 CHAPTER 3B

FORFEITURE OF MONEY HELD IN BANK AND BUILDING SOCIETY ACCOUNTS

Textual Amendments

F219 Pt. 5 Ch. 3B inserted (27.4.2017 for specified purposes, 30.1.2018 for the insertion of ss. 303Z2(4), 303Z10 for E.W.S. so far as not already in force, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 16**, 58(1)(6); S.I. 2018/78, regs. 2(b), 3(d)

Modifications etc. (not altering text)

C11 Pt. 5 Ch. 3B applied by 2007 c. 30, s. 24(1) (as substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 21(3)**, 58(1)(6); S.I. 2018/78, reg. 3(f))

Freezing of bank and building society accounts

303Z1 Application for account freezing order

(1) This section applies if an enforcement officer has reasonable grounds for suspecting that money held in an account maintained with a bank or building society—
  (a) is recoverable property, or
  (b) is intended by any person for use in unlawful conduct.

(2) Where this section applies (but subject to section 303Z2) the enforcement officer may apply to the relevant court for an account freezing order in relation to the account in which the money is held.

(3) For the purposes of this Chapter—
  (a) an account freezing order is an order that, subject to any exclusions (see section 303Z5), prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account;
  (b) an account is operated by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.

(4) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct.

(5) The money referred to in subsection (1) may be all or part of the credit balance of the account.

(6) In this Chapter—

"bank" has the meaning given by section 303Z7;

"building society" has the same meaning as in the Building Societies Act 1986;

"enforcement officer" means—
  (a) an officer of Revenue and Customs,
  (b) a constable,

(c) an SFO officer, or

(d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State under section 453;

"the minimum amount" has the meaning given by section 303Z8;

"relevant court"—

(a) in England and Wales and Northern Ireland, means a magistrates' court, and

(b) in Scotland, means the sheriff.

303Z2 Restrictions on making of application under section 303Z1

(1) The power to apply for an account freezing order is not exercisable if the money in relation to which the enforcement officer's suspicion exists is less in amount than the minimum amount.

(2) An enforcement officer may not apply for an account freezing order unless the officer is a senior officer or is authorised to do so by a senior officer.

(3) The power to apply for an account freezing order is not exercisable by an SFO officer, or by an accredited financial investigator, in relation to an account maintained with a branch of a bank or building society that is in Scotland.

(4) For the purposes of this Chapter, a "senior officer" is —

(a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,

(b) a senior police officer,

(c) the Director of the Serious Fraud Office,

(d) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose, or

(e) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State under section 453.

(5) In subsection (4), a "senior police officer" means a police officer of at least the rank of inspector.

303Z3 Making of account freezing order

(1) This section applies where an application for an account freezing order is made under section 303Z1 in relation to an account.

(2) The relevant court may make the order if satisfied that there are reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account)—

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) An account freezing order ceases to have effect at the end of the period specified in the order (which may be varied under section 303Z4) unless it ceases to have effect

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at an earlier or later time in accordance with the provision made by sections 303Z9(6)(c), 303Z11(2) to (7), 303Z14(6) to (8) and 303Z15.

(4) The period specified by the relevant court for the purposes of subsection (3) (whether when the order is first made or on a variation under section 303Z4) may not exceed the period of 2 years, starting with the day on which the account freezing order is (or was) made.

(5) An account freezing order must provide for notice to be given to persons affected by the order.

303Z4 Variation and setting aside of account freezing order

(1) The relevant court may at any time vary or set aside an account freezing order on an application made by—
  (a) an enforcement officer, or
  (b) any person affected by the order.

(2) But an enforcement officer may not make an application under subsection (1) unless the officer is a senior officer or is authorised to do so by a senior officer.

(3) Before varying or setting aside an account freezing order the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(4) In relation to Scotland, the references in this section to setting aside an order are to be read as references to recalling it.

303Z5 Exclusions

(1) The power to vary an account freezing order includes (amongst other things) power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.

(2) Exclusions from the prohibition may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated—
  (a) to meet the person's reasonable living expenses, or
  (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where a magistrates' court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
  (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,
  (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  (c) is made subject to the same conditions as would be the required conditions (see section 286A) if the order had been made under section 245A (in addition to any conditions imposed under subsection (4)).

(6) A magistrates' court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Part—
  (a) must have regard to the desirability of the person being represented in any proceedings under this Part in which the person is a participant, and
  (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made—
    (i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
    (ii) be funded by the Northern Ireland Legal Services Commission.

(7) The sheriff's power to make exclusions may not be exercised for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that there is not undue prejudice to the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct.

303Z6 Restriction on proceedings and remedies

(1) If a court in which proceedings are pending in respect of an account maintained with a bank or building society is satisfied that an account freezing order has been applied for or made in respect of the account, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(2) Before exercising the power conferred by subsection (1), the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

(3) In relation to Scotland, the reference in subsection (1) to staying the proceedings is to be read as a reference to sisting the proceedings.

303Z7 "Bank"

(1) "Bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom.

(2) In subsection (1), "authorised deposit-taker" means—
  (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;
  (b) a person who—
    (i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and
    (ii) accepts deposits;
  (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

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(3) A reference in subsection (2) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.

303Z8 "The minimum amount"

(1) "The minimum amount" is £1,000.

(2) The Secretary of State may by regulations amend the amount for the time being specified in subsection (1).

(3) The Secretary of State must consult the Scottish Ministers and the Department of Justice before making regulations under subsection (2).

(4) For the purposes of this Chapter the amount of any money held in an account maintained with a bank or building society in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

Account forfeiture notices (England and Wales and Northern Ireland)

303Z9 Account forfeiture notice

(1) This section applies while an account freezing order made by a magistrates' court has effect.

In this section the account to which the order applies is "the frozen account".

(2) A senior officer may give a notice for the purpose of forfeiting money held in the frozen account (whether all or part of the credit balance of the account) if satisfied that the money—
  (a) is recoverable property, or
  (b) is intended by any person for use in unlawful conduct.

(3) A notice given under subsection (2) is referred to in this Chapter as an account forfeiture notice.

(4) An account forfeiture notice must—
  (a) state the amount of money held in the frozen account which it is proposed be forfeited,
  (b) confirm that the senior officer is satisfied as mentioned in subsection (2),
  (c) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and
  (d) explain that the money will be forfeited unless an objection is received at that address within the period for objecting.

(5) The period for objecting must be at least 30 days starting with the day after the notice is given.

(6) If no objection is made within the period for objecting, and the notice has not lapsed under section 303Z11—
  (a) the amount of money stated in the notice is forfeited (subject to section 303Z12),

(b) the bank or building society with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and

(c) immediately after the transfer has been made, the account freezing order made in relation to the frozen account ceases to have effect.

(7) An objection may be made by anyone (whether a recipient of the notice or not).

(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the money held in the frozen account under section 303Z14.

303Z10 Giving of account forfeiture notice

(1) The Secretary of State must make regulations about how an account forfeiture notice is to be given.

(2) The regulations may (amongst other things) provide—

(a) for an account forfeiture notice to be given to such person or persons, and in such manner, as may be prescribed;

(b) for circumstances in which, and the time at which, an account forfeiture notice is to be treated as having been given.

(3) The regulations must ensure that where an account forfeiture notice is given it is, if possible, given to every person to whom notice of the account freezing order was given.

303Z11 Lapse of account forfeiture notice

(1) An account forfeiture notice lapses if—

(a) an objection is made within the period for objecting specified in the notice under section 303Z9(4)(c),

(b) an application is made under section 303Z14 for the forfeiture of money held in the frozen account, or

(c) an order is made under section 303Z4 setting aside the relevant account freezing order.

(2) If an account forfeiture notice lapses under subsection (1)(a), the relevant account freezing order ceases to have effect at the end of the period of 48 hours starting with the making of the objection ("the 48-hour period").

This is subject to subsections (3) and (7).

(3) If within the 48-hour period an application is made—

(a) for a variation of the relevant account freezing order under section 303Z4 so as to extend the period specified in the order, or

(b) for forfeiture of money held in the frozen account under section 303Z14,

the order continues to have effect until the relevant time (and then ceases to have effect).

(4) In the case of an application of the kind mentioned in subsection (3)(a), the relevant time means—

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(a) if an extension is granted, the time determined in accordance with section 303Z3(3), or
(b) if an extension is not granted, the time when the application is determined or otherwise disposed of.

(5) In the case of an application of the kind mentioned in subsection (3)(b), the relevant time is the time determined in accordance with section 303Z14(6).

(6) If within the 48-hour period it is decided that no application of the kind mentioned in subsection (3)(a) or (b) is to be made, an enforcement officer must, as soon as possible, notify the bank or building society with which the frozen account is maintained of that decision.

(7) If the bank or building society is notified in accordance with subsection (6) before the expiry of the 48-hour period, the relevant account freezing order ceases to have effect on the bank or building society being so notified.

(8) In relation to an account forfeiture notice—
(a) "the frozen account" is the account in which the money to which the account forfeiture notice relates is held;
(b) "the relevant account freezing order" is the account freezing order made in relation to the frozen account.

(9) In calculating a period of 48 hours for the purposes of this section no account is to be taken of—
(a) any Saturday or Sunday,
(b) Christmas Day,
(c) Good Friday, or
(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the account freezing order was made.

303Z12 Application to set aside forfeiture

(1) A person aggrieved by the forfeiture of money in pursuance of section 303Z9(6)(a) may apply to a magistrates' court for an order setting aside the forfeiture of the money or any part of it.

(2) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended ("the 30-day period").

(3) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—
(a) failed to object to the forfeiture within the period for objecting, and
(b) failed to make an application within the 30-day period.

(4) On an application under this section the court must consider whether the money to which the application relates could be forfeited under section 303Z14 (ignoring the forfeiture mentioned in subsection (1)).

(5) If the court is satisfied that the money to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that money or part.

(6) Where the court sets aside the forfeiture of any money—
  (a) it must order the release of that money, and
  (b) the money is to be treated as never having been forfeited.

(7) Where money is released by virtue of subsection (6)(a), there must be added to the money on its release any interest accrued on it whilst in the account referred to in section 303Z9(6)(b).

303Z13 Application of money forfeited under account forfeiture notice

(1) Money forfeited in pursuance of section 303Z9(6)(a), and any interest accrued on it whilst in the account referred to in section 303Z9(6)(b), is to be paid into the Consolidated Fund.

(2) But it is not to be paid in—
  (a) before the end of the period within which an application under section 303Z12 may be made (ignoring the possibility of an application by virtue of section 303Z12(3)), or
  (b) if an application is made within that period, before the application is determined or otherwise disposed of.

Forfeiture orders

303Z14 Forfeiture order

(1) This section applies while an account freezing order has effect.

In this section the account to which the account freezing order applies is “the frozen account”.

(2) An application for the forfeiture of money held in the frozen account (whether all or part of the credit balance of the account) may be made—
  (a) to a magistrates' court by a person specified in subsection (3), or
  (b) to the sheriff by the Scottish Ministers.

(3) The persons referred to in subsection (2)(a) are—
  (a) the Commissioners for Her Majesty's Revenue and Customs,
  (b) a constable,
  (c) an SFO officer, or
  (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this Chapter by the Secretary of State under section 453.

(4) The court or sheriff may order the forfeiture of the money or any part of it if satisfied that the money or part—
  (a) is recoverable property, or
  (b) is intended by any person for use in unlawful conduct.

(5) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, an order by a magistrates' court may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

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(6) Where an application is made under subsection (2), the account freezing order is to continue to have effect until the time referred to in subsection (7)(b) or (8).

But subsections (7)(b) and (8) are subject to section 303Z15.

(7) Where money held in a frozen account is ordered to be forfeited under subsection (4)—
- (a) the bank or building society with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and
- (b) immediately after the transfer has been made the account freezing order made in relation to the frozen account ceases to have effect.

(8) Where, other than by the making of an order under subsection (4), an application under subsection (2) is determined or otherwise disposed of, the account freezing order ceases to have effect immediately after that determination or other disposal.

303Z15 Continuation of account freezing order pending appeal

(1) This section applies where, on an application under subsection (2) of section 303Z14 in relation to an account to which an account freezing order applies, the court or sheriff decides—
- (a) to make an order under subsection (4) of that section in relation to part only of the money to which the application related, or
- (b) not to make an order under subsection (4) of that section.

(2) The person who made the application under section 303Z14(2) may apply without notice to the court or sheriff that made the decision referred to in subsection (1)(a) or (b) for an order that the account freezing order is to continue to have effect.

(3) Where the court or sheriff makes an order under subsection (2) the account freezing order is to continue to have effect until—
- (a) the end of the period of 48 hours starting with the making of the order under subsection (2), or
- (b) if within that period of 48 hours an appeal is brought under section 303Z16 against the decision referred to in subsection (1)(a) or (b), the time when the appeal is determined or otherwise disposed of.

(4) Subsection (9) of section 303Z11 applies for the purposes of subsection (3) as it applies for the purposes of that section.

303Z16 Appeal against decision under section 303Z14

(1) Any party to proceedings for an order for the forfeiture of money under section 303Z14 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—
- (a) from an order or decision of a magistrates' court in England and Wales, to the Crown Court;
- (b) from an order or decision of the sheriff, to the Sheriff Appeal Court;
- (c) from an order or decision of a magistrates' court in Northern Ireland, to a county court.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the money, it may order the release of the whole or any part of the money.

(5) Where money is released by virtue of subsection (4), there must be added to the money on its release any interest accrued on it whilst in the account referred to in section 303Z14(7)(a).

303Z17 Application of money forfeited under account forfeiture order

(1) Money forfeited by an order under section 303Z14, and any interest accrued on it whilst in the account referred to in subsection (7)(a) of that section—
   (a) if forfeited by a magistrates' court, is to be paid into the Consolidated Fund, and
   (b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.

(2) But it is not to be paid in—
   (a) before the end of the period within which an appeal under section 303Z16 may be made, or
   (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Supplementary

303Z18 Compensation

(1) This section applies if—
   (a) an account freezing order is made, and
   (b) none of the money held in the account to which the order applies is forfeited in pursuance of an account forfeiture notice or by an order under section 303Z14.

(2) Where this section applies a person by or for whom the account to which the account freezing order applies is operated may make an application to the relevant court for compensation.

(3) If the relevant court is satisfied that the applicant has suffered loss as a result of the making of the account freezing order and that the circumstances are exceptional, the relevant court may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) If the account freezing order was applied for by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.

(6) If the account freezing order was applied for by a constable, the compensation is to be paid as follows—
   (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;
   (b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority;

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(c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.

(7) If the account freezing order was applied for by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.

(8) If the account freezing order was applied for by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.

(9) If the account freezing order was applied for by an accredited financial investigator who was not an officer of Revenue and Customs, a constable, an SFO officer or a National Crime Agency officer, the compensation is to be paid as follows—

(a) in the case of an investigator who was—

(i) a member of the civilian staff of a police force (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or

(ii) a member of staff of the City of London police force,

it is to be paid out of the police fund from which the expenses of the police force are met,

(b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland,

(c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department,

(d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,

(e) in the case of an investigator who was exercising a function of the Welsh Revenue Authority, it is to be paid by the Welsh Revenue Authority, and

(f) in any other case, it is to be paid by the employer of the investigator.

(10) The Secretary of State may by regulations amend subsection (9).

(11) The power in subsection (10) is exercisable by the Department of Justice (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998.)

303Z19 Powers for prosecutors to appear in proceedings

(1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable or an accredited financial investigator in proceedings under this Chapter if the Director—

(a) is asked by, or on behalf of, a constable or (as the case may be) an accredited financial investigator to do so, and

(b) considers it appropriate to do so.

(2) The Director of Public Prosecutions may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director—

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(a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this section.

(4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.**]**

CHAPTER 4

GENERAL

Modifications etc. (not altering text)

C12 Pt. 5 Ch. 4: power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 7**

Recoverable property

304 Property obtained through unlawful conduct

(1) Property obtained through unlawful conduct is recoverable property.

(2) But if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—

(a) the person who through the conduct obtained the property, or

(b) a person into whose hands it may (by virtue of this subsection) be followed.

305 Tracing property, etc.

(1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.

(2) If a person enters into a transaction by which—

(a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and

(b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

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306 Mixing property

(1) Subsection (2) applies if a person's recoverable property is mixed with other property (whether his property or another's).

(2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(3) Recoverable property is mixed with other property if (for example) it is used—

(a) to increase funds held in a bank account,

(b) in part payment for the acquisition of an asset,

(c) for the restoration or improvement of land,

[[F220](ca) for the discharge (in whole or in part) of a mortgage, charge or other security,**]**

(d) by a person holding a leasehold interest in the property to acquire the freehold.

Textual Amendments

F220 S. 306(3)(ca) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 34(10)**, 58(1)(6); S.I. 2018/78, reg. 3(s)

307 Recoverable property: accruing profits

(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct.

308 General exceptions

(1) If—

(a) a person disposes of recoverable property, and

(b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) If—

(a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,

(b) the claimant's claim is based on the defendant's unlawful conduct, and

(c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

In relation to Scotland, "claimant" and "defendant" are to be read as "pursuer" and "defender".

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(4) If—

(a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)), section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) **[**[F221] or in pursuance of a service compensation order under the Armed Forces Act 2006**]**, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.

[[F222](4A) If—

(a) a payment is made to a person in pursuance of a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.**]**

[[F223](4A) If—

(a) a payment is made to a person in pursuance of a slavery and trafficking reparation order under Schedule 2 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.**]**

(5) If—

(a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and

(b) apart from this subsection, the sum received, or the property obtained, would be recoverable property,

the property ceases to be recoverable.

(6) If—

(a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (c. 8) (restitution orders), an amount is paid to or distributed among any persons in accordance with the court's directions, and

(b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

(7) If—

(a) in pursuance of a requirement of the **[**[F224]Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of**]** section 384(5) of the Financial Services and Markets Act 2000 (power [F225]... to require restitution), an amount is paid to or distributed among any persons, and

(b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

[[F226](7A) If—

(a) a payment is made to a person in pursuance of an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013, and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.**]**

(8) Property is not recoverable while a restraint order applies to it, that is—

(a) an order under section 41, 120 or 190, or

(b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g).

[[F227](8A) Property is not recoverable while it is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P.**]**

(9) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—

(a) an order under section 6, 92 or 156, or

(b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

(10) Where—

(a) a person enters into a transaction to which section 305(2) applies, and

(b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 305(2)) of any property obtained on the transaction in place of the property disposed of.

Textual Amendments

F221 Words in s. 308(4)(a) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 197**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

F222 S. 308(4A) inserted (E.W.) (31.7.2015) by Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 21**; S.I. 2015/1476, reg. 2(j)

F223 S. 308(4A) inserted (N.I.) (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 4 para. 17**

F224 Words in s. 308(7)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F225 Words in s. 308(7)(a) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 94(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F226 S. 308(7A) inserted (15.10.2013 for E., 5.11.2013 for W.) by Prevention of Social Housing Fraud Act 2013 (c. 3), s. 12, **Sch. para. 23**; S.I. 2013/2622, art. 2; S.I. 2013/2861, art. 2

F227 S. 308(8A) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 78**; S.I. 2015/983, arts. 2(2)(e), 3(o); S.I. 2016/147, art. 3(i)

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Modifications etc. (not altering text)

C13 S. 308(4) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 1(3), **Sch. 1 para. 51**

309 Other exemptions

(1) An order may provide that property is not recoverable or (as the case may be) associated property if—

(a) it is prescribed property, or

(b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 278 as if it had been disposed of in pursuance of a recovery order.

(3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(4) In this section, an order means an order made by the Secretary of State after consultation with the Scottish Ministers **[**[F228]and the Department of Justice**]**, and prescribed means prescribed by the order.

Textual Amendments

F228 Words in s. 309(4) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 64** (with arts. 28-31)

310 Granting interests

(1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his granting an interest in the property ("the property in question")—

(a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct,

(b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

Insolvency

311 Insolvency

(1) Proceedings for a recovery order may not be taken or continued in respect of property to which subsection (3) applies unless the appropriate court gives leave and the

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proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

(2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 295 unless the appropriate court gives leave.

[[F229](2A) An application for an order for the further detention of any property to which subsection (3) applies may not be made under section 303L unless the appropriate court gives leave.

(2B) An application for the making of an account freezing order under section 303Z3 in respect of an account in which is held money to which subsection (3) applies, or an application under section 303Z4 for the extension of the period specified in such an order, may not be made unless the appropriate court gives leave.**]**

(3) This subsection applies to recoverable property, or property associated with it, if—

(a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,

(b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act, or Part 2 of the 1989 Order, has effect in relation to the company,

(c) an order under **[**[F230]section 286 of the 1986 Act, Article 259 of the 1989 Order or section 54 of the 2016 Act**]** (appointment of interim trustee or interim receiver) has effect in relation to the property,

(d) it is an asset comprised in the estate of an individual who has been **[**[F231]made**]** bankrupt or, in relation to Scotland, of a person whose estate has been sequestrated,

(e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to him, or

(f) in relation to Scotland, it is property comprised in the estate of a person who has granted a trust deed within the meaning of the **[**[F232]2016**]** Act.

(4) An application under this section, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings for a recovery order **[**[F233], or to apply for an account freezing order under section 303Z3,**]** may be made without notice to any person.

(5) Subsection (4) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

(6) References to the provisions of the 1986 Act in sections 420 and 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include subsections (1) to (3) above.

(7) In this section—

[F234](a) . . . . . .

(b) the 1986 Act means the Insolvency Act 1986 (c. 45),

(c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

[[F235](d) the 2016 Act means the Bankruptcy (Scotland) Act 2016**]**

and in subsection (8) "the applicable enactment" means whichever enactment mentioned in paragraphs **[**[F236](b) to (d)**]** is relevant to the resolution, arrangement, order or trust deed mentioned in subsection (3).

(8) In this section—

(a) an asset means any property within the meaning of the applicable enactment or, where the **[**[F237]2016 Act is the applicable enactment, any property comprised in an estate to which that**]** Act applies,

(b) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in subsection (3), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court,

(c) acting as an insolvency practitioner has the same meaning as in section 433,

(d) other expressions used in this section and in the applicable enactment have the same meaning as in that enactment.

Textual Amendments

F229 S. 311(2A)(2B) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 34(2)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F230 Words in s. 311(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(a)(i)**

F231 Word in s. 311(3)(d) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F232 Word in s. 311(3)(f) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(a)(ii)**

F233 Words in s. 311(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 34(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F234 S. 311(7)(a) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(i)**

F235 S. 311(7)(d) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(ii)**

F236 Words in s. 311(7) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(iii)**

F237 Words in s. 311(8)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(c)**

Delegation of enforcement functions

312 Performance of functions of Scottish Ministers by constables in Scotland

(1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.

(2) The specified functions are the functions conferred on the Scottish Ministers by—

(a) sections 244(1) and (2) and 256(1) and (7) (proceedings in the Court of Session),

(b) section 267(2) (trustee for civil recovery),

(c) sections 271(3) and (4) and 272(5) (agreements about associated and joint property),

(d) section 275(3) (pension schemes),

(e) section 282(1) (exemptions),
(f) section 283(5) and (8) (compensation),
(g) section 287(2) (financial threshold),
(h) section 293(1) (code of practice),
(i) section 298(1) (forfeiture),
(j) section 303(1) (minimum amount).
[F238(k) section 303B(3) (listed asset);
(l) section 303H(1) (code of practice);
(m) section 303O(1)(b) (forfeiture);
(n) section 303Y(3) (minimum value);
(o) section 303Z8(3) (minimum amount);
(p) section 303Z14(2)(b) (forfeiture).]

Textual Amendments

F238 S. 312(2)(k)-(p) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 35**; S.I. 2018/78, reg. 5(3)(b)(i)(ii)

Commencement Information

I47 S. 312 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

F239313 Restriction on performance of Director's functions by police

. . . . . .

Textual Amendments

F239 S. 313 repealed (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 8 para. 90, **Sch. 14**; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

Commencement Information

I48 S. 313 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Interpretation

314 Obtaining and disposing of property

(1) References to a person disposing of his property include a reference—
(a) to his disposing of a part of it, or
(b) to his granting an interest in it,
(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

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(3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

315 Northern Ireland courts

In relation to the practice and procedure of courts in Northern Ireland, expressions used in this Part are to be read in accordance with rules of court.

316 General interpretation

(1) In this Part—

[F240"account forfeiture notice" (in Chapter 3B) has the meaning given by section 303Z9(3),]

[F240"account freezing order" (in Chapter 3B) account forfeiture notice " (in Chapter 3B) has the meaning given by section 303Z1(3)(a),]

"associated property" [F241(in Chapter 2)] has the meaning given by section 245,

[F240"bank" (in Chapter 3B) has the meaning given by section 303Z7,]

[F240"building society" (in Chapter 3B) has the meaning given by section 303Z1(6),]

"cash" has the meaning given by section 289(6) or (7),

"constable", in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32),

"country" includes territory,

"the court" (except in sections 253(2) and (3) and 262(2) and (3) and [F242Chapter 3][F242Chapters 3, 3A and 3B]) means the High Court or (in relation to proceedings in Scotland) the Court of Session,

"dealing" with property includes disposing of it, taking possession of it or removing it from the United Kingdom,

[F243"the Department of Justice" means the Department of Justice in Northern Ireland;]

[F244"electronic money institution" (in Chapter 3B) has the meaning given by section 303Z1(6),]

"enforcement authority"—

(a) [F245in relation to England and Wales, means [F246the Financial Conduct Authority,][F247Her Majesty's Revenue and Customs,][F248the National Crime Agency], the Director of Public Prosecutions F249... or the Director of the Serious Fraud Office,]

(b) in relation to Scotland, means the Scottish Ministers,

(c) [F250in relation to Northern Ireland, means [F251the Financial Conduct Authority,][F252Her Majesty's Revenue and Customs,][F248the National Crime Agency], the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland,]

[F240"enforcement officer" (in Chapter 3B) has the meaning given by section 303Z1(6),]

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"excepted joint owner" has the meaning given by section 270(4),

"interest", in relation to land—

(a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

(b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

"interest", in relation to property other than land, includes any right (including a right to possession of the property),

"interim administration order" has the meaning given by section 256(2),

"interim receiving order" has the meaning given by section 246(2),

[[F240]"listed asset" (in Chapter 3A) has the meaning given by section 303B,**]**

"the minimum amount" (in Chapter 3) has the meaning given by section 303,

["the minimum amount" (in Chapter 3B) has the meaning given by section 303Z8**]**

[[F240]"the minimum value" (in Chapter 3A) has the meaning given by section 303Y,

"part", in relation to property, includes a portion,

[[F244]"payment institution" (in Chapter 3B) has the meaning given by section 303Z1(6),**]**

[[F253]"PPO receiver" has the meaning given by section 255G(2);**]**

"premises" has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60),

[[F254] "prohibitory property order" has the meaning given by section 255A(2);

"property freezing order" has the meaning given by section 245A(2);**]**

"property obtained through unlawful conduct" has the meaning given by section 242,

"recoverable property" is to be read in accordance with sections 304 to 310,

"recovery order" means an order made under section 266,

[[F240]"relevant court" has the meaning given by section 303Z1(6),**]**

[[F244]"relevant financial institution" (in Chapter 3B) has the meaning given by section 303Z1,**]**

[[F240]"relevant officer" (in Chapter 3A) has the meaning given by section 303C(9),**]**

"respondent" means—

(a) where proceedings are brought by the enforcement authority by virtue of Chapter 2, the person against whom the proceedings are brought,

(b) where no such proceedings have been brought but the enforcement authority has applied for **[**[F255]a property freezing order, an interim receiving order, a prohibitory property order or an**]** interim administration order, the person against whom he intends to bring such proceedings,

[[F240]"senior officer" (in Chapter 3B) has the meaning given by section 303Z2(4),**]**

"share", in relation to an excepted joint owner, has the meaning given by section 270(4),

"unlawful conduct" has the meaning given by section 241,

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"value" means market value.

(2) The following provisions apply for the purposes of this Part.

(3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

(4) Property is all property wherever situated and includes—
- (a) money,
- (b) all forms of property, real or personal, heritable or moveable,
- (c) things in action and other intangible or incorporeal property.

(5) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.

(6) In relation to land, it is a reference to any interest which he holds in the land.

(7) In relation to property other than land, it is a reference—
- (a) to the property (if it belongs to him), or
- (b) to any other interest which he holds in the property.

(8) References to the satisfaction of the enforcement authority's right to recover property obtained through unlawful conduct are to be read in accordance with section 279.

F256 **[** (8A) In relation to an order in England and Wales or Northern Ireland which is a recovery order, a property freezing order, an interim receiving order or an order under section 276, references to the enforcement authority are, unless the context otherwise requires, references to the enforcement authority which is seeking, or (as the case may be) has obtained, the order.**]**

F257 **[** (8B) An enforcement authority in relation to **[**F258a part of the United Kingdom**]** may take proceedings there for an order under Chapter 2 of this Part in respect of any property or person, whether or not the property or person is (or is domiciled, resident or present) in that part of the United Kingdom.**]**

(9) Proceedings against any person for an offence are concluded when—
- (a) the person is convicted or acquitted,
- (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or
- (c) the jury is discharged without a finding **[**F259otherwise than in circumstances where the proceedings are continued without a jury**]**.

F260 **[** (10) References (in Chapter 3B) to an account being operated by or for a person are to be read in accordance with section 303Z1(3)(b).**]]**

Textual Amendments

F240 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(2)(c)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F241 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(2)(a)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F242 Words in s. 316(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(2)(b)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

F243 Words in s. 316(1) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 65** (with arts. 28-31)

F244 Words in s. 316(1) inserted (retrospective to 27.4.2017 except as it extends to N.I.) by Financial Services Act 2021 (c. 22), s. 33(2)(3), **Sch. 12 para. 21** (with s. 33(4))

F245 Words in s. 316(1) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 91(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F246 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(f)

F247 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 19(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(f)

F248 Words in s. 316(1) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 121**; S.I. 2013/1682, art. 3(v)

F249 Words in s. 316(1) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 25**

F250 Words in s. 316(1) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 91(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F251 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 20(2)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(f)

F252 Words in s. 316(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 19(2)(b)**, 58(1)(6); S.I. 2018/78, reg. 3(f)

F253 Words in s. 316(1) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 4 para. 54**; S.I. 2015/820, reg. 3(q)(iv)

F254 Words in s. 316(1) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 22(2)**; S.I. 2005/3136, art. 3(c)

F255 Words in s. 316(1) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 6 para. 22(3)**; S.I. 2005/3136, art. 3(c)

F256 S. 316(8A) inserted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 91(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

F257 S. 316(8B) inserted (E.W.S.) (retrospectively) by Crime and Courts Act 2013 (c. 22), **ss. 48(5)**(7), 61(11)(c) (with s. 48(8), Sch. 25); this insertion extended to N.I. (20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **7(a)**

F258 Words in s. 316(8B) substituted (retrospective to 20.3.2015) by The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 (S.I. 2015/798), arts. 1(2), **8(7)**

F259 Words in s. 316(9)(c) inserted (24.7.2006 for E.W., 8.1.2007 in so far as not already in force) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 78**; S.I. 2006/1835, art. 2(h), S.I. 2006/3422, art. 2(1)(c)

F260 S. 316(10) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 36(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

Modifications etc. (not altering text)

C14 S. 316(8B): power to modify conferred (25.4.2013) by Crime and Courts Act 2013 (c. 22), s. 61(11)(f), **Sch. 25 para. 4(2)(f)**

Status:
Point in time view as at 16/04/2018.

Changes to legislation:
Proceeds of Crime Act 2002, Part 5 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.