Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 5

CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

CHAPTER 2

CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

Proceedings for recovery orders

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.

[[F1](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

F1 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.

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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) 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)

[F2 Property freezing orders (England and Wales and Northern Ireland)

Textual Amendments

F2 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.

Status: *Point in time view as at 01/04/2013.*
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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—

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(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 **[**[F3]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**]** the Northern Ireland Legal Services Commission.

(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

F3 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)

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 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.**]**

[[F4]245E Receivers in connection with property freezing orders

(1) Subsection (2) applies if—

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(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

F4 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)

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.

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(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

F4 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,

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(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

F4 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 **[**[F5]enforcement authority**]** .

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

Textual Amendments

F5 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)

[F6 Property freezing orders and interim receiving orders: registration]

Textual Amendments

F6 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 **[**F7 property 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 **[**[F8]property 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) **[**[F9]the 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 **[**[F10]a property freezing order or**]**an interim receiving order.

(4) **[**[F11]A 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

F7 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)

F8 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)

F9 S. 248(2)(a) repealed (prosp.) by Proceeds of Crime Act 2002 (c. 29), ss. 457, 458(1), **Sch. 12**

F10 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)

F11 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**[**[F12]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) **[**[F13]a property freezing order, or an interim receiving order,**]** made in pursuance of the application relates.

[[F14](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.

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(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under subsection**[**[F15](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 **[**[F16]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**[**[F17]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

F12 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)

F13 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)

F14 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)

F15 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)

F16 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)

F17 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)

[**[F18]*Interim receiving orders: further provisions]***

Textual Amendments

F18 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.

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[[F19](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 **[**[F20]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**]** the Northern Ireland Legal Services Commission.**]**

(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 **[**[F21], 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

F19 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)

F20 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)

F21 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 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.

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)

[F22 Prohibitory property orders (Scotland)

Textual Amendments

F22 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

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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 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.

(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.

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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)*

(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).

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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 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.**]**

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.

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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)*

(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).

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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 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 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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.

[[F23](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

F23 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

(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.

Status: *Point in time view as at 01/04/2013.*
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(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.

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)

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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) **[**[F24]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 **[**[F25]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

F24 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)

F25 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

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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) **[**[F26]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 **[**[F27]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.

[[F28](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

F26 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)

F27 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)

F28 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, **[**[F29]receiver appointed under section 245E,**]** 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

F29 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)

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.

(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 **[**[F30]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.

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(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

F30 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

(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, **[**[F31]receiver appointed under section 245E,**]** 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

F31 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)

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

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(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.

(7) If—

(a) an order is made under section 298 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 298 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.

(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.

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) This section applies to—

(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,

[[F32](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,**]**

(b) **[**[F33]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.

[[F34](3) The **[**[F35]enforcement authority (unless it is the Scottish Ministers)**]** may apply a sum received by **[**[F36]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 **[**[F37]enforcement authority concerned **[**[F38](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

F32 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)

F33 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)

F34 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)

F35 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)

F36 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)

F37 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)

F38 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.

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(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 **[**[F39]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 **[**[F40]Financial Conduct Authority or the Prudential Regulation Authority**]** in respect of any recoverable property held by **[**[F41]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

F39 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)

F40 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.

F41 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)

Miscellaneous

283 Compensation

(1) If, in the case of any property to which **[**[F42]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 **[**[F43]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.

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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)*

(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.

[[F44](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

F42 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)

F43 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)

F44 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)

[[F45](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.

[[F46](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

F45 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)

F46 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)

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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

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 **[**[F47]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 **[**[F48]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) **[**[F49]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 **[**[F50]attachment**]** .**]**

Textual Amendments

F47 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)

F48 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)

F49 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)

F50 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)

286 Scope of powers (Scotland)

(1) Orders under this Chapter may be made by the Court of Session in respect of a person wherever domiciled, resident or present.

(2) Such an order may be made by the Court of Session in respect of moveable property wherever situated.

(3) But such an order in respect of a person's moveable property may not be made by the Court of Session where—

(a) the person is not domiciled, resident or present in Scotland, and

(b) the property is not situated in Scotland,

unless the unlawful conduct took place in Scotland.

Commencement Information

I45 S. 286 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)

[F51 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

F51 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—

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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) 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

F51 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 **[**[F52]or, in relation to Northern Ireland, exercisable by the Department of Justice**]** .

(3) If the authority applies for **[**[F53]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 **[**[F54]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

F52 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)

F53 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)

F54 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)

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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

I46 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—

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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)*

"**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.

(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,

Status: *Point in time view as at 01/04/2013.*
Changes to legislation: *Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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) 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

I47 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)

Status:
Point in time view as at 01/04/2013.

Changes to legislation:
Proceeds of Crime Act 2002, Chapter 2 is up to date with all changes known to be in force on or before 05 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.