



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

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,

Changes to legislation: *Proceeds of Crime Act 2002, Section 266 is up to date with all changes known to be in force on or before 26 April 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) View outstanding changes*

- (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.
- [^{F1}(8ZA) If the recoverable property in respect of which the Court of Session makes a recovery order includes heritable property, the Court of Session must, on the application of the enforcement authority, also grant decree of removing and warrant for ejection, enforceable by the trustee for civil recovery, in relation to any persons occupying the heritable property.]
- [^{F2}(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

- F1** [S. 266\(8ZA\)](#) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 29\(3\)](#), [58\(1\)\(6\)](#); [S.I. 2018/78](#), [reg. 3\(1\)](#)

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F2 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

I1 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)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)