



# Criminal Finances Act 2017

## 2017 CHAPTER 22

### PART 1

#### PROCEEDS OF CRIME

### CHAPTER 1

#### INVESTIGATIONS

*Unexplained wealth orders: England and Wales and Northern Ireland*

## 2 Interim freezing orders

After section 362I of the Proceeds of Crime Act 2002 (inserted by section 1 above) insert—

*“Unexplained wealth orders: interim freezing of property*

### **362J Application for interim freezing order**

- (1) This section applies where the High Court makes an unexplained wealth order in respect of any property.
- (2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.
- (3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 362L).
- (4) An interim freezing order—

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- (a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates,
  - (b) must be made in the same proceedings as those in which the unexplained wealth order is made, and
  - (c) may be combined in one document with the unexplained wealth order.
- (5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

### **362K Variation and discharge of interim freezing order**

- (1) The High Court may at any time vary or discharge an interim freezing order.
- (2) The High Court must discharge an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.
- (3) The first case is where—
  - (a) the applicable 48 hour period has ended, and
  - (b) a relevant application has not been made before the end of that period in relation to the property concerned.
- (4) The second case is where—
  - (a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned, and
  - (b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.
- (5) The third case is where the court has received a notification in relation to the property concerned under section 362D(4) (notification from enforcement authority of no further proceedings).
- (6) The “applicable 48 hour period” is to be read as follows—
  - (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the 60 day period mentioned in section 362D(3) ends;
  - (b) in any other case, it is the period of 48 hours beginning with the day after the day with which the response period ends.
- (7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of—
  - (a) any Saturday or Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, or
  - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the interim freezing order concerned is made.
- (8) Section 362D(7) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements

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imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.

- (9) Before exercising power under this section to vary or discharge an interim 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.
- (10) Subsection (9) does not apply where the court is acting as required by subsection (2).
- (11) In this section—
- “relevant application” means an application for—
    - (a) a restraint order under section 41 or 190,
    - (b) a property freezing order, or
    - (c) an interim receiving order;
  - “response period” has the meaning given by section 362C(4).

### **362L Exclusions**

- (1) The power to vary an interim freezing order includes (amongst other things) 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 (amongst other things) make provision for the purpose of enabling any person—
- (a) to meet the person’s reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Chapter, it must ensure that the exclusion—
- (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs,
  - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  - (c) is made subject to the same conditions as would be the required conditions (see section 286A) if the order had been made under section 245A (in addition to any conditions under subsection (4)).
- (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Chapter—

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- (a) must have regard to the desirability of the person being represented in any proceedings under this Chapter in which the person is a participant, and
  - (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be 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.

### **362M Restrictions on proceedings and remedies**

- (1) While an interim freezing order has effect—
- (a) the High 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, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised, against the property to which the order applies except with the leave of the High 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 freezing order has been applied for or made in respect of the property, it may—
- (a) stay the proceedings, or
  - (b) allow them to continue on any terms it thinks fit.
- (3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable—
- (a) only with the leave of the High Court, and
  - (b) subject to any terms that the court may impose.
- (4) The reference in subsection (3) to a “right of forfeiture” in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.
- (5) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court’s decision.

### **362N Receivers in connection with interim freezing orders**

- (1) This section applies where the High Court makes an interim freezing order on an application by an enforcement authority.
- (2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.
- (3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

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- (4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the enforcement authority to obtain a recovery order in respect of any property.
- (5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.
- (6) The person nominated may be a member of staff of the enforcement authority.
- (7) 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.
- (8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of 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).

### **362O Powers of receivers appointed under section 362N**

- (1) If the High Court appoints a receiver under section 362N 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 the person is able to do so);
  - (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.
- (4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's 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) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (6) Subsection (7) applies in a case where—
  - (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 362N, but

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- (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of the appointment.
- (7) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (8) But subsection (7) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

### **362P Supervision of section 362N 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 362N—
  - (a) the receiver;
  - (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
  - (c) a person affected by an action taken by the receiver;
  - (d) a person who may be affected by an action proposed to be taken by the receiver.
- (2) Before it gives 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 interim freezing order concerned;
  - (c) a person who may be interested in the application under subsection (1).
- (3) The court may at any time vary or discharge—
  - (a) the appointment of a receiver under section 362N,
  - (b) an order under section 362O, or
  - (c) directions under this section.
- (4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—
  - (a) the receiver;
  - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 362O or (as the case may be) for the directions under this section;
  - (c) the parties to the proceedings for the interim freezing order concerned;
  - (d) any person who may be affected by the court's decision.

### **362Q Registration**

Sections 248 (registration: England and Wales) and 249 (registration: Northern Ireland) apply in relation to interim freezing orders as they apply in relation to property freezing orders under section 245A.

### **362R Compensation**

- (1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.
- (2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.
- (3) The court may order compensation to be paid to the applicant only if satisfied that—
  - (a) the applicant has suffered loss as a result of the making of the interim freezing order,
  - (b) there has been a serious default on the part of the enforcement authority that applied for the order, and
  - (c) the order would not have been made had the default not occurred.
- (4) Where the court orders the payment of compensation—
  - (a) the compensation is payable by the enforcement authority that applied for the interim freezing order, and
  - (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.”