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STATUTORY INSTRUMENTS

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**2005 No. 3181**

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005

PART 5

GIVING EFFECT IN THE UNITED KINGDOM TO EXTERNAL ORDERS BY MEANS OF CIVIL RECOVERY

CHAPTER 2

CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

*Miscellaneous*

**Compensation**

**194.**—(1) If, in the case of any property to which 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) Paragraph (1) does not apply if the court—

- (a) has made a declaration in respect of the property by virtue of article 192, or
- (b) makes an order under article 187.

(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the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded,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 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 order mentioned in paragraph (1), it may require the enforcement authority to pay compensation to him.

(6) If, but for article 180(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under paragraph (6) must be made within the period of three months beginning with the vesting referred to in article 180(2).

(8) If the court is satisfied that, in consequence of the operation of article 180, 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 article is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

#### **Payment of interim administrator or trustee (Scotland)**

**195.**—(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.

(2) The Scottish Ministers may apply a sum received by them under article 191(2) in making payment of such fees or expenses.

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

#### **Effect on diligence of recovery order (Scotland)**

**196.**—(1) An arrestment or poiding 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 poided, or (if the property has been sold) the proceeds of sale, must be handed over to the trustee for civil recovery.

(3) A poiding 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 paragraph (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) The provision of this article 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 poiding.

#### **Scope of powers (Scotland)**

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

(2) 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 conduct which satisfies the test in article 202(2) took place in Scotland.

### **Legal expenses excluded from freezing: required conditions**

**198.**—(1) The Lord Chancellor may by regulations specify the required conditions for the purposes of article 149(5) or 157(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 paragraph (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 article 199 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 article 199 in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this article, the Lord Chancellor must consult such persons as he considers appropriate.

### **Legal expenses: regulations for purposes of article 177(11) or 198(3)**

**199.**—(1) The Lord Chancellor may by regulations—

- (a) make provision for the purposes of article 177(11);
- (b) make provision for the purposes of required conditions that make provision of the kind mentioned in article 198(3)(b) or (c).

(2) Regulations under this article 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 article, the Lord Chancellor must consult such persons as he considers appropriate.

### **Financial threshold**

**200.**—(1) 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 £10,000.

(2) If the authority applies for a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order before starting the proceedings, paragraph (1) applies to the application instead of to the start of the proceedings.

(3) This article does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order which has been properly applied for.

## Limitation

**201.**—(1) After section 27A of the Limitation Act 1980<sup>(1)</sup> there is inserted—

### “Actions for recovery of property for purposes of an external order

**27B.**—(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 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(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 a property freezing order, or
- (c) an application is made for an interim receiving order,

whichever is earliest.

(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, or believed to have been obtained, as a result of or in connection with criminal 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, or believed to have been obtained, as a result of or in connection with criminal 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,
- (c) section 3(2) of this Act does not prevent his asserting on an application under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.

(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) In this section—

- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and

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(1) 1980 c. 58; section 27A was inserted by section 288(1) of the Proceeds of Crime Act 2002.

- (b) expressions used in this section which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.

(2) After section 19B of the Prescription and Limitation (Scotland) Act 1973<sup>(2)</sup> there is inserted—

**“Actions for recovery of property for the purposes of an external order**

**19C.**—(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 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(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,
- (b) an application is made for a prohibitory property order, or
- (c) an application is made for an interim administration order,

whichever is the earliest.

(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, or believed to have been obtained, as a result of or in connection with criminal 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, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained.

(5) In this section—

- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
- (b) expressions used in this section which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.

(3) After Article 72A of the Limitation (Northern Ireland) Order 1989<sup>(3)</sup> there is inserted—

**“Actions for recovery of property for purposes of an external order**

**72B.**—(1) None of the time limits fixed by Parts 2 and 3 of this Order applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(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

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(2) 1973 c. 52; section 19B was inserted by section 288(2) of the Proceeds of Crime Act 2002.

(3) S.I. 1989/1339 (N.I. 11); Article 72A was inserted by section 288(3) of the Proceeds of Crime Act 2002.

- (b) an application is made for a property freezing order, or
- (c) an application is made for an interim receiving order,

whichever is earliest.

(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, or believed to have been obtained, as a result of or in connection with criminal 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, or believed to have been obtained, as a result of or in connection with criminal 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) of this Order does not prevent his asserting on an application under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.

(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) of this Order.

(7) In this Article—

- (a) "criminal conduct" is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
- (b) expressions used in this Article which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this Article as in that Part."