
STATUTORY INSTRUMENTS

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 3

GENERAL

Recoverable property

Recoverable property: property or sum of money specified in the external order

202.—(1) Property or a sum of money is recoverable property if it is specified in an external order (within the meaning of section 447(2) of the Act).

(2) Accordingly, the property (including money) must have been found to have been obtained as a result of or in connection with criminal conduct (within the meaning of section 447(8) of the Act) or must have been believed to have been so obtained.

(3) But if property (including money) which is specified in the external order has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(4) Recoverable property specified in an external order may be followed into the hands of a person obtaining it on a disposal by—

- (a) the person who through the conduct obtained the property, or
- (b) a person into whose hands it may (by virtue of this paragraph) be followed.

(5) Where an external order specifies property other than a sum of money, only that property is recoverable property.

Tracing property, etc.

203.—(1) This article applies only where an external order specifies a sum of money.

(2) Where property which satisfies the tests in article 202(1) and (2) (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.

(3) If a person enters into a transaction by which—

- (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and
- (b) he obtains other property in place of it,

the other property represents the original property.

(4) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

Mixing property

204.—(1) This article applies only where an external order specifies a sum of money.

(2) Paragraph (3) applies if a person’s recoverable property is mixed with other property (whether his property or another’s).

(3) The portion of the mixed property which is attributable to the recoverable property represents the property which satisfies the tests in article 202(1) and (2).

(4) Recoverable property is mixed with other property if (for example) it is used—

- (a) to increase funds held in a bank account,
- (b) in part payment for the acquisition of an asset,
- (c) for the restoration or improvement of land,
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Recoverable property: general exceptions

205.—(1) If—

- (a) a person disposes of recoverable property, and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person’s hands and, accordingly, it ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) If—

- (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,
- (b) the claimant’s claim is based on any conduct by the defendant which satisfies the test in article 202(2), and
- (c) apart from this paragraph, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

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

(4) If—

- (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994⁽¹⁾, section 249 of the Criminal Procedure (Scotland) Act 1995⁽²⁾ or section 130 of the Powers of Criminal Court (Sentencing) Act 2000⁽³⁾, and

(1) S.I. 1994/2795 (N.I. 15).

(2) 1995 c. 46.

(3) 2000 c. 6.

(b) apart from this paragraph, the sum received would be recoverable property, the property ceases to be recoverable.

(5) If—

(a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969⁽⁴⁾ or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and

(b) apart from this paragraph, the sum received, or the property obtained, would be recoverable property, the property ceases to be recoverable.

(6) If—

(a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (restitution orders)⁽⁵⁾, an amount is paid to or distributed among any persons in accordance with the court's directions, and

(b) apart from this paragraph, the sum received by them would be recoverable property, the property ceases to be recoverable.

(7) If—

(a) in pursuance of a requirement of the Financial Services Authority under section 384(5) of the Financial Services and Markets Act 2000 (power of authority to pursue restitution), an amount is paid to or distributed among any persons and

(b) apart from this paragraph, the sum received by them would be recoverable property, the property ceases to be recoverable.

(8) Property is not recoverable while a restraint order applies to it, that is—

(a) an order under section 41, 120 or 190 of the Act or article 8, 58 or 95 of this Order, or

(b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act.

(9) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—

(a) an order under section 6, 92 or 156 of the Act or an external order registered under Part 2, 3 or 4 of this Order, or

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

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

(10) Where—

(a) a person enters into a transaction to which article 203(3) applies, and

(b) the disposal is one to which paragraph (1) or (2) applies,

this article does not affect the recoverability (by virtue of article 203(3)) of any property obtained on the transaction in place of the property disposed of.

(4) 1969 c. 16 (N.I.).

(5) 2000 c. 8.

Other exemptions

206.—(1) Property, which apart from this article, would be recoverable property and is—

- (a) forfeited in pursuance of powers conferred by the customs and excise Acts, as defined by section 1(1) of the Customs and Excise Management Act 1979(6), or
- (b) disposed of in pursuance of an enactment prescribed in Schedule 5,

is not recoverable or (as the case may be) associated property.

(2) But where particular circumstances are prescribed in Schedule 5 in relation to an enactment, paragraph (1)(b) applies only in those circumstances.

Granting interests

207.—(1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his granting an interest in the property (“the property in question”)—

- (a) where the property in question is property which satisfies the tests in article 202(1) and (2), the interest is also to be treated as satisfying those tests,
- (b) where the property in question represents in his hands property which satisfies the tests in article 202(1) and (2), the interest is also to be treated as representing in his hands property which satisfies those tests.

Insolvency

Insolvency

208.—(1) Proceedings for a recovery order may not be taken or continued in respect of property to which paragraph (2) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

(2) This paragraph applies to recoverable property, or property associated with it, if—

- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
- (b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act or Part 2 of the 1989 Order, has effect in relation to the company,
- (c) an order under section 2 of the 1985 Act, section 286 of the 1986 Act or Article 259 of the 1989 Order (appointment of interim trustee or interim receiver) has effect in relation to the property,
- (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt or, in relation to Scotland, of a person whose estate has been sequestrated,
- (e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to him, or
- (f) in relation to Scotland, it is property comprised in the estate of a person who has granted a trust deed within the meaning of the 1985 Act.

(3) An application under this article, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings for a recovery order may be made without notice to any person.

(4) Paragraph (3) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

(5) References to the provisions of the 1986 Act in sections 420 and 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include paragraphs (1) and (2) above.

(6) In this article—

- (a) the 1985 Act means the Bankruptcy (Scotland) Act 1985⁽⁷⁾,
- (b) the 1986 Act means the Insolvency Act 1986⁽⁸⁾,
- (c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989⁽⁹⁾,

and in paragraph (7) “the applicable enactment” means whichever enactment mentioned in subparagraphs (a) to (c) is relevant to the resolution, arrangement, order or trust deed mentioned in paragraph (2).

(7) In this article—

- (a) an asset means any property within the meaning of the applicable enactment or, where the 1985 Act is the applicable enactment, any property comprised in an estate to which the 1985 Act applies,
- (b) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in paragraph (2), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court,
- (c) acting as an insolvency practitioner has the same meaning as in article 4,
- (d) other expressions used in this article and in the applicable enactment have the same meaning as in that enactment.

Delegation of enforcement functions

Performance of functions of Scottish Ministers by constables in Scotland

209.—(1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.

(2) The specified functions are the functions conferred on the Scottish Ministers by—

- (a) articles 144(1) and (2) and 167(1) and (7) (proceedings in the Court of Session),
- (b) article 178(2) (trustee for civil recovery),
- (c) articles 182(3) and (4) and 183(5) (agreements about associated and joint property),
- (d) article 186(3) (pension schemes),
- (e) article 193(1) (exemptions),
- (f) article 194(5) and (8) (compensation),
- (g) article 200(2) (financial threshold).

(7) 1985 c. 66.

(8) 1986 c. 45.

(9) S.I. 1989/2405 (N.I. 19).

Restriction on performance of Director’s functions by police

210.—(1) In spite of section 1(6) of the Act, nothing which the Director is authorised or required to do for the purposes of this Part may be done by—

- (a) a member of a police force,
 - (b) a member of the Police Service of Northern Ireland,
 - (c) a person appointed as a police member of the National Criminal Intelligence Service under section 9(1)(b) of the Police Act 1997⁽¹⁰⁾,
 - (d) a person appointed as a police member of the National Crime Squad under section 55(1)(b) of that Act.
- (2) In this article—
- (a) “member of a police force” has the same meaning as in the Police Act 1996⁽¹¹⁾ and includes a person who would be a member of a police force but for section 97(3) of that Act (police officers engaged on service outside their force),
 - (b) “member of the Police Service of Northern Ireland” includes a person who would be a member of the Police Service of Northern Ireland but for section 27(3) of the Police (Northern Ireland) Act 1998⁽¹²⁾ (members of that service engaged on other police service).

Interpretation

Obtaining and disposing of property

211. References to a person disposing of his property include a reference—

- (a) to his disposing of a part of it, or
- (b) to his granting an interest in it,

(or to both), and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(3) Where a person’s property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

Northern Ireland courts

212. In relation to the practice and procedure of courts in Northern Ireland, expressions used in this Part are to be read in accordance with rules of court.

General interpretation

213.—(1) In this Part—

“associated property” has the meaning given by article 146,

⁽¹⁰⁾ 1997 c. 50; sections 9 and 55 are prospectively repealed by Schedule 17 to the Serious Organised Crime and Police Act 2005.

⁽¹¹⁾ 1996 c. 16.

⁽¹²⁾ 1998 c. 32.

“constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000(13),

“the court” except in articles 158(2) and (3) and 173(2) and (3) means the High Court or (in relation to proceedings in Scotland) the Court of Session,

“dealing” with property includes disposing of it, taking possession of it or removing it from the United Kingdom,

“Director” means Director of the Agency,

“enforcement authority”—

(a) in relation to England and Wales and Northern Ireland, means the Director,

(b) in relation to Scotland, means the Scottish Ministers,

“excepted joint owner” has the meaning given by article 181(4),

“interest”, in relation to land—

(a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

(b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

“interest”, in relation to property other than land, includes any right (including a right to possession of the property),

“interim administration order” has the meaning given by article 167(2),

“interim receiving order” has the meaning given by article 151(2),

“part”, in relation to property, includes a portion,

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984(14),

“prohibitory property order” has the meaning given in article 171(2),

“property freezing order” has the meaning given in article 147(2),

“recoverable property” is to be read in accordance with articles 202 to 207,

“recovery order” means an order made under article 177,

“respondent” means—

(a) where proceedings are brought by the enforcement authority, the person against whom the proceedings are brought,

(b) where no such proceedings have been brought but the enforcement authority has applied for a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order, the person against whom he intends to bring such proceedings,

“share”, in relation to an excepted joint owner, has the meaning given by article 181(4),

“specified property” means property other than a sum of money that is specified in an external order,

“value” means market value.

(2) The following provisions apply for the purposes of this Part.

(3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

(13) 2000 c. 32.

(14) 1984 c. 60.

- (4) Property is all property wherever situated and includes—
 - (a) money,
 - (b) all forms of property, real or personal, heritable or moveable,
 - (c) things in action and other intangible or incorporeal property.
- (5) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (6) In relation to land, it is a reference to any interest which he holds in the land.
- (7) In relation to property other than land, it is a reference—
 - (a) to the property (if it belongs to him), or
 - (b) to any other interest which he holds in the property.
- (8) References to the satisfaction of the enforcement authority's right to recover any property which satisfies the tests in article 202(1) and (2) are to read in accordance with article 189.