

EXPLANATORY NOTES

PROCEEDS OF CRIME ACT 2002

INTRODUCTION

BACKGROUND

Confiscation

Cash forfeiture

Money laundering

Report by the Performance and Innovation Unit

Publication of draft sections for a Proceeds of Crime Bill

SUMMARY

THE ACT

Explanatory Notes for the Proceeds of Crime Act 2002

COMMENTARY ON SECTIONS

PART 1: ASSETS RECOVERY AGENCY

Section 1: The Agency and its Director

Schedule 1: Assets Recovery Agency

Section 2: Director's functions: general

Section 3: Accreditation and training

Section 4: Co-operation

Section 5: Advice and assistance

PART 2: CONFISCATION: ENGLAND AND WALES

Confiscation orders

Section 6: Making of order

Section 7: Recoverable amount

Section 8: Defendant's benefit

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 9: Available amount

Section 10: Assumptions to be made in case of criminal lifestyle

Section 11: Time for payment

Section 12: Interest on unpaid sums

Section 13: Effect of order on court's other powers

Procedural matters

Section 14: Postponement

Section 15: Effect of postponement

Section 16: Statement of information

Section 17: Defendant's response to statement of information

Section 18: Provision of information by defendant

Reconsideration

Sections 19-21: Reconsideration

Section 22: Order made: reconsideration of available amount

Section 23: Inadequacy of available amount: variation of order

Section 24: Inadequacy of available amount: discharge of order

Section 25: Small amount outstanding: discharge of order

Section 26: Information

Defendant absconds

Section 27: Defendant convicted or committed

Section 28: Defendant neither convicted nor acquitted

Section 29 : Variation of order

Section 30: Discharge of order

Appeals

Section 31: Appeal by prosecutor or Director

Section 32: Court's powers on appeal

Section 33: Appeal to House of Lords

Enforcement authority

Section 34: Enforcement authority

Enforcement as fines etc

Section 35: Director not appointed as enforcement authority

Section 36: Director appointed as enforcement authority

Section 37: Director's application for enforcement

Section 38: Provisions about imprisonment or detention

Section 39: Reconsideration etc: variation of prison term

Restraint orders

Section 40: Conditions for exercise of powers

Section 41: Restraint orders

Section 42: Application, discharge and variation

Section 43: Appeal to Court of Appeal

Section 44: Appeal to House of Lords

Section 45: Seizure

Section 46: Hearsay Evidence

Section 47: Supplementary

Management receivers

Section 48: Appointment

Section 49: Powers

Enforcement receivers

Section 50: Appointment

Section 51: Powers

Director's receivers

Section 52: Appointment

Section 53: Powers

Application of sums

Section 54: Enforcement receivers

Section 55: Sums received by justices' chief executive

Section 56: Director's receivers

Section 57: Sums received by Director

Restrictions

Section 58: Restraint orders

Sections 59 & 60: Enforcement receivers; Director's receivers

Receivers: further provisions

Section 61: Protection

Section 62: Further applications

Section 63: Discharge and variation

Section 64: Management receivers: discharge

Section 65: Appeal to Court of Appeal

Section 66: Appeal to House of Lords

Seized money

Section 67: Seized money

Financial investigators

Section 68: Applications and appeals

Exercise of powers

Section 69: Powers of court and receiver

Committal

Section 70: Committal by magistrates' court

Section 71: Sentencing by Crown Court

Compensation

Section 72: Serious default

Section 73: Order varied or discharged

Enforcement abroad

Section 74: Enforcement abroad

Interpretation

Section 75: Criminal lifestyle

Section 76: Conduct and benefit

Sections 77 & 78: Tainted gifts; Gifts and their recipients

Sections 79-81: Value: the basic rule; Value of property obtained from conduct; Value of tainted gifts

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Sections 82-84: Free property; Realisable property; Property: general provisions

Sections 85-87: Proceedings; Applications; Confiscation orders

Section 88: Other interpretative provisions

General

Section 89: Procedure on appeal to the Court of Appeal

Section 90: Procedure on appeal to the House of Lords

Section 91: Crown Court Rules

Schedule 2: Lifestyle offences: England and Wales

PART 3: CONFISCATION: SCOTLAND

Confiscation orders

Section 92: Making of order

Section 93: Recoverable amount

Section 94: Accused's benefit

Section 95: Available amount

Section 96: Assumptions as to benefit from general criminal conduct

Section 97: Effect of order on court's other powers

Section 98: Disposal of family home

Procedural matters

Section 99: Postponement

Section 100: Effect of postponement

Section 101: Statement of information

Section 102: Accused's response to statement of information

Section 103: Provision of information by accused

Reconsideration

Sections 104-106: Reconsideration

Section 107: Order made: reconsideration of available amount

Section 108: Inadequacy of available amount: variation of order

Section 109: Inadequacy of available amount: discharge of order

Section 110: Information

Accused unlawfully at large

Sections 111-114: Accused unlawfully at large

Appeals

Section 115: Appeal by prosecutor

Payment and enforcement

Section 116: Time for payment

Section 117: Interest on unpaid sums

Section 118: Application of provisions about fine enforcement

Restraint orders etc

Section 119: Conditions for exercise of powers

Section 120: Restraint orders etc.

Section 121: Application, recall and variation

Section 122: Appeals

Sections 123 & 124: Inhibition of property affected by order; arrestment of property affected by order

Section 128: Management administrators

Section 126: Seizure

Section 127: Restraint orders: restriction on proceedings and remedies

Realisation of property: general

Section 128: Enforcement administrators

Section 129: Management administrators: discharge

Section 130: Application of sums by enforcement administrator

Section 131: Sums received by clerk of court

Exercise of powers

Section 132: Powers of court and administrator

Administrators: general

Section 133: Protection of administrators

Section 134: Protection of persons affected

Section 135: Recall and variation of order

Section 136: Appeals

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 137: Administrators: further provision

Section 138: Administrators: restriction on proceedings and remedies

Compensation

Section 139: Serious default

Section 140: Confiscation order varied or discharged

Enforcement abroad

Section 141: Enforcement abroad

Interpretation

Section 142: Criminal lifestyle

Section 143: Conduct and benefit

Section 147: Tainted gifts and their recipients

Sections 145-147: Value: the basic rule; value of property obtained from conduct; value of tainted gifts

Sections 151-153: Free property; realisable property; property: general provisions

Sections 151-153: Proceedings; applications; Satisfaction of confiscation orders

Section 154: Other interpretative provisions

General

Section 155: Rules of Court

Schedule 3: Administrators: further provision

Schedule 4: Lifestyle offences: Scotland

PART 4: CONFISCATION: NORTHERN IRELAND

Confiscation orders; Procedural matters

Sections 156-168: Confiscation orders; Procedural matters

Reconsideration

Sections 169-171: Reconsideration

Sections 172 & 173: Order made: reconsideration of available amount; Inadequacy of available amount: variation of order

Section 174: Inadequacy of available amount: discharge of order

Section 175: Small amount outstanding: discharge of order

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 176: Information

Defendant absconds

Section 177-180: Absconded defendant convicted or committed; Defendant neither convicted nor acquitted; Variation and discharge of orders

Appeals

Section 181: Appeal by prosecutor or Director

Section 182: Court's powers on appeal

Section 183: Appeal to House of Lords

Enforcement authority

Section 184: Enforcement authority

Enforcement as fines etc

Section 185: Enforcement as fines etc

Section 186: Director's application for enforcement

Section 187: Provisions about imprisonment or detention

Section 188: Reconsideration etc: variation of prison term

Restraint orders

Sections 189 to 191: Conditions for exercise of powers; Restraint orders; Application, discharge and variation

Sections 192 & 193: Appeal to Court of Appeal; Appeal to House of Lords

Section 194: Seizure

Section 195: Supplementary

Management Receivers

Sections 196 and 197: Appointment; Powers

Enforcement receivers

Section 198: Appointment

Section 199: Powers

Director's receivers

Sections 200 & 201: Appointment; Powers

Application of sums

Sections 202 & 203: Enforcement receivers; Sums received by chief clerk

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Sections 204 & 205: Sums received by Director's receivers or Director

Restrictions

Sections 206 to 208: Restraint orders; Enforcement receivers; Director's receivers

Receivers: further provisions

Sections 209 to 214 Protection; Further applications; Discharge and variation

Sections 213 & 214: Appeal to Court of Appeal; Appeal to House of Lords

Seized money

Section 215: seized money

Financial Investigators

Section 216: Applications and Appeals

Exercise of powers

Section 217: Powers of court and receiver

Committal

Section 218: Committal by magistrates' court

Section 219: sentencing by Crown Court

Compensation

Section 220: serious default

Sections 221 & 222: Order varied or discharged; Enforcement abroad

Interpretation

Section 223: Criminal lifestyle

Section 224: Conduct and benefit

Sections 225 & 226: Tainted gifts; Gifts and their recipients

Sections 227-229: Value: the basic rule; Value of property obtained from conduct; Value of tainted gifts

Sections 230-235: Free property; Realisable property; Property: general provisions; Proceedings; Applications; Confiscation orders

Section 239: other interpretative provisions

General

Sections 237 & 238: Procedure on appeal to the Court of Appeal; Procedure on appeal to the House of Lords

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 239: Crown Court Rules

Schedule 5: Lifestyle offences: Northern Ireland

PART 5: CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

Chapter 1: Introductory

Section 240: General purpose of this Part

Section 241: "Unlawful conduct"

Section 242: "Property obtained through unlawful conduct"

Chapter 2: Civil recovery in the High Court or Court of Session Proceedings for recovery orders

Section 243: Proceedings for recovery orders in England and Wales or Northern Ireland

Section 244: Proceedings for recovery orders in Scotland

Section 245: "Associated property"

Interim receiving orders (England and Wales and Northern Ireland)

Section 246: Application for interim receiving order

Section 247: Functions of interim receiver

Schedule 6: Powers of interim receiver or administrator

Section 248: Registration

Section 249: Registration (Northern Ireland)

Section 250: Duties of respondent etc.

Section 251: Supervision of interim receiver and variation of order

Section 252: Restrictions on dealing etc. with property

Section 253: Restriction on proceedings and remedies

Section 254: Exclusion of property which is not recoverable etc.

Section 255: Reporting

Interim administration orders (Scotland)

Section 256: Application for interim administration order

Section 257: Functions of interim administrator

Section 258: Inhibition of property affected by order

Section 259: Duties of respondent etc

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 260: Supervision of interim administrator and variation of order

Section 261: Restrictions on dealing etc. with property

Section 262: Restriction on proceedings and remedies

Section 263: Exclusion of property which is not recoverable etc.

Section 264: Reporting

Section 265: Arrestment of property affected by interim administration order

Vesting and realisation of recoverable property

Section 266: Recovery orders

Section 267: Functions of the trustee for civil recovery

Schedule 7: Powers of trustee for civil recovery

Section 268: Recording of recovery order (Scotland)

Section 269: Rights of pre-emption, etc

Section 270: Associated and joint property

Section 271: Agreements about associated and joint property

Section 272: Associated and joint property: default of agreement

Section 273: Payments in respect of rights under pension schemes

Section 274: Consequential adjustment of liabilities under pension schemes

Section 275: Pension schemes: supplementary

Section 276: Consent orders

Section 277: Consent orders: pensions

Section 278: Limit on recovery

Section 279: Section 278: supplementary

Section 280: Applying realised proceeds

Exemptions etc.

Section 281: Victims of theft, etc.

Section 282: Other exemptions

Miscellaneous

Section 283: Compensation

Section 284: Payment of interim administrator or trustee (Scotland)

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 285: Effect of diligence on recovery order (Scotland)

Section 286: Scope of powers (Scotland)

Section 287: Financial threshold

Section 288: Limitation

Chapter 3: Recovery of cash in summary proceedings

Sections 289-291: Searches; Prior approval; Report on exercise of powers

Sections 292-293: Code of practice; Code of practice: Scotland

Seizure and detention

Section 294: Seizure of cash

Sections 295-296: Detention of seized cash; Interest

Section 297: Release of detained cash

Forfeiture

Section 298: Forfeiture

Supplementary

Section 301: Victims and other owners

Section 302: Compensation

Section 303: "The minimum amount"

Chapter 4: General Recoverable property

Section 304: Property obtained through unlawful conduct

Section 305: Tracing property, etc.

Section 306: Mixing property

Section 307: Recoverable property: accruing profits

Section 308: General exceptions

Section 309: Other exemptions

Section 310: Granting interests

Insolvency

Section 311: Insolvency

Delegation of enforcement functions

Section 312: Performance of functions of Scottish Ministers by constables in Scotland

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 313: Restriction on performance of Director's functions by police

Interpretation

Section 314: Obtaining and disposing of property

Section 315: Northern Ireland: courts

Section 316: General interpretation

PART 6: REVENUE FUNCTIONS

General Functions

Section 317: Director's general Revenue functions

Section 318: Revenue functions regarding employment

Section 319: Source of income

Section 320: Appeals

Inheritance Tax Functions

Section 321: Director's functions: transfers of value

Section 322: Director's functions: certain settlements

General

Section 323: Functions

Section 324: Exercise of Revenue Functions

Section 325: Declarations

Section 326: Interpretation

PART 7: MONEY LAUNDERING

Offences

Section 327: Concealing etc.

Section 328: Arrangements

Section 329: Acquisition, use and possession

Section 330: Failure to disclose: regulated sector

Section 331: Failure to disclose: nominated officers in the regulated sector

Section 332: Failure to disclose: other nominated officers

Section 333: Tipping off

Consent

Section 335: Appropriate consent

Section 336: Nominated officer: consent

Disclosures

Section 337: Protected disclosures

Section 338: Authorised disclosures

Section 339: Form and manner of disclosures

Interpretation

Section 340: Interpretation

Schedule 9: Regulated sector and supervisory authorities

PART 8: INVESTIGATIONS

Chapter 1: Investigations

Section 341: Investigations

Section 342: Offences of prejudicing investigation

Chapter 2: England and Wales and Northern Ireland

Section 343: Judges

Section 344: Courts

Production orders

Section 345: Production orders

Section 347: Order to grant entry

Section 350: Government departments

Section 351: Supplementary

Search and seizure warrants

Section 352: Search and seizure warrants

Section 353: Requirements where production order not available

Section 355: Further provisions: confiscation and money laundering

Section 356: Further provisions: civil recovery

Disclosure orders

Section 357: Disclosure orders

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 358: Requirements for making of disclosure order

Section 359: Offences

Section 360: Statements

Customer information orders

Section 363: Customer information orders

Section 364: Meaning of customer information

Section 366: Offences

Section 367: Statements

Account monitoring orders

Section 370: Account monitoring orders

Section 371: Requirements for making of account monitoring order

Section 372: Statements

Section 375: Supplementary

Evidence overseas

Section 376: Evidence overseas

Code of practice

Section 377: Code of practice

Interpretation

Section 378: Officers

Chapter 3: Scotland Production orders

Section 380: Production orders

Section 382: Order to grant entry

Section 385: Government departments

Search warrants

Section 387: Search warrants

Section 388: Requirements where production order is not available

Section 390: Further provisions: confiscation, civil recovery and money laundering

Disclosure orders

Section 391: Disclosure orders

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 392: Requirements for making of disclosure order

Section 393: Offences

Section 394: Statements

Customer information orders

Section 397: Customer information orders

Section 398: Meaning of customer information

Section 400: Offences

Section 401: Statements

Account monitoring orders

Section 404: Account monitoring orders

Section 405: Requirements for making of account monitoring order

Section 406: Statements

Section 408: Supplementary

General

Section 409: Jurisdiction of sheriff

Section 410: Code of practice

Section 411: Performance of functions of Scottish Ministers by constables in Scotland

Section 412: Interpretation

Chapter 4: General Interpretation

Section 413: Criminal conduct

PART 9: INSOLVENCY ETC.

Bankruptcy in England & Wales

Section 417: Modifications of the 1986 Act

Section 418: Restriction of powers

Section 419: Tainted gifts

Sequestration in Scotland

Section 420-422: Modifications of the 1985 Act; Restriction of powers; Tainted gifts

Bankruptcy in Northern Ireland

Sections 423-425: Modifications of the 1989 Order; Restriction of powers;
Tainted gifts

Winding up in England & Wales and Scotland

Section 426: Winding up under the 1986 Act

Section 427: Tainted gifts

Winding up in Northern Ireland

Section 428: Winding up under the 1989 Order

Section 429: Tainted gifts

Floating charges

Section 430: Floating charges

Limited liability partnerships

Section 431: Limited liability partnerships

Insolvency practitioners

Section 432: Insolvency practitioners

PART 10: INFORMATION

England and Wales and Northern Ireland

Section 435: Use of information by Director

Section 436: Disclosure of information to Director

Section 437: Further disclosure

Section 438: Disclosure of information by Director

Scotland

Section 439: Disclosure of information to Lord Advocate and to Scottish
Ministers

Section 440: Further disclosure

Section 441: Disclosure of information by Lord Advocate and by Scottish
Ministers

Overseas purposes

Section 442: Restriction on disclosure for overseas purposes

PART 11: CO-OPERATION

Section 443: Enforcement in different parts of the United Kingdom

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Section 444: External requests and orders

Section 445: External investigations

Section 447: Interpretation

PART 12: MISCELLANEOUS AND GENERAL

Miscellaneous

Section 448: Tax

Schedule 10: Tax

PART 1 – GENERAL

PART 2 – PROVISIONS RELATING TO PART 5

Sections 449 & 450: Agency staff: pseudonyms; Pseudonyms: Scotland

Section 451: Customs and Excise prosecutions

Section 452: Crown servants

Section 453: References to financial investigators

Schedule 11: Amendments

These notes refer to the Proceeds of Crime Act 2002 (c.29)

Parliamentary Commissioner Act 1967 (c.13)

Criminal Appeal Act 1968 (c.19)

Misuse of Drugs Act 1971 (c.38)

Rehabilitation of Offenders Act 1974 (c.53)

Criminal Appeal (Northern Ireland) Act 1980 (c.47)

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))

Civil Jurisdiction and Judgments Act 1982 (c. 27)

Civic Government (Scotland) Act 1982 (c.45)

Criminal Justice Act 1982 (c.48)

Police and Criminal Evidence Act 1984 (c.60)

Bankruptcy (Scotland) Act 1985 (c.66)

Insolvency Act 1986 (c. 45)

Criminal Justice Act 1988 (c.33)

Extradition Act 1989 (c.33)

Police & Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12))

Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (NI 19))

Criminal Justice (International Co-operation) Act 1990 (c. 5)

Criminal Justice and Public Order Act 1994 (c.31)

Drug Trafficking Act 1994 (c.37)

Proceeds of Crime (Scotland) Act 1995 (c.43)

Criminal Procedure (Scotland) Act 1995 (c.46)

Proceeds of Crime (Northern Ireland) Order 1996 (SI 1996/1299 (NI 9))

Crime (Sentences) Act 1997 (c. 43)

Access to Justice Act 1999 (c.22)

Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

Financial Services and Markets Act 2000 (c.8)

Terrorism Act 2000 (c.11)

Criminal Justice and Police Act 2001 (c.16)

Section 458: Commencement

These notes refer to the Proceeds of Crime Act 2002 (c.29)

General

Section 459: Orders and regulations

Section 461: Extent

COMMENCEMENT

HANSARD REFERENCES