

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Civil Recovery of the Proceeds etc. of Unlawful Conduct Chapter 4: General

Recoverable property

Insolvency

Section 311: Insolvency

437. This section sets out the interrelationship between civil recovery and insolvency proceedings. Broadly, a civil recovery claim will be treated in the same way that any other civil proprietary claim is treated in insolvency proceedings. This means that in most circumstances the enforcement authority will have to apply for leave from the court dealing with the insolvency proceedings to bring or continue civil recovery proceedings. This is provided for in the Insolvency Act 1986 (and its Northern Ireland and Scottish equivalents, the Insolvency (Northern Ireland) Order 1989 and the Bankruptcy (Scotland) Act 1985). However, under the insolvency legislation, leave does not have to be obtained in relation to all types of insolvency proceedings. ***Section 311*** therefore covers the insolvency proceedings that are not covered by the 1985 or 1986 Acts or the 1989 Order, so that the enforcement authority will have to apply for leave from the insolvency court in all circumstances.
438. The section also covers the interrelationship between cash forfeiture and insolvency proceedings. Under ***subsection (1)***, civil recovery proceedings may not be initiated or continued in respect of property which is subject to insolvency proceedings (as defined in ***subsection (3)***) without the leave of the court which is dealing with the insolvency. Under ***subsection (2)***, an application for the further detention of cash under the cash forfeiture provisions in Chapter 3, where the cash forms part of the insolvency proceedings listed in ***subsection (3)***, may not be made without the leave of the insolvency court. An application to the insolvency court may be made without notice, to prevent a potential civil recovery respondent finding out about the Director's intention to bring proceedings (***subsection (4)***); but notice must still be given where required to the insolvency practitioner or to the official receiver (***subsection (5)***).