



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 8

#### INVESTIGATIONS

### CHAPTER 3

#### SCOTLAND

*[<sup>F1</sup>Unexplained wealth orders: interim freezing of property*

#### Textual Amendments

- F1** Ss. 396J-396S inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 5, 58\(1\)\(6\)](#); [S.I. 2018/78](#), [reg. 3\(a\)](#)

#### **396J Application for interim freezing order**

- (1) This section applies where the Court of Session 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 396L).
- (4) An interim freezing order—
  - (a) may be made only on the application of the Scottish Ministers,

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- (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.

### **396K Variation and recall of interim freezing order**

- (1) The Court of Session may at any time vary or recall an interim freezing order.
- (2) The Court of Session must recall 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 396D(5) (notification of no further proceedings).
- (6) References in this section to the “applicable 48 hour period” are to be read as follows—
  - (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by the 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 396D(4) ends;
  - (b) in any other case, it is the period of 48 hours beginning with the day after the day on 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 other day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.
- (8) Section 396D(8) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements 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 recall 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.

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(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 120,
- (b) a prohibitory property order under section 255A, or
- (c) an interim administration order under section 256;

“response period” has the meaning given by section 396C(4).

### **396L 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) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Chapter.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.

### **396M Restrictions on proceedings and remedies**

- (1) While an interim freezing order has effect the Court of Session may sist any action, execution or other legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session 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) sist the proceedings, or
  - (b) allow them to continue on any terms it thinks fit.
- (3) 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.

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### **396N Arrestment of property affected by interim freezing order**

- (1) On the application of the Scottish Ministers the Court of Session may, in relation to moveable property to which an interim freezing order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.
- (2) An application under subsection (1) may be made at the same time as the application for the interim freezing order or at any time afterwards.
- (3) A warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5), the Scottish Ministers must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

### **396O Inhibition of property affected by interim freezing order**

- (1) On the application of the Scottish Ministers, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in an interim freezing order.
- (2) The property is heritable property situated in Scotland to which the interim freezing order applies (whether generally or to such of it as is specified in the application).
- (3) The warrant for inhibition—
  - (a) has effect as if granted on the dependence of an action for debt by the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly, and
  - (b) has the effect of letters of inhibition and must forthwith be registered by the Scottish Ministers in the register of inhibitions and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) An inhibition executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (6) If an inhibition ceases to have effect to any extent by virtue of subsection (5), the Scottish Ministers must—
  - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
  - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

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### **396P Receivers in connection with interim freezing orders**

- (1) This section applies where the Court of Session makes an interim freezing order on an application by the Scottish Ministers.
- (2) The Court of Session may, on an application by the Scottish Ministers, 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.
- (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 Scottish Ministers to obtain a recovery order in respect of the property.
- (5) In their application the Scottish Ministers must nominate a suitably qualified person for appointment as a receiver.
- (6) The person nominated may be a member of staff of the Scottish Ministers.
- (7) The Scottish Ministers may apply a sum received by them 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 Scottish Ministers (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the Scottish Ministers).

### **396Q Powers of receivers appointed under section 396P**

- (1) If the Court of Session appoints a receiver under section 396P, the court may act under this section on the application of the Scottish Ministers.
- (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 Scotland 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 Scotland specified by the receiver or to place them in the custody of the receiver.
- (5) In subsection (4) “document” means anything in which information of any description is recorded.

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- (6) 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.
- (7) Subsection (8) 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 396P, but
  - (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 his or her appointment.
- (8) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (9) But subsection (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

### **396R Supervision of section 396P receiver and variations**

- (1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a receiver appointed under section 396P—
  - (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) any person who may be interested in the application under subsection (1).
- (3) The court may at any time vary or recall—
  - (a) the appointment of a receiver under section 396P,
  - (b) an order under section 396Q, 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 396Q 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.

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### **396S Compensation**

- (1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.
- (2) The application must be made within the period of three months beginning with the recall 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 Scottish Ministers in applying 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 Scottish Ministers, 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.]

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