



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 5

#### CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

### CHAPTER 4

#### GENERAL

#### *Insolvency*

### 311 Insolvency

- (1) Proceedings for a recovery order may not be taken or continued in respect of property to which subsection (3) 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) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 295 unless the appropriate court gives leave.
- [<sup>F1</sup>(2A) An application for an order for the further detention of any property to which subsection (3) applies may not be made under section 303L unless the appropriate court gives leave.
- (2B) An application for the making of an account freezing order under section 303Z3 in respect of an account in which is held money to which subsection (3) applies, or an application under section 303Z4 for the extension of the period specified in such an order, may not be made unless the appropriate court gives leave.]
- (3) This subsection 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,

*Status: Point in time view as at 16/04/2018.*

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- (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 [<sup>F2</sup>section 286 of the 1986 Act, Article 259 of the 1989 Order or section 54 of the 2016 Act] (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 [<sup>F3</sup>made] 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 [<sup>F4</sup>2016] Act.
- (4) An application under this section, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings for a recovery order [<sup>F5</sup>, or to apply for an account freezing order under section 303Z3,] may be made without notice to any person.
- (5) Subsection (4) 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).
- (6) 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 subsections (1) to (3) above.
- (7) In this section—
- <sup>F6</sup>(a) .....
  - (b) the 1986 Act means the Insolvency Act 1986 (c. 45),
  - (c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
  - [<sup>F7</sup>(d) the 2016 Act means the Bankruptcy (Scotland) Act 2016]
- and in subsection (8) “the applicable enactment” means whichever enactment mentioned in paragraphs [<sup>F8</sup>(b) to (d)] is relevant to the resolution, arrangement, order or trust deed mentioned in subsection (3).
- (8) In this section—
- (a) an asset means any property within the meaning of the applicable enactment or, where the [<sup>F9</sup>2016 Act is the applicable enactment, any property comprised in an estate to which that] Act applies,
  - (b) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in subsection (3), 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 section 433,
  - (d) other expressions used in this section and in the applicable enactment have the same meaning as in that enactment.

#### Textual Amendments

- F1** [S. 311\(2A\)\(2B\)](#) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by [Criminal Finances Act 2017](#) (c. 22), s. 58(5)(6), [Sch. 5 para. 34\(2\)](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

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- F2** Words in s. 311(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(a)(i)**
- F3** Word in s. 311(3)(d) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**
- F4** Word in s. 311(3)(f) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(a)(ii)**
- F5** Words in s. 311(4) inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), s. 58(5)(6), **Sch. 5 para. 34(3)**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F6** S. 311(7)(a) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(i)**
- F7** S. 311(7)(d) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(ii)**
- F8** Words in s. 311(7) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(b)(iii)**
- F9** Words in s. 311(8)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(6)(c)**

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