



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 5

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

### CHAPTER 4

#### GENERAL

#### *Recoverable property*

#### **304 Property obtained through unlawful conduct**

- (1) Property obtained through unlawful conduct is recoverable property.
- (2) But if property obtained through unlawful conduct 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.
- (3) Recoverable property obtained through unlawful conduct 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 subsection) be followed.

#### **305 Tracing property, etc.**

- (1) Where property obtained through unlawful conduct (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.
- (2) 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

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(b) he obtains other property in place of it,  
the other property represents the original property.

(3) 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).

### **306 Mixing property**

(1) Subsection (2) applies if a person's recoverable property is mixed with other property (whether his property or another's).

(2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(3) 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.

### **307 Recoverable property: accruing profits**

(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct.

### **308 General exceptions**

(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 the defendant's unlawful conduct, and
- (c) apart from this subsection, 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".

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- (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 (S.I. 1994/2795 (N.I. 15)), section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and
  - (b) apart from this subsection, 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 (c. 16 (N.I.)) 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 subsection, 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 (c. 8) (restitution orders), an amount is paid to or distributed among any persons in accordance with the court's directions, and
  - (b) apart from this subsection, 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 require restitution), an amount is paid to or distributed among any persons, and
  - (b) apart from this subsection, 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, or
  - (b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g).
- (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, or
  - (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g),
- and, in relation to an order mentioned in 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.

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(10) Where—

- (a) a person enters into a transaction to which section 305(2) applies, and
- (b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 305(2)) of any property obtained on the transaction in place of the property disposed of.

### **309 Other exemptions**

- (1) An order may provide that property is not recoverable or (as the case may be) associated property if—
  - (a) it is prescribed property, or
  - (b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.
- (2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 278 as if it had been disposed of in pursuance of a recovery order.
- (3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.
- (4) In this section, an order means an order made by the Secretary of State after consultation with the Scottish Ministers, and prescribed means prescribed by the order.

### **310 Granting interests**

- (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 obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct,
  - (b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

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