

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

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

Proceedings for recovery orders

Interim administration orders (Scotland)

Section 256: Application for interim administration order

327. *Sections 256 to 265* make provision for ‘interim administration orders’ in Scotland; interim administration procedure may – but need not always – form the preliminary stage of civil recovery procedure.

328. An ‘interim administration order’ is, as *subsection (2)* explains, a court order for:

- the detention, custody or preservation of property which is claimed to be recoverable property or associated property, and
- the appointment of an interim administrator in respect of that property.

Its characteristics are spelled out more fully at *sections 257 to 265*, though *subsection (8)* these sections do not limit the extent of the power to make the order.

329. Under *subsection (1)*, the first step in the procedure is for the Scottish Ministers to make an application to the Court of Session for an interim administration order. The Scottish Ministers may do this even though they have not yet served the application which marks the start of court proceedings. And they may do so without putting any interested party on notice that they are doing so if giving notice would prejudice the Scottish Ministers’ right to recover the property (*subsection (3)*). It may be necessary to act swiftly and without alerting potential parties, for example, to prevent property from being concealed or disposed of.

330. *Subsections (5) and (6)* set out the conditions which must be satisfied before the court can make an interim administration order. The Scottish Ministers must satisfy the court that:

- there is a ‘probable cause of action’, that the property in question is either recoverable or associated property, and
- if the property in relation to which the order is sought includes associated property, the Scottish Ministers have taken all reasonable steps to establish the identities of everyone who holds the property (if the order is made or the proceedings otherwise go ahead, the Scottish Ministers will have to put these persons immediately on notice of the action under *section 244(2)*).

*These notes refer to the Proceeds of Crime Act 2002
(c.29) which received Royal Assent on 24 July 2002*

331. The Scottish Ministers must also, under *subsection (7)*, nominate someone suitable to act as interim administrator, but the nominee may not be a member of staff of the Scottish administration. The interim administrator on appointment becomes an officer of the court and his functions (set out in *section 257*) require him to act to secure the detention, custody or preservation of the property pending resolution of its fate.