



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.

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.
- (3) This subsection applies to recoverable property, or property associated with it, if—

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- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
 - (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 section 2 of the 1985 Act, section 286 of the 1986 Act or Article 259 of the 1989 Order (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 adjudged 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 1985 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 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—
- (a) the 1985 Act means the Bankruptcy (Scotland) Act 1985 (c. 66),
 - (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)),
- and in subsection (8) “the applicable enactment” means whichever enactment mentioned in paragraphs (a) to (c) 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 1985 Act is the applicable enactment, any property comprised in an estate to which the 1985 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.

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Delegation of enforcement functions

312 Performance of functions of Scottish Ministers by constables in Scotland

- (1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.
- (2) The specified functions are the functions conferred on the Scottish Ministers by—
 - (a) sections 244(1) and (2) and 256(1) and (7) (proceedings in the Court of Session),
 - (b) section 267(2) (trustee for civil recovery),
 - (c) sections 271(3) and (4) and 272(5) (agreements about associated and joint property),
 - (d) section 275(3) (pension schemes),
 - (e) section 282(1) (exemptions),
 - (f) section 283(5) and (8) (compensation),
 - (g) section 287(2) (financial threshold),
 - (h) section 293(1) (code of practice),
 - (i) section 298(1) (forfeiture),
 - (j) section 303(1) (minimum amount).

Commencement Information

- II** S. 312 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

313 Restriction on performance of Director’s functions by police

- (1) In spite of section 1(6), nothing which the Director is authorised or required to do for the purposes of this Part may be done by—
 - (a) a member of a police force,
 - (b) a member of the Police Service of Northern Ireland,
 - (c) a person appointed as a police member of the National Criminal Intelligence Service under section 9(1)(b) of the Police Act 1997 (c. 50),
 - (d) a person appointed as a police member of the National Crime Squad under section 55(1)(b) of that Act.
- (2) In this section—
 - (a) “member of a police force” has the same meaning as in the Police Act 1996 (c. 16) and includes a person who would be a member of a police force but for section 97(3) of that Act (police officers engaged on service outside their force),
 - (b) “member of the Police Service of Northern Ireland” includes a person who would be a member of the Police Service of Northern Ireland but for section 27(3) of the Police (Northern Ireland) Act 1998 (c. 32) (members of that service engaged on other police service).

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Commencement Information

- I2** S. 313 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

Interpretation

314 Obtaining and disposing of property

- (1) References to a person disposing of his property include a reference—
- (a) to his disposing of a part of it, or
 - (b) to his granting an interest in it,
- (or to both); and references to the property disposed of are to any property obtained on the disposal.
- (2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.
- (3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.
- (4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

315 Northern Ireland courts

In relation to the practice and procedure of courts in Northern Ireland, expressions used in this Part are to be read in accordance with rules of court.

316 General interpretation

- (1) In this Part—
- “associated property” has the meaning given by section 245,
 - “cash” has the meaning given by section 289(6) or (7),
 - “constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32),
 - “country” includes territory,
 - “the court” (except in sections 253(2) and (3) and 262(2) and (3) and Chapter 3) means the High Court or (in relation to proceedings in Scotland) the Court of Session,
 - “dealing” with property includes disposing of it, taking possession of it or removing it from the United Kingdom,
 - “enforcement authority”—
 - (a) in relation to England and Wales and Northern Ireland, means the Director,
 - (b) in relation to Scotland, means the Scottish Ministers,
 - “excepted joint owner” has the meaning given by section 270(4),
 - “interest”, in relation to land—

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- (a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,
 - (b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,
 - “interest”, in relation to property other than land, includes any right (including a right to possession of the property),
 - “interim administration order” has the meaning given by section 256(2),
 - “interim receiving order” has the meaning given by section 246(2),
 - “the minimum amount” (in Chapter 3) has the meaning given by section 303,
 - “part”, in relation to property, includes a portion,
 - “premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60),
 - [^{F1}“prohibitory property order” has the meaning given by section 255A(2);
 - “property freezing order” has the meaning given by section 245A(2);]
 - “property obtained through unlawful conduct” has the meaning given by section 242,
 - “recoverable property” is to be read in accordance with sections 304 to 310,
 - “recovery order” means an order made under section 266,
 - “respondent” means—
 - (a) where proceedings are brought by the enforcement authority by virtue of Chapter 2, the person against whom the proceedings are brought,
 - (b) where no such proceedings have been brought but the enforcement authority has applied for [^{F2}a property freezing order, an interim receiving order, a prohibitory property order or an] interim administration order, the person against whom he intends to bring such proceedings,
 - “share”, in relation to an excepted joint owner, has the meaning given by section 270(4),
 - “unlawful conduct” has the meaning given by section 241,
 - “value” means market value.
- (2) The following provisions apply for the purposes of this Part.
- (3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.
- (4) Property is all property wherever situated and includes—
- (a) money,
 - (b) all forms of property, real or personal, heritable or moveable,
 - (c) things in action and other intangible or incorporeal property.
- (5) Any reference to a person’s property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (6) In relation to land, it is a reference to any interest which he holds in the land.
- (7) In relation to property other than land, it is a reference—
- (a) to the property (if it belongs to him), or
 - (b) to any other interest which he holds in the property.

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- (8) References to the satisfaction of the enforcement authority's right to recover property obtained through unlawful conduct are to be read in accordance with section 279.
- (9) Proceedings against any person for an offence are concluded when—
- (a) the person is convicted or acquitted,
 - (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or
 - (c) the jury is discharged without a finding.

Textual Amendments

- F1** Words in s. 316(1) inserted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 22\(2\)](#); S.I. 2005/3136, art. 3(c)
- F2** Words in s. 316(1) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 22\(3\)](#); S.I. 2005/3136, art. 3(c)

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