

Proceeds of Crime Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 31 – EN

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Blunkett has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Proceeds of Crime Bill are compatible with the Convention rights.

Proceeds of Crime Bill

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A
B I L L

TO

Establish the Assets Recovery Agency and make provision about the appointment of its Director and his functions (including Revenue functions), to provide for confiscation orders in relation to persons who benefit from criminal conduct and for restraint orders to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering, to make provision about investigations relating to benefit from criminal conduct or to property which is or represents property obtained through unlawful conduct or to money laundering, to make provision to give effect to overseas requests and orders made where property is found or believed to be obtained through criminal conduct, and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ASSETS RECOVERY AGENCY

1 The Agency and its Director

- (1) There shall be an Assets Recovery Agency (referred to in this Act as the Agency). 5
- (2) The Secretary of State must appoint a Director of the Agency (referred to in this Act as the Director).
- (3) The Director is a corporation sole.
- (4) The Director may —
 - (a) appoint such persons as members of staff of the Agency, and 10
 - (b) make such arrangements for the provision of services,as he considers appropriate for or in connection with the exercise of his functions.

- (5) Anything which the Director is authorised or required to do may be done by –
 - (a) a member of staff of the Agency, or
 - (b) a person providing services under arrangements made by the Director, if authorised by the Director (generally or specifically) for that purpose.
- (6) Schedule 1 contains further provisions about the Agency and the Director. 5

2 Director's functions: general

- (1) The Director must exercise his functions in the way which he considers is best calculated to contribute to the reduction of crime.
- (2) In exercising his functions as required by subsection (1) the Director must –
 - (a) act efficiently and effectively; 10
 - (b) have regard to his current annual plan (as approved by the Secretary of State in accordance with Schedule 1).
- (3) The Director may do anything (including the carrying out of investigations) which he considers is –
 - (a) appropriate for facilitating, or 15
 - (b) incidental or conducive to, the exercise of his functions.
- (4) But subsection (3) does not allow the Director to borrow money.
- (5) In considering under subsection (1) the way which is best calculated to contribute to the reduction of crime the Director must have regard to any guidance given to him by the Secretary of State. 20

3 Accreditation and training

- (1) The Director must establish a system for the accreditation of financial investigators.
- (2) A person who is accredited as a financial investigator in accordance with the system is referred to in this Act as an accredited financial investigator. 25
- (3) The system of accreditation must include provision for –
 - (a) the monitoring of the performance of accredited financial investigators, and
 - (b) the withdrawal of accreditation from any person who contravenes or fails to comply with any condition subject to which he was accredited. 30
- (4) *The Director may charge a person –*
 - (a) *for being accredited as a financial investigator, and*
 - (b) *for the monitoring of his performance as an accredited financial investigator.*
- (5) The Director must make provision for the training of persons in –
 - (a) financial investigation, and
 - (b) the operation of this Act. 35
- (6) *The Director may charge the persons who receive the training.*

4 Co-operation

- (1) Persons who have functions – 40

- (a) relating to the investigation or prosecution of offences, or
 - (b) otherwise relating to crime,must co-operate with the Director in the exercise of his functions.
- (2) The Director must co-operate with those persons in the exercise of functions they have under this Act. 5

5 Advice and assistance

The Director must give the Secretary of State advice and assistance which he reasonably requires and which –

- (a) relate to matters connected with the operation of this Act, and
- (b) are designed to help the Secretary of State to exercise his functions so as to reduce crime. 10

PART 2

CONFISCATION: ENGLAND AND WALES

Confiscation orders

- ## 6 Making of order 15
- (1) The Crown Court must proceed under this section if the following two conditions are satisfied.
 - (2) The first condition is that a defendant falls within any of the following paragraphs –
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court; 20
 - (b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 4 or 6 of the Sentencing Act;
 - (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered). 25
 - (3) The second condition is that –
 - (a) the prosecutor or the Director asks the court to proceed under this section, or
 - (b) the court believes it is appropriate for it to do so. 30
 - (4) The court must proceed as follows –
 - (a) it must decide whether the defendant has a criminal lifestyle;
 - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
 - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct. 35
 - (5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must –
 - (a) decide the recoverable amount, and
 - (b) make an order (a confiscation order) requiring him to pay that amount. 40

- (6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.
- (7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities. 5
- (8) The first condition is not satisfied if the defendant absconds (but section 28 may apply).
- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2). 10

7 Time for making order

A confiscation order must be made before the court sentences the defendant for the offence (or any of the offences) concerned.

8 Recoverable amount

- (1) The recoverable amount for the purposes of section 6 is an amount equal to the defendant's benefit from the conduct concerned. 15
- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is –
 - (a) the available amount, or
 - (b) a nominal amount, if the available amount is nil. 20
- (3) But if section 6(6) applies the recoverable amount is such amount as –
 - (a) the court believes is just, but
 - (b) does not exceed the amount found under subsection (1) or (2) (as the case may be).
- (4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which –
 - (a) a recovery order is in force under section 267, or
 - (b) a forfeiture order is in force under section 297(2),
 must be ignored. 25
- (5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount. 30

9 Defendant's benefit

- (1) If the court is proceeding under section 6 this section applies for the purpose of –
 - (a) deciding whether the defendant has benefited from conduct, and
 - (b) deciding his benefit from the conduct. 35
- (2) The court must –
 - (a) take account of conduct occurring up to the time it makes its decision;
 - (b) take account of property obtained up to that time. 40

- (3) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
 - (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
 - (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (4). 5
- (4) These are the provisions—
 - (a) the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41); 10
 - (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
 - (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
 - (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43); 15
 - (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
 - (h) Part 3 or 4 of this Act.

10 Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
 - (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and
 - (b) the total of the values (at that time) of all tainted gifts. 25
- (2) An obligation has priority if it is an obligation of the defendant—
 - (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
 - (b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date. 30
- (3) "Preferential debts" has the meaning given by section 386 of the Insolvency Act 1986 (c. 45).

11 Assumptions to be made in case of criminal lifestyle 35

- (1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—
 - (a) deciding whether he has benefited from his general criminal conduct, and
 - (b) deciding his benefit from the conduct. 40
- (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.

- (3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him –
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct. 5
- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it. 10
- (6) But the court must not make a required assumption in relation to particular property or expenditure if –
 - (a) the assumption is shown to be incorrect, or
 - (b) there would be a serious risk of injustice if the assumption were made.
- (7) If the court does not make one or more of the required assumptions it must state its reasons. 15
- (8) The relevant day is the first day of the period of six years ending with –
 - (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days. 20
- (9) The date of conviction is –
 - (a) the date on which the defendant was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest. 25

12 Time for payment

- (1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section. 30
- (2) If the defendant shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.
- (3) The specified period –
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed six months. 35
- (4) If within the specified period the defendant applies to the Crown Court for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period.
- (5) The extended period –
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed 12 months. 40

13 Interest on unpaid sums

- (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid.
- (2) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts). 5
- (3) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

14 Effect of order on court's other powers

- (1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned. 10
- (2) The court must take account of the confiscation order before –
 - (a) it imposes a fine on the defendant, or
 - (b) it makes an order falling within subsection (3).
- (3) These orders fall within this subsection – 15
 - (a) an order involving payment by the defendant, other than an order under section 130 of the Sentencing Act (compensation orders);
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under section 143 of the Sentencing Act (deprivation orders); 20
 - (d) an order under section 23 of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.
- (5) Subsection (6) applies if – 25
 - (a) the Crown Court makes both a confiscation order and an order for the payment of compensation under section 130 of the Sentencing Act against the same person in the same proceedings, and
 - (b) the court believes he will not have sufficient means to satisfy both the orders in full. 30
- (6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.
- (7) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it believes is appropriate in respect of an offence. 35

Procedural matters

15 Postponement

- (1) The court may postpone proceedings under section 6 for a specified period; and a period of postponement may be extended. 40

- (2) A period of postponement (including one as extended) must not end after the permitted period ends.
- (3) But subsection (2) does not apply if there are exceptional circumstances.
- (4) The permitted period is the period of two years starting with the date of conviction. 5
- (5) But if –
 - (a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and
 - (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (4),the permitted period is that period of three months. 10
- (6) A postponement or extension may be made –
 - (a) on application by the defendant;
 - (b) on application by the prosecutor or the Director (as the case may be);
 - (c) by the court of its own motion.15
- (7) If –
 - (a) proceedings are postponed for a period, and
 - (b) an application to extend the period is made before it ends,the application may be granted even after the period ends. 20
- (8) The date of conviction is –
 - (a) the date on which the defendant was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.25
- (9) References to appealing include references to applying under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case).

16 Effect of postponement

- (1) If the court postpones proceedings under section 6 it may proceed to sentence the defendant for the offence (or any of the offences) concerned. 30
- (2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not –
 - (a) impose a fine on him,
 - (b) make an order falling within section 14(3), or
 - (c) make an order for the payment of compensation under section 130 of the Sentencing Act.35
- (3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by –
 - (a) imposing a fine on him,
 - (b) making an order falling within section 14(3), or
 - (c) making an order for the payment of compensation under section 130 of the Sentencing Act.40

- (4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.
- (5) For the purposes of –
 - (a) section 18(2) of the Criminal Appeal Act 1968 (c. 19) (time limit for notice of appeal or of application for leave to appeal), and 5
 - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (c. 33) (time limit for notice of application for leave to refer a case under section 36 of that Act),the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3). 10
- (6) If the court proceeds to sentence the defendant under subsection (1) –
 - (a) section 6 has effect as if the defendant’s particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 15
 - (b) section 7 must be ignored.
- (7) The postponement period is the period for which proceedings under section 6 are postponed.

17 Statement of information

- (1) If the court is proceeding under section 6 in a case where section 6(3)(a) applies, the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders. 20
- (2) If the court is proceeding under section 6 in a case where section 6(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders. 25
- (3) If the prosecutor or the Director (as the case may be) believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues –
 - (a) whether the defendant has a criminal lifestyle; 30
 - (b) whether he has benefited from his general criminal conduct;
 - (c) his benefit from the conduct.
- (4) A statement under subsection (3) –
 - (a) must include information the prosecutor or Director believes is relevant in connection with applying the assumptions in section 11; 35
 - (b) must, if the prosecutor or Director believes there would be a serious risk of injustice if a required assumption were made, include information he believes is relevant in connection with deciding whether it should not be made.
- (5) If the prosecutor or the Director (as the case may be) does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues –
 - (a) whether the defendant has benefited from his particular criminal conduct; 40
 - (b) his benefit from the conduct. 45

- (6) If the prosecutor or the Director gives the court a statement of information –
 - (a) he may at any time give the court a further statement of information;
 - (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders.
- (7) If the court makes an order under this section it may at any time vary it by making another one. 5

18 Defendant’s response to statement of information

- (1) If the prosecutor or the Director gives the court a statement of information and a copy is served on the defendant, the court may order the defendant –
 - (a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and 10
 - (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.
- (2) If the defendant accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 17(3) or (5) (as the case may be). 15
- (3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from –
 - (a) any allegation in respect of which he has complied with the requirement;
 - (b) any allegation that he has benefited from his general or particular criminal conduct.20
- (4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court. 25
- (5) If the court makes an order under this section it may at any time vary it by making another one.
- (6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence. 30

19 Provision of information by defendant

- (1) This section applies if –
 - (a) the court is proceeding under section 6 in a case where section 6(3)(a) applies, or
 - (b) it is proceeding under section 6 in a case where section 6(3)(b) applies or it is considering whether to proceed. 35
- (2) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date. 40
- (4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

- (5) If the prosecutor or the Director (as the case may be) accepts to any extent an allegation made by the defendant—
 - (a) in giving information required by an order under this section, or
 - (b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 10,
 the court may treat the acceptance as conclusive of the matters to which it relates. 5
- (6) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (7) If the court makes an order under this section it may at any time vary it by making another one. 10

Reconsideration

20 No order made: reconsideration of case

- (1) This section applies if—
 - (a) the first condition in section 6 is satisfied but no court has proceeded under that section, 15
 - (b) there is evidence which was not available to the prosecutor on the relevant date,
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and 20
 - (d) after considering the evidence the court believes it is appropriate for it to proceed under section 6.
- (2) If this section applies the court must proceed under section 6, and when it does so subsections (3) to (8) below apply. 25
- (3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—
 - (a) section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 30
 - (b) section 7 must be ignored.
- (4) Section 9(2) does not apply, and the rules applying instead are that the court must—
 - (a) take account of conduct occurring before the relevant date; 35
 - (b) take account of property obtained before that date;
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (5) In section 11—
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date; 40
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date. 45

- (6) The recoverable amount for the purposes of section 6 is such amount as –
- (a) the court believes is just, but
 - (b) does not exceed the amount found under section 8.
- (7) In arriving at the just amount the court must have regard in particular to –
- (a) the amount found under section 8; 5
 - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
 - (c) any order which falls within section 14(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 10; 10
 - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).
- (8) If an order for the payment of compensation under section 130 of the Sentencing Act has been made against the defendant in respect of the offence or offences concerned, section 14(5) and (6) above do not apply. 15
- (9) The relevant date is –
- (a) if the court made a decision not to proceed under section 6, the date of the decision; 20
 - (b) if the court did not make such a decision, the date of conviction.
- (10) The date of conviction is –
- (a) the date on which the defendant was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest. 25

21 No order made: reconsideration of benefit

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that in proceeding under section 6 the court has decided that –
- (a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or
 - (b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct.
- (3) If the court proceeded under section 6 because the Director asked it to, the second condition is that –
- (a) the Director has evidence which was not available to him when the court decided that the defendant had not benefited from his general or particular criminal conduct,
 - (b) before the end of the period of six years starting with the date of conviction the Director applies to the Crown Court to consider the evidence, and 40
 - (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it. 45

- (4) If the court proceeded under section 6 because the prosecutor asked it to or because it believed it was appropriate for it to do so, the second condition is that—
 - (a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct, 5
 - (b) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and
 - (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it. 10
- (5) If this section applies the court—
 - (a) must make a fresh decision under section 6(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be); 15
 - (b) may make a confiscation order under that section.
- (6) Subsections (7) to (12) below apply if the court proceeds under section 6 in pursuance of this section. 20
- (7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—
 - (a) section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 25
 - (b) section 7 must be ignored.
- (8) Section 9(2) does not apply, and the rules applying instead are that the court must—
 - (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct; 30
 - (b) take account of property obtained before that date;
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date. 35
- (9) In section 11—
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct; 40
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (10) The recoverable amount for the purposes of section 6 is such amount as—
 - (a) the court believes is just, but 45
 - (b) does not exceed the amount found under section 8.
- (11) In arriving at the just amount the court must have regard in particular to—

-
- (a) the amount found under section 8;
 - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
 - (c) any order which falls within section 14(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 10; 5
 - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders). 10
 - (12) If an order for the payment of compensation under section 130 of the Sentencing Act has been made against the defendant in respect of the offence or offences concerned, section 14(5) and (6) above do not apply.
 - (13) The date of conviction is the date found by applying section 20(10).
- 22 Order made: reconsideration of benefit** 15
- (1) This section applies if –
 - (a) a court has made a confiscation order,
 - (b) the prosecutor or the Director believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the amount found as his benefit for the purposes of the order, 20
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence on which his belief is based, and
 - (d) after considering the evidence the court believes it is appropriate for it to proceed under this section. 25
 - (2) The court must make a new calculation of the defendant’s benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply.
 - (3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned. 30
 - (4) Section 9(2) does not apply, and the rules applying instead are that the court must –
 - (a) take account of conduct occurring up to the time it decided the defendant’s benefit for the purposes of the confiscation order; 35
 - (b) take account of property obtained up to that time;
 - (c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
 - (5) In applying section 9(3) the confiscation order must be ignored.
 - (6) In section 11 – 40
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order;
 - (b) the third assumption does not apply with regard to expenditure incurred by him after that time; 45

- (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.
- (7) If the amount found under the new calculation of the defendant's benefit exceeds the amount found as his benefit for the purposes of the confiscation order the court— 5
 - (a) must make a new calculation of the recoverable amount for the purposes of section 6, and
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just. 10
- (8) In applying subsection (7)(a) the court must— 15
 - (a) take the new calculation of the defendant's benefit;
 - (b) apply section 10 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
- (9) In applying subsection (7)(b) the court must have regard in particular to— 20
 - (a) any fine imposed on the defendant for the offence (or any of the offences) concerned;
 - (b) any order which falls within section 14(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 10; 25
 - (c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).
- (10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) if a court has made a direction under section 14(6).
- (11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money. 30
- (12) The date of conviction is the date found by applying section 20(10).

23 Order made: reconsideration of available amount

- (1) This section applies if— 35
 - (a) a court has made a confiscation order,
 - (b) the amount required to be paid was the amount found under section 8(2), and
 - (c) an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.
- (2) These applicants fall within this subsection— 40
 - (a) the prosecutor;
 - (b) the Director;
 - (c) a receiver appointed under section 50 or 52.
- (3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 10 as if references to the time the 45

confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.	
(4) If the amount found under the new calculation exceeds the amount found as the available amount for the purposes of the confiscation order the court may vary the order by substituting for the amount required to be paid such amount as –	5
(a) it believes is just, but	
(b) does not exceed the amount found (when the confiscation order was made) as the defendant’s benefit from the conduct concerned.	10
(5) In deciding what is just the court must have regard in particular to –	
(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;	
(b) any order which falls within section 14(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 10;	15
(c) any order which has been made against him in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders).	20
(6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) if a court has made a direction under section 14(6).	
(7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.	
24 Inadequacy of available amount: variation of order	25
(1) This section applies if –	
(a) a court has made a confiscation order, and	
(b) the defendant, or a receiver appointed under section 50 or 52, applies to the Crown Court to vary the order under this section.	
(2) In such a case the court must calculate the available amount, and in doing so it must apply section 10 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.	30
(3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.	35
(4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.	40
(5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.	45

- (6) In subsection (4) “company” means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

25 Inadequacy of available amount: discharge of order

- (1) This section applies if – 5
- (a) a court has made a confiscation order,
 - (b) a justices’ chief executive applies to the Crown Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is less than £1,000.
- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 10 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation. 10
- (3) If the court – 15
- (a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and
 - (b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,
- it may discharge the confiscation order.
- (4) The specified reasons are – 20
- (a) in a case where any of the realisable property is situated in England and Wales and consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;
 - (b) any reason specified by the Secretary of State by order.
- (5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c). 25

26 Small amount outstanding: discharge of order

- (1) This section applies if – 30
- (a) a court has made a confiscation order,
 - (b) a justices’ chief executive applies to the Crown Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is £50 or less.
- (2) In such a case the court may discharge the order.
- (3) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c). 35

27 Information

- (1) This section applies if – 40
- (a) the court proceeds under section 6 in pursuance of section 20 or 21, or
 - (b) the prosecutor or the Director applies under section 22.
- (2) In such a case –
- (a) the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders;

- (b) section 17 applies accordingly (with appropriate modifications where the prosecutor or the Director applies under section 22);
- (c) section 18 applies accordingly;
- (d) section 19 applies as it applies in the circumstances mentioned in section 19(1).

5

Defendant absconds

28 Defendant convicted or committed

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that a defendant absconds after –
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court, 10
 - (b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 4 or 6 of the Sentencing Act, or
 - (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered). 15
- (3) The second condition is that –
 - (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so. 20
- (4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).
- (5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications – 25
 - (a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;
 - (b) the court must not make an order under section 6 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant; 30
 - (c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 11, 17(4), 18 and 19 must be ignored;
 - (e) sections 20, 21 and 22 must be ignored while the defendant is still an absconder. 35
- (6) Once the defendant ceases to be an absconder section 20 has effect as if subsection (1)(a) read –
 - “(a) at a time when the first condition in section 28 was satisfied the court did not proceed under section 6,”. 40
- (7) If the court does not believe it is appropriate for it to proceed under this section, once the defendant ceases to be an absconder section 20 has effect as if subsection (1)(b) read –
 - “(b) there is evidence which was not available to the prosecutor or the Director on the relevant date,”. 45

29 Defendant neither convicted nor acquitted

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that –
 - (a) proceedings for an offence or offences are started against a defendant but are not concluded, 5
 - (b) he absconds, and
 - (c) the period of two years (starting with the day the court believes he absconded) has ended.
- (3) The second condition is that –
 - (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and 10
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 6 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5). 15
- (5) If the court proceeds under section 6 as applied by this section, this Part has effect with these modifications –
 - (a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations; 20
 - (b) the court must not make an order under section 6 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
 - (c) section 6(9) applies as if the reference to subsection (2) were to subsection (2) of this section; 25
 - (d) sections 11, 17(4) and 18 to 21 must be ignored;
 - (e) section 22 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 22 has effect as if references to the date of conviction were to –
 - (a) the day when proceedings for the offence concerned were started against the defendant, or 30
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (7) If –
 - (a) the court makes an order under section 6 as applied by this section, and 35
 - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,section 6 does not apply so far as that conviction is concerned.

30 Variation of order

- (1) This section applies if – 40
 - (a) the court makes a confiscation order under section 6 as applied by section 29,
 - (b) the defendant ceases to be an absconder,

- (c) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and
 - (d) before the end of the period of six years starting with the date on which the order was made he applies to the Crown Court to consider the evidence on which his belief is based. 5
- (2) If (after considering the evidence) the court concludes that the defendant's belief is well founded –
 - (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and 10
 - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

31 Discharge of order

- (1) Subsection (2) applies if – 15
 - (a) the court makes a confiscation order under section 6 as applied by section 29,
 - (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and
 - (c) he applies to the Crown Court to discharge the order. 20
- (2) In such a case the court must discharge the order.
- (3) Subsection (4) applies if –
 - (a) the court makes a confiscation order under section 6 as applied by section 29,
 - (b) the defendant ceases to be an absconder, 25
 - (c) subsection (1)(b) does not apply, and
 - (d) he applies to the Crown Court to discharge the order.
- (4) In such a case the court may discharge the order if it finds that –
 - (a) there has been undue delay in continuing the proceedings mentioned in section 29(2), or 30
 - (b) the prosecutor does not intend to proceed with the prosecution.
- (5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

Appeals

- 32 Appeal by prosecutor or Director** 35
- (1) If the Crown Court makes a confiscation order the prosecutor or the Director may appeal to the Court of Appeal in respect of the order.
- (2) If the Crown Court decides not to make a confiscation order the prosecutor or the Director may appeal to the Court of Appeal against the decision.
- (3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 20, 21, 28 or 29. 40

33 Court’s powers on appeal

- (1) On an appeal under section 32(1) the Court of Appeal may confirm, quash or vary the confiscation order.
- (2) On an appeal under section 32(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may – 5
 - (a) itself proceed under section 6 (ignoring subsections (1) to (3)), or
 - (b) direct the Crown Court to proceed afresh under section 6.
- (3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.
- (4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must – 10
 - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
 - (b) have regard to any order which falls within section 14(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 10. 15
- (5) If the Court of Appeal proceeds under section 6 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply. 20
- (6) If a court has already sentenced the defendant for the offence (or any of the offences) concerned –
 - (a) section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 25
 - (b) section 7 must be ignored.
- (7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) – 30
 - (a) the court must have regard to it, and
 - (b) section 14(5) and (6) above do not apply.
- (8) Section 9(2) does not apply, and the rules applying instead are that the court must – 35
 - (a) take account of conduct occurring before the relevant date;
 - (b) take account of property obtained before that date;
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) In section 11 – 40
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date. 45

- (10) Section 27 applies as it applies in the circumstances mentioned in subsection (1) of that section.
- (11) If the Court of Appeal –
 - (a) makes a confiscation order, and
 - (b) appoints the Director as the enforcement authority for the order under section 35,it must direct the Crown Court to proceed under section 52.
- (12) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

34 Appeal to House of Lords 10

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 32.
- (2) An appeal under this section lies at the instance of –
 - (a) the defendant or the prosecutor (if the prosecutor appealed under section 32);
 - (b) the defendant or the Director (if the Director appealed under section 32).15
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the House of Lords may confirm, quash or vary the order.
- (4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the House of Lords may –
 - (a) confirm the decision, or
 - (b) direct the Crown Court to proceed afresh under section 6 if it believes the decision was wrong.20
25
- (5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the House of Lords may make.
- (6) If a court varies a confiscation order under this section or makes a confiscation order in pursuance of a direction under this section it must –
 - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
 - (b) have regard to any order which falls within section 14(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 10.30
35
- (7) If the Crown Court proceeds afresh under section 6 in pursuance of a direction under this section subsections (8) to (12) apply.
- (8) If a court has already sentenced the defendant for the offence (or any of the offences) concerned –
 - (a) section 6 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned;
 - (b) section 7 must be ignored.40
45

- (9) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under section 130 of the Sentencing Act (compensation orders) –
 - (a) the Crown Court must have regard to it, and
 - (b) section 14(5) and (6) above do not apply. 5
- (10) Section 9(2) does not apply, and the rules applying instead are that the Crown Court must –
 - (a) take account of conduct occurring before the relevant date;
 - (b) take account of property obtained before that date;
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date. 10
- (11) In section 11 –
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date; 15
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (12) Section 27 applies as it applies in the circumstances mentioned in subsection (1) of that section. 20
- (13) The relevant date is –
 - (a) in a case where the Crown Court made a confiscation order which was quashed by the Court of Appeal, the date on which the Crown Court made the order;
 - (b) in any other case, the date on which the Crown Court decided not to make a confiscation order. 25

Enforcement authority

35 Enforcement authority

- (1) Subsection (2) applies if a court makes a confiscation order and any of the following paragraphs applies – 30
 - (a) the court proceeded under section 6 after being asked to do so by the Director;
 - (b) the court proceeded under section 6 by virtue of an application by the Director under section 20, 21, 28 or 29;
 - (c) the court proceeded under section 6 as a result of an appeal by the Director under section 32(2) or 34; 35
 - (d) before the court made the order the Director applied to the court to appoint him as the enforcement authority for the order.
- (2) In any such case the court must appoint the Director as the enforcement authority for the order. 40

Enforcement as fines etc

36 Director not appointed as enforcement authority

- (1) This section applies if a court –
 - (a) makes a confiscation order, and
 - (b) does not appoint the Director as the enforcement authority for the order. 5
- (2) Sections 139(2) to (4) and (9) and 140(1) to (4) of the Sentencing Act (functions of court as to fines and enforcing fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order. 10
- (3) In the application of Part 3 of the Magistrates' Courts Act 1980 (c. 43) to an amount payable under a confiscation order –
 - (a) ignore section 75 of that Act (power to dispense with immediate payment);
 - (b) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines) of that Act; 15
 - (c) in section 87 of that Act ignore subsection (3) (inquiry into means).

37 Director appointed as enforcement authority 20

- (1) This section applies if a court –
 - (a) makes a confiscation order, and
 - (b) appoints the Director as the enforcement authority for the order.
- (2) Section 139(2) to (4) and (9) of the Sentencing Act (functions of court as to fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order. 25

38 Director's application for enforcement

- (1) If the Director believes that the conditions set out in subsection (2) are satisfied he may make an ex parte application to the Crown Court for the issue of a summons against the defendant. 30
- (2) The conditions are that –
 - (a) a confiscation order has been made;
 - (b) the Director has been appointed as the enforcement authority for the order;
 - (c) because of the defendant's wilful refusal or culpable neglect the order is not satisfied; 35
 - (d) the order is not subject to appeal;
 - (e) the Director has done all that is practicable (apart from this section) to enforce the order.
- (3) If it appears to the Crown Court that the conditions are satisfied it may issue a summons ordering the defendant to appear before the court at the time and place specified in the summons. 40

- (4) If the defendant fails to appear before the Crown Court in pursuance of the summons the court may issue a warrant for his arrest.
- (5) If—
 - (a) the defendant appears before the Crown Court in pursuance of the summons or of a warrant issued under subsection (4), and 5
 - (b) the court is satisfied that the conditions set out in subsection (2) are satisfied,
it may issue a warrant committing the defendant to prison or detention for default in payment of the amount ordered to be paid by the confiscation order.
- (6) Subsection (7) applies if the amount remaining to be paid under the confiscation order when the warrant under subsection (5) is issued is less than the amount ordered to be paid. 10
- (7) In such a case the court must substitute for the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act such term as bears to the original term the same proportion as the amount remaining to be paid bears to the amount ordered to be paid. 15
- (8) Subsections (9) and (10) apply if—
 - (a) the defendant has been committed to prison or detention in pursuance of a warrant issued under subsection (5), and
 - (b) a payment is made in respect of some or all of the amount remaining to be paid under the confiscation order. 20
- (9) If the payment is for the whole amount remaining to be paid the defendant must be released unless he is in custody for another reason.
- (10) If the payment is for less than that amount, the period of commitment is reduced so that it bears to the term fixed under section 139(2) of the Sentencing Act the same proportion as the amount remaining to be paid bears to the amount ordered to be paid. 25

39 Provisions about imprisonment or detention

- (1) Subsection (2) applies if—
 - (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and 30
 - (b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).
- (2) In such a case the term of imprisonment or of detention under section 108 of the Sentencing Act (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above. 35
- (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences). 40
- (4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored— 45

- (a) any sentence suspended under section 118(1) of the Sentencing Act which has not taken effect at the time the warrant is issued;
 - (b) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977 (c. 45) (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison; 5
 - (c) any term of imprisonment or detention fixed under section 139(2) of the Sentencing Act (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued at that time. 10
- (5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned. 15

40 Reconsideration etc: variation of prison term

- (1) Subsection (2) applies if –
- (a) a court varies a confiscation order under section 22, 23, 24, 30, 33 or 34,
 - (b) the effect of the variation is to vary the maximum period applicable in relation to the order under section 139(4) of the Sentencing Act, and 20
 - (c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 139(2) of the Sentencing Act.
- (2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under section 139(2) of the Sentencing Act in place of the term previously fixed. 25
- (3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.
- (4) In such a case the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under section 139(2) of the Sentencing Act. 30
- (5) If the effect of section 13 is to increase the maximum period applicable in relation to a confiscation order under section 139(4) of the Sentencing Act, on the application of the appropriate person the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 139(2) of that Act. 35
- (6) The appropriate person is –
- (a) the Director, if he was appointed as the enforcement authority for the order under section 35;
 - (b) the prosecutor, in any other case. 40

Restraint orders

41 Conditions for exercise of powers

- (1) The Crown Court may exercise the powers conferred by section 42 if any of the following conditions is satisfied.

- (2) The first condition is that –
 - (a) a criminal investigation has been started in England and Wales with regard to an offence, and
 - (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct. 5
- (3) The second condition is that –
 - (a) proceedings for an offence have been started in England and Wales and not concluded, and
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct. 10
- (4) The third condition is that –
 - (a) an application by the prosecutor or the Director has been made under section 20, 21, 28 or 29 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct. 15
- (5) The fourth condition is that –
 - (a) an application by the prosecutor or the Director has been made under section 22 and not concluded, or the court believes that such an application is to be made, and 20
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the amount found as his benefit for the purposes of the confiscation order.
- (6) The fifth condition is that – 25
 - (a) an application by the prosecutor or the Director has been made under section 23 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the amount found as the available amount for the purposes of the confiscation order. 30
- (7) The second condition is not satisfied if the court believes that –
 - (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed. 35
- (8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that –
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor or the Director (as the case may be) does not intend to proceed. 40
- (9) If the first condition is satisfied –
 - (a) references in this Part to the defendant are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;
 - (c) section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started. 45

42 Restraint orders

- (1) If any condition set out in section 41 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.
- (2) A restraint order may provide that it applies – 5
 - (a) to all realisable property held by the specified person whether or not the property is described in the order;
 - (b) to realisable property transferred to the specified person after the order is made.
- (3) A restraint order may be made subject to exceptions, and an exception may in particular – 10
 - (a) make provision for reasonable living expenses and reasonable legal expenses;
 - (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation; 15
 - (c) be made subject to conditions.
- (4) But an exception to a restraint order must not make provision for any legal expenses which – 20
 - (a) relate to an offence which falls within subsection (5), and
 - (b) are incurred by a person against whom proceedings for the offence have been started or by a recipient of a tainted gift.
- (5) These offences fall within this subsection – 25
 - (a) the offence mentioned in section 41(2) or (3), if the first or second condition (as the case may be) is satisfied;
 - (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.
- (6) Subsection (7) applies if – 30
 - (a) a court makes a restraint order, and
 - (b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).
- (7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- (8) A restraint order does not affect property for the time being subject to a charge under any of these provisions – 35
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37); 40
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (9) Dealing with property includes removing it from England and Wales.

43 Application, discharge and variation

- (1) A restraint order –
 - (a) may be made only on an application by an applicant falling within subsection (2);
 - (b) may be made on an ex parte application to a judge in chambers. 5
- (2) These applicants fall within this subsection –
 - (a) the prosecutor;
 - (b) the Director;
 - (c) an accredited financial investigator.
- (3) An application to discharge or vary a restraint order or an order under section 42(7) may be made to the Crown Court by – 10
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) Subsections (5) to (7) apply to an application under subsection (3).
- (5) The court – 15
 - (a) may discharge the order;
 - (b) may vary the order.
- (6) If the condition in section 41 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be). 20
- (7) If the condition in section 41 which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

44 Appeal to Court of Appeal 25

- (1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If an application is made under section 43(3) in relation to a restraint order or an order under section 42(7) the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application – 30
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may – 35
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

45 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 44.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal. 40

- (3) On an appeal under this section the House of Lords may –
- (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

46 Seizure

- (1) If a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from England and Wales. 5
- (2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.

47 Supplementary

10

- (1) The Land Registration Act 1925 (c. 21) and the Land Charges Act 1972 (c. 61) –
- (a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;
 - (b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions. 15
- (2) The person applying for a restraint order must be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which –
- (a) the application relates, or
 - (b) a restraint order made in pursuance of the application relates. 20

Management receivers

48 Appointment

- (1) Subsection (2) applies if –
- (a) the Crown Court makes a restraint order, and
 - (b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards). 25
- (2) The Crown Court may by order appoint a receiver in respect of any realisable property to which the restraint order applies. 30

49 Powers

- (1) If the court appoints a receiver under section 48 it may act under this section on the application of the person who applied for the restraint order.
- (2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies –
- (a) power to take possession of the property, subject to any conditions or exceptions the court specifies;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to start, carry on or defend any legal proceedings in respect of the property; 40

- (d) power to sell so much of the property as is necessary to meet the receiver's remuneration and expenses.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—
 - (a) search for or inspect anything authorised by the court; 5
 - (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
 - (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents; 15
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.
- (6) The court—
 - (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property. 25
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33); 30
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)). 35
- (8) The court must not—
 - (a) confer the power mentioned in subsection (2)(b) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property, 40unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) Managing or otherwise dealing with property includes—
 - (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; 45
 - (c) incurring capital expenditure in respect of the property.

Enforcement receivers

50 Appointment

- (1) This section applies if –
 - (a) a confiscation order is made,
 - (b) it is not satisfied, and 5
 - (c) it is not subject to appeal.
- (2) On the application of the prosecutor the Crown Court may by order appoint a receiver in respect of realisable property.

51 Powers

- (1) If the court appoints a receiver under section 50 it may act under this section on the application of the prosecutor. 10
- (2) The court may by order confer on the receiver the following powers in relation to the realisable property –
 - (a) power to take possession of the property, subject to any conditions or exceptions the court specifies; 15
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise the property, in such manner as the court may specify;
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following –
 - (a) search for or inspect anything authorised by the court;
 - (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court. 25
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions –
 - (a) hold property;
 - (b) enter into contracts; 30
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver. 35
- (6) The court –
 - (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; 40
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions –
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not –
- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) Managing or otherwise dealing with property includes –
- (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

Director's receivers

52 Appointment

- (1) This section applies if –
- (a) a confiscation order is made, and
 - (b) the Director is appointed as the enforcement authority for the order under section 35.
- (2) But this section does not apply if –
- (a) the Court of Appeal directs the Crown Court to proceed under this section, and
 - (b) when the Crown Court comes to do so the confiscation order has been satisfied.
- (3) If this section applies the Crown Court must make an order for the appointment of a receiver in respect of realisable property.
- (4) An order under subsection (3) –
- (a) must confer power on the Director to nominate the person who is to be the receiver, and
 - (b) takes effect when the Director nominates that person.
- (5) The Director must not nominate a person under subsection (4) unless at the time he does so the confiscation order –
- (a) is not satisfied, and
 - (b) is not subject to appeal.
- (6) A person nominated to be the receiver under subsection (4) may be –

- (a) a member of the staff of the Agency;
 - (b) a person providing services under arrangements made by the Director.
- (7) If this section applies section 50 does not apply.

53 Powers

- | | |
|---|----|
| (1) If the court makes an order for the appointment of a receiver under section 52 it may act under this section on the application of the Director. | 5 |
| (2) The court may by order confer on the receiver the following powers in relation to the realisable property – | |
| (a) power to take possession of the property, subject to any conditions or exceptions the court specifies; | 10 |
| (b) power to manage or otherwise deal with the property; | |
| (c) power to realise the property, in such manner as the court may specify; | |
| (d) power to start, carry on or defend any legal proceedings in respect of the property. | |
| (3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following – | 15 |
| (a) search for or inspect anything authorised by the court; | |
| (b) make or obtain a copy, photograph or other record of anything so authorised; | |
| (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court. | 20 |
| (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions – | |
| (a) hold property; | |
| (b) enter into contracts; | 25 |
| (c) sue and be sued; | |
| (d) employ agents; | |
| (e) execute powers of attorney, deeds or other instruments; | |
| (f) take any other steps the court thinks appropriate. | |
| (5) The court may order any person who has possession of realisable property to give possession of it to the receiver. | 30 |
| (6) The court – | |
| (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; | 35 |
| (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property. | |
| (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions – | 40 |
| (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32); | |
| (b) section 78 of the Criminal Justice Act 1988 (c. 33); | |
| (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)); | |
| (d) section 27 of the Drug Trafficking Act 1994 (c. 37); | 45 |

- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not –
 - (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property,
 unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) Managing or otherwise dealing with property includes –
 - (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

Application of sums 15

54 Enforcement receivers

- (1) This section applies to sums which are in the hands of a receiver appointed under section 50 if they are –
 - (a) the proceeds of the realisation of property under section 51;
 - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.
- (2) The sums must be applied as follows –
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 417;
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant’s behalf towards satisfaction of the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver’s hands he must distribute them –
 - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
 - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is –
 - (a) the property represented by the proceeds mentioned in subsection (1)(a);
 - (b) the sums mentioned in subsection (1)(b).
- (6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the appropriate justices’ chief executive on account of the amount payable under the order.

- (7) The appropriate justices' chief executive is the one for the magistrates' court responsible for enforcing the confiscation order as if the amount ordered to be paid were a fine.

55 Sums received by justices' chief executive

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|---|----|
| (1) This section applies if a justices' chief executive receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 54 or otherwise). | 5 |
| | |
| (2) The chief executive's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows. | |
| (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as – | 10 |
| (a) are payable under this subsection by virtue of section 417, but | |
| (b) are not already paid under section 54(2)(a). | |
| (4) If the justices' chief executive received the sums under section 54 he must next apply them – | 15 |
| (a) first, in payment of the remuneration and expenses of a receiver appointed under section 48, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 49(2)(d); | |
| (b) second, in payment of the remuneration and expenses of the receiver appointed under section 50. | 20 |
| (5) If a direction was made under section 14(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the justices' chief executive must next apply the sums in payment of that amount. | |
| (6) If any amount remains after the justices' chief executive makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of section 60 of the Justices of the Peace Act 1997 (c. 25) (application of fines etc) as if it were a fine imposed by a magistrates' court. | 25 |
| (7) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters – | 30 |
| (a) the justices' chief executive must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 14(6) bears to the total amount payable under the confiscation order; | 35 |
| (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it; | |
| (c) the amount deducted must be treated for the purposes of section 60 of the Justices of the Peace Act 1997 as if it were a fine imposed by a magistrates' court. | 40 |
| (8) Subsection (4) does not apply if the receiver is a member of the staff of the Crown Prosecution Service or of the Commissioners of Customs and Excise; and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere. | 45 |

56 Director’s receivers

- (1) This section applies to sums which are in the hands of a receiver appointed under section 52 if they are –
 - (a) the proceeds of the realisation of property under section 53;
 - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest. 5
- (2) The sums must be applied as follows –
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 417; 10
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant’s behalf towards satisfaction of the confiscation order by being paid to the Director on account of the amount payable under it. 15
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver’s hands he must distribute them –
 - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
 - (b) in such proportions as it directs. 20
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is –
 - (a) the property represented by the proceeds mentioned in subsection (1)(a); 25
 - (b) the sums mentioned in subsection (1)(b).

57 Sums received by Director

- (1) This section applies if the Director receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 56 or otherwise). 30
- (2) The Director’s receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as –
 - (a) are payable under this subsection by virtue of section 417, but
 - (b) are not already paid under section 56(2)(a). 35
- (4) If the Director received the sums under section 56 he must next apply them –
 - (a) first, in payment of the remuneration and expenses of a receiver appointed under section 48, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 49(2)(d); 40
 - (b) second, in payment of the remuneration and expenses of the receiver appointed under section 52.

- (5) If a direction was made under section 14(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the Director must next apply the sums in payment of that amount.
- (6) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters – 5
 - (a) the Director must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 14(6) bears to the total amount payable under the confiscation order; 10
 - (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it.
- (7) Subsection (4) does not apply if the receiver is a member of the staff of the Agency or a person providing services under arrangements made by the Director. 15

Restrictions

58 Restraint orders

- (1) Subsections (2) to (4) apply if a court makes a restraint order.
- (2) No distress may be levied against any realisable property to which the order applies except with the leave of the Crown Court and subject to any terms the Crown Court may impose. 20
- (3) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose. 25
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (5) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 30
- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to – 35
 - (a) the applicant for the restraint order, and
 - (b) any receiver appointed in respect of the property under section 48, 50 or 52.

59 Enforcement receivers

- (1) Subsections (2) to (4) apply if a court makes an order under section 50 appointing a receiver in respect of any realisable property. 40
- (2) No distress may be levied against the property except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

- (3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy. 5
- (5) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 50 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 10
- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
 - (a) the prosecutor, and
 - (b) the receiver (if the order under section 50 has been made). 15

60 Director's receivers

- (1) Subsections (2) to (4) apply if—
 - (a) the Crown Court has made an order under section 52 for the appointment of a receiver in respect of any realisable property, and
 - (b) the order has taken effect. 20
- (2) No distress may be levied against the property except with the leave of the Crown Court and subject to any terms the Crown Court may impose.
- (3) If the order is for the appointment of a receiver in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Crown Court and subject to any terms the Crown Court may impose. 25
- (4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (5) If a court (whether the Crown Court or any other court) in which proceedings are pending in respect of any property is satisfied that an order under section 52 for the appointment of a receiver in respect of the property has taken effect, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 30
- (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
 - (a) the Director, and
 - (b) the receiver. 35

Receivers: further provisions

61 Protection 40

- If a receiver appointed under section 48, 50 or 52—
- (a) takes action in relation to property which is not realisable property,
 - (b) would be entitled to take the action if it were realisable property, and

(c) believes on reasonable grounds that he is entitled to take the action, he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

62 Further applications

- (1) This section applies to a receiver appointed under section 48, 50 or 52. 5
- (2) The receiver may apply to the Crown Court for an order giving directions as to the exercise of his powers.
- (3) The following persons may apply to the Crown Court –
 - (a) any person affected by action taken by the receiver;
 - (b) any person who may be affected by action the receiver proposes to take. 10
- (4) On an application under this section the court may make such order as it believes is appropriate.

63 Discharge and variation

- (1) The following persons may apply to the Crown Court to vary or discharge an order made under any of sections 48 to 53 – 15
 - (a) the receiver;
 - (b) the person who applied for the order or (if the order was made under section 52 or 53) the Director;
 - (c) any person affected by the order.
- (2) On an application under this section the court – 20
 - (a) may discharge the order;
 - (b) may vary the order.
- (3) But in the case of an order under section 48 or 49 –
 - (a) if the condition in section 41 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be); 25
 - (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be). 30

64 Management receivers: discharge

- (1) This section applies if –
 - (a) a receiver stands appointed under section 48 in respect of realisable property (the management receiver), and 35
 - (b) the court appoints a receiver under section 50 or makes an order for the appointment of a receiver under section 52.
- (2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 49. 40

- (3) But in a case where the court makes an order under section 52 its order under subsection (2) above does not take effect until the order under section 52 takes effect.
- (4) If the management receiver complies with an order under subsection (2) he is discharged – 5
 - (a) from his appointment under section 48;
 - (b) from any obligation under this Act arising from his appointment.

65 Appeal to Court of Appeal

- (1) If on an application for an order under any of sections 48 to 51 or section 53 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision. 10
- (2) If the court makes an order under any of sections 48 to 51 or section 53, the following persons may appeal to the Court of Appeal in respect of the court’s decision –
 - (a) the person who applied for the order; 15
 - (b) any person affected by the order.
- (3) If on an application for an order under section 62 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (4) If the court makes an order under section 62, the following persons may appeal to the Court of Appeal in respect of the court’s decision – 20
 - (a) the person who applied for the order;
 - (b) any person affected by the order;
 - (c) the receiver.
- (5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 63 – 25
 - (a) the person who applied for the order in respect of which the application was made or (if the order was made under section 52 or 53) the Director;
 - (b) any person affected by the court’s decision;
 - (c) the receiver. 30
- (6) On an appeal under this section the Court of Appeal may –
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

66 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 65. 35
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the House of Lords may –
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate. 40

Seized money

67 Seized money

- (1) This section applies to money which –
 - (a) is held by a person, and
 - (b) is held in an account maintained by him with a bank or a building society. 5
- (2) This section also applies to money which is held by a person and which –
 - (a) has been seized by a constable under section 19 of the Police and Criminal Evidence Act 1984 (c. 60) (general power of seizure etc), and
 - (b) is held in an account maintained by a police force with a bank or a building society. 10
- (3) This section also applies to money which is held by a person and which –
 - (a) has been seized by a customs officer under section 19 of the 1984 Act as applied by order made under section 114(2) of that Act, and
 - (b) is held in an account maintained by the Commissioners of Customs and Excise with a bank or a building society. 15
- (4) This section applies if the following conditions are satisfied –
 - (a) a restraint order has effect in relation to money to which this section applies;
 - (b) a confiscation order is made against the person by whom the money is held; 20
 - (c) the Director has not been appointed as the enforcement authority for the confiscation order;
 - (d) a receiver has not been appointed under section 50 in relation to the money; 25
 - (e) any period allowed under section 12 for payment of the amount ordered to be paid under the confiscation order has ended.
- (5) In such a case a magistrates’ court may order the bank or building society to pay the money to the justices’ chief executive for the court on account of the amount payable under the confiscation order. 30
- (6) If a bank or building society fails to comply with an order under subsection (5) –
 - (a) the magistrates’ court may order it to pay an amount not exceeding £5,000, and
 - (b) for the purposes of the Magistrates’ Courts Act 1980 (c. 43) the sum is to be treated as adjudged to be paid by a conviction of the court. 35
- (7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)(a).
- (8) For the purposes of this section – 40
 - (a) a bank is a deposit-taking business within the meaning of the Banking Act 1987 (c. 22);
 - (b) “building society” has the same meaning as in the Building Societies Act 1986 (c. 53).

Financial investigators

68 Applications and appeals

- (1) Subsections (2) and (3) apply to –
 - (a) an application under section 42, 43, 48, 49 or 63;
 - (b) an appeal under section 44, 45, 65 or 66. 5
- (2) An accredited financial investigator must not make such an application or bring such an appeal unless he is authorised to do so by –
 - (a) a police officer who is not below the rank of superintendent,
 - (b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank, or 10
 - (c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 436.
- (3) If such an application is made or appeal brought by an accredited financial investigator any subsequent step in the application or appeal or any further application or appeal relating to the same matter may be taken, made or brought by a different accredited financial investigator who is authorised as mentioned in subsection (2). 15
- (4) If –
 - (a) an application for a restraint order is made by an accredited financial investigator, and
 - (b) a court is required under section 58(6) to give the applicant for the order an opportunity to be heard, 20the court may give the opportunity to a different accredited financial investigator who is authorised as mentioned in subsection (2). 25

Exercise of powers

69 Powers of court and receiver

- (1) This section applies to –
 - (a) the powers conferred on a court by sections 42 to 60 and sections 62 to 67; 30
 - (b) the powers of a receiver appointed under section 48, 50 or 52.
- (2) The powers –
 - (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant; 35
 - (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
 - (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant; 40
 - (d) may be exercised in respect of a debt owed by the Crown.

- (3) Subsection (2) has effect subject to the following rules –
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; 5
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4). 10
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

Committal 15

70 Committal by magistrates' court

- (1) This section applies if –
- (a) a defendant is convicted of an offence by a magistrates' court, and
 - (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 6. 20
- (2) In such a case the magistrates' court –
- (a) must commit the defendant to the Crown Court in respect of the offence, and
 - (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3). 25
- (3) An offence falls within this subsection if –
- (a) the defendant has been convicted of it by the magistrates' court or any other court, and
 - (b) the magistrates' court has power to deal with him in respect of it. 30
- (4) If a committal is made under this section in respect of an offence or offences –
- (a) section 6 applies accordingly, and
 - (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 71.
- (5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under section 3(2) of the Sentencing Act (offences triable either way) the court must state whether it would have done so. 35
- (6) A committal under this section may be in custody or on bail.

71 Sentencing by Crown Court 40

- (1) If a defendant is committed to the Crown Court under section 70 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 6).

- (2) In the case of an offence in respect of which the magistrates' court has stated under section 70(5) that it would have committed the defendant for sentence, the Crown Court—
 - (a) must inquire into the circumstances of the case, and
 - (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it. 5
- (3) In the case of any other offence the Crown Court—
 - (a) must inquire into the circumstances of the case, and
 - (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence. 10

Compensation

72 Serious default

- (1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.
- (2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence. 15
- (3) The first condition is also satisfied if proceedings for an offence are started against a person and—
 - (a) they do not result in his conviction for the offence, or
 - (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it. 20
- (4) If subsection (2) applies the second condition is that—
 - (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
 - (b) the investigation would not have continued if the default had not occurred. 25
- (5) If subsection (3) applies the second condition is that—
 - (a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and 30
 - (b) the proceedings would not have been started or continued if the default had not occurred.
- (6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part. 35
- (7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.
- (8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.
- (9) *Compensation under this section is payable to the applicant and —* 40
 - (a) *if the person in default was or was acting as a member of a police force, the compensation is payable out of the police fund from which the expenses of that force are met;*

- (b) *if the person in default was a member of the Crown Prosecution Service or was acting on its behalf, the compensation is payable by the Director of Public Prosecutions;*
 - (c) *if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;* 5
 - (d) *if the person in default was a customs officer, the compensation is payable by the Commissioners of Customs and Excise;*
 - (e) *if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.*
- 73 Order varied or discharged** 10
- (1) This section applies if –
 - (a) the court varies a confiscation order under section 30 or discharges one under section 31, and
 - (b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order. 15
 - (2) The court may order the payment of such compensation as it believes is just.
 - (3) *Compensation under this section is payable –*
 - (a) *to the applicant;*
 - (b) *by the Lord Chancellor.* 20

Enforcement abroad

- 74 Enforcement abroad**
- (1) This section applies if –
 - (a) any of the conditions in section 41 is satisfied,
 - (b) the prosecutor or the Director believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and 25
 - (c) the prosecutor or the Director (as the case may be) sends a request for assistance to the Secretary of State with a view to it being forwarded under this section. 30
 - (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.
 - (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that – 35
 - (a) any person is prohibited from dealing with realisable property;
 - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
 - (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed. 40

- (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.
- (6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation. 5
- (7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states –
 - (a) that property has been realised in pursuance of a request under subsection (3),
 - (b) the date of realisation, and 10
 - (c) the proceeds of realisation.
- (8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation. 15

Interpretation

75 Criminal lifestyle

- (1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.
- (2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests – 20
 - (a) it is a drug trafficking offence;
 - (b) it is a money laundering offence;
 - (c) it is specified in regulations under this section by the Secretary of State;
 - (d) it constitutes conduct forming part of a course of criminal activity; 25
 - (e) it is an offence committed over a period of at least six months.
- (3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and –
 - (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or 30
 - (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited. 35

76 Conduct and benefit

- (1) Criminal conduct is conduct which –
 - (a) constitutes an offence in England and Wales, or
 - (b) would constitute such an offence if it occurred in England and Wales.
- (2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial – 40
 - (a) whether conduct occurred before or after the passing of this Act;

- (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.
- (3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs—
 - (a) conduct which constitutes the offence or offences concerned; 5
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;
 - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned. 10
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage. 15
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
- (7) If a person benefits from conduct his benefit is the value of the property obtained. 20

77 Tainted gifts

- (1) Subsections (2) and (3) apply if—
 - (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or 25
 - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the relevant day.
- (3) A gift is also tainted if it was made by the defendant at any time and was of property— 30
 - (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
 - (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct. 35
- (4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.
- (5) A gift is tainted if it was made by the defendant at any time after—
 - (a) the date on which the offence concerned was committed, or
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest. 40
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.

- (7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) A gift may be a tainted gift whether it was made before or after the passing of this Act. 5
- (9) The relevant day is the first day of the period of six years ending with –
 - (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days. 10

78 Gifts and their recipients

- (1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time the defendant obtained it, he is to be treated as making a gift.
- (2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction – 15
 - (a) whose numerator is the difference between the two values mentioned in subsection (1), and
 - (b) whose denominator is the value of the property at the time the defendant obtained it. 20
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

79 Value: the basic rule

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person. 25
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4). 30
- (4) The provisions are –
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)); 35
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (5) This section has effect subject to sections 80 and 81.

80 Value of property obtained from conduct

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.
- (2) The value of the property at the material time is the greater of the following – 5
 - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (3).
- (3) The property found under this subsection is as follows – 10
 - (a) if the person holds the property obtained, the property found under this subsection is that property;
 - (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands; 15
 - (c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 79. 20

81 Value of tainted gifts

- (1) The value at any time (the material time) of a tainted gift is the greater of the following –
 - (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money; 25
 - (b) the value (at the material time) of the property found under subsection (2).
- (2) The property found under this subsection is as follows –
 - (a) if the recipient holds the property given, the property found under this subsection is that property; 30
 - (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
 - (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands. 35
- (3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 79.

82 Free property

- Property is free unless an order is in force in respect of it under any of these provisions – 40
- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);

- (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);
- (d) section 143 of the Sentencing Act (deprivation orders);
- (e) section 23 or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);
- (f) section 251, 267, 294(2) or 297(2) of this Act.

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83 Realisable property

Realisable property is –

- (a) any free property held by the defendant;
- (b) any free property held by the recipient of a tainted gift.

84 Property: general provisions

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- (1) Property is all property wherever situated and includes –
 - (a) money;
 - (b) all forms of real or personal property;
 - (c) things in action and other intangible or incorporeal property.
- (2) The following rules apply in relation to property –
 - (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to property vested in his trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) or liquidator;
 - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
 - (f) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
 - (g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease;
 - (h) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

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85 Proceedings

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- (1) Proceedings for an offence are started –
 - (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (c. 43) in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) in a case falling within subsection (2)(b) of that section (preferment by Court of Appeal or High Court judge).

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- (2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.
- (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.
- (4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned. 5
- (5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded – 10
 - (a) when the order is satisfied or discharged, or
 - (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.
- (6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply – 15
 - (a) if an application for leave to appeal under section 32(2) is refused, the proceedings are concluded when the decision to refuse is made;
 - (b) if the time for applying for leave to appeal under section 32(2) expires without an application being made, the proceedings are concluded when the time expires; 20
 - (c) if on appeal under section 32(2) the Court of Appeal confirms the Crown Court’s decision, and an application for leave to appeal under section 34 is refused, the proceedings are concluded when the decision to refuse is made; 25
 - (d) if on appeal under section 32(2) the Court of Appeal confirms the Crown Court’s decision, and the time for applying for leave to appeal under section 34 expires without an application being made, the proceedings are concluded when the time expires; 30
 - (e) if on appeal under section 32(2) the Court of Appeal confirms the Crown Court’s decision, and on appeal under section 34 the House of Lords confirms the Court of Appeal’s decision, the proceedings are concluded when the House of Lords confirms the decision;
 - (f) if on appeal under section 32(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision; 35
 - (g) if on appeal under section 34 the House of Lords directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision. 40
- (7) In applying subsection (6) any power to extend the time for making an application for leave to appeal must be ignored.
- (8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored. 45

86 Applications

- (1) An application under section 20, 21, 28 or 29 is concluded –
 - (a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order; 5
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made. 10
- (2) An application under section 22 or 23 is concluded –
 - (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
 - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order; 15
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made. 20

87 Confiscation orders

- (1) A confiscation order is satisfied when no amount is due under it.
- (2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored. 25

88 Drug trafficking offences

- (1) Each of the following offences under the Misuse of Drugs Act 1971 (c. 38) is a drug trafficking offence –
 - (a) an offence under section 4(2) or (3) (production and supply of controlled drugs); 30
 - (b) an offence under section 5(3) (possession of controlled drugs);
 - (c) an offence under section 8 (permitting certain activities);
 - (d) an offence under section 20 (assisting in or inducing commission outside UK of offence punishable under a corresponding law). 35
- (2) An offence is a drug trafficking offence if –
 - (a) it is an offence under section 50(2) or (3), 68(2) or 170 of the Customs and Excise Management Act 1979 (c. 2) (import, export and fraudulent evasion), and
 - (b) it is an offence in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971. 40
- (3) Each of the following offences under the Criminal Justice (International Co-operation) Act 1990 (c. 5) is a drug trafficking offence –

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- (a) an offence under section 12 (manufacture or supply of substance specified in Schedule 2 to that Act);
 - (b) an offence under section 19 (using ship for illicit traffic in controlled drugs).
 - (4) Each of the following is a drug trafficking offence – 5
 - (a) an attempt, conspiracy or incitement to commit any of the offences falling within subsections (1) to (3) above;
 - (b) aiding, abetting, counselling or procuring the commission of any of those offences.
 - 89 Money laundering offences** 10
 - (1) An offence under section 321, 322 or 323 is a money laundering offence.
 - (2) Each of the following is a money laundering offence –
 - (a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);
 - (b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1). 15
 - 90 Other interpretative provisions**
 - (1) A reference to the offence (or offences) concerned must be construed in accordance with section 6(9).
 - (2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. 20
 - (3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).
 - (4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence. 25
 - (5) The Sentencing Act is the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
 - (6) The following paragraphs apply to references to orders –
 - (a) a confiscation order is an order under section 6;
 - (b) a restraint order is an order under section 42. 30
 - (7) Sections 75 to 89 and this section apply for the purposes of this Part.

General

91 Procedure on appeal to the Court of Appeal

- (1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court. 35
- (2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (distribution of business between civil and criminal divisions) the criminal division of the Court of Appeal is the division –
 - (a) to which an appeal to that Court under this Part is to lie, and 40

	(b) which is to exercise that Court’s jurisdiction under this Part.	
	(3) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (c. 19) (subject to any specified modifications).	
92	Procedure on appeal to the House of Lords	5
	(1) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal) does not prevent an appeal to the House of Lords under this Part.	
	(2) In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).	10
93	Crown Court Rules	
	In relation to –	
	(a) proceedings under this Part, or	
	(b) receivers appointed under this Part,	15
	Crown Court Rules may make provision corresponding to provision in Civil Procedure Rules.	
PART 3		
CONFISCATION: SCOTLAND		
	<i>Confiscation orders</i>	20
94	Making of order	
	(1) The court may act under this section if the following three conditions are satisfied.	
	(2) The first condition is that an accused falls within either of the following paragraphs –	25
	(a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or	
	(b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.	
	(3) The second condition is that the prosecutor asks the court to act under this section at any time before the accused is sentenced.	30
	(4) The third condition is that the court decides to order some disposal in respect of the accused; and an absolute discharge is a disposal for the purpose of this subsection.	
	(5) If the court acts under this section it must proceed as follows –	35
	(a) it must decide whether the accused has a criminal lifestyle;	
	(b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;	
	(c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.	40

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- (6) If the court decides under subsection (5)(b) or (c) that the accused has benefited from the conduct referred to –
- (a) it must decide the recoverable amount, and
 - (b) it may make an order (a confiscation order) requiring him to pay an amount not exceeding the recoverable amount. 5
- (7) Before making an order under this section the court must take into account any representations made to it by any person whom the court thinks is likely to be affected by the order.
- (8) The standard of proof required to decide any question arising under subsection (5) or (6) is the standard applicable in civil proceedings. 10
- (9) The first condition is not satisfied if the accused absconds (but section 113 may apply).
- (10) For the purposes of any appeal or review, an order under this section is a sentence.
- (11) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2). 15
- (12) In this section and sections 95 to 120 “the court” means the High Court of Justiciary or the sheriff.
- 95 Time for making order**
- Where the court decides to make a confiscation order, it must make the order before – 20
- (a) imposing a fine on the accused, or
 - (b) making any order involving a payment by him, other than a compensation order under section 249 of the Procedure Act,
- in relation to the offence (or any of the offences) concerned. 25
- 96 Recoverable amount**
- (1) The recoverable amount for the purposes of section 94 is an amount equal to the accused’s benefit from the conduct concerned.
- (2) But if the accused shows that the available amount is less than that benefit the recoverable amount is – 30
- (a) the available amount, or
 - (b) a nominal amount, if the available amount is nil.
- (3) In calculating the accused’s benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which – 35
- (a) a recovery order is in force under section 267, or
 - (b) a forfeiture order is in force under section 297,
- must be ignored.
- (4) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount. 40

97 Accused's benefit

- (1) If the court is acting under section 94 this section applies for the purpose of—
 - (a) deciding whether the accused has benefited from conduct, and
 - (b) deciding his benefit from the conduct.
- (2) The court must take account of— 5
 - (a) conduct occurring up to the time it makes its decision;
 - (b) property obtained up to that time.
- (3) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
 - (a) the amount ordered to be paid under each confiscation order previously made against the accused; 10
 - (b) the amount ordered to be paid under each confiscation order previously made against him under—
 - (i) the Drug Trafficking Offences Act 1986 (c. 32);
 - (ii) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41); 15
 - (iii) Part 6 of the Criminal Justice Act 1988 (c. 33);
 - (iv) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I.17));
 - (v) Part 1 of the Drug Trafficking Act 1994 (c. 37);
 - (vi) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43); 20
 - (vii) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I.9)); or
 - (viii) Part 2 or 4 of this Act.

98 Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of— 25
 - (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the accused minus the total amount payable in pursuance of obligations which then have priority, and
 - (b) the total of the values (at that time) of all tainted gifts. 30
- (2) An obligation has priority if—
 - (a) it is an obligation of the accused to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction for an offence and at any time before the confiscation order is made, or
 - (b) it is an obligation of the accused to pay a sum which would be— 35
 - (i) a preferred debt if the accused's estate were sequestrated on the date of the confiscation order, or
 - (ii) a preferential debt if his winding up were ordered on that date, or
 - (c) it is a security or real burden which would require to be discharged in realising the property. 40
- (3) In subsection (2)—
 - “preferred debt” has the meaning given by section 51(2) of the Bankruptcy (Scotland) Act 1985 (c. 66);
 - “preferential debt” has the meaning given by section 386 of the Insolvency Act 1986 (c. 45). 45

99 Assumptions as to benefit from general criminal conduct

- (1) Where the court decides under section 94 that the accused has a criminal lifestyle it may make the following four assumptions for the purpose of—
 - (a) deciding whether he has benefited from his general criminal conduct, and
 - (b) deciding his benefit from the conduct.5
- (2) The first assumption is that any property transferred to the accused at any time after the relevant day was obtained by him—
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.10
- (3) The second assumption is that any property held by the accused at any time after the date of conviction was obtained by him—
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the accused at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
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- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the accused, he obtained it free of any other interests in it.
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- (6) But the court must not make any of those assumptions in relation to particular property or expenditure if the assumption is shown to be incorrect.
- (7) If the court does not make one or more of those assumptions it must state its reasons.
- (8) The relevant day is the first day of the period of six years ending with—
 - (a) the day when proceedings for the offence concerned were instituted against the accused, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.25
- (9) The date of conviction is—
 - (a) the date on which the accused was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions are on different dates, the date of the latest.30

100 Effect of order on court's other powers 35

- (1) If the court decides to make a confiscation order it must act as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- (2) The court must take account of the confiscation order before—
 - (a) it imposes a fine on the accused, or
 - (b) it makes an order falling within subsection (3).40
- (3) These orders fall within this subsection—
 - (a) an order involving payment by the accused, other than a compensation order under section 249 of the Procedure Act;

- (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
 - (d) an order under section 23 of the Terrorism Act 2000 (c. 11) (forfeiture orders). 5
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the accused.
- (5) Subsection (6) applies if –
 - (a) a court makes both a confiscation order and a compensation order under section 249 of the Procedure Act against the same person in the same proceedings, and 10
 - (b) the court believes he will not have sufficient means to satisfy both the orders in full.
- (6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person’s means. 15
- (7) No enactment restricting the power of a court dealing with an accused in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with the accused in any way it thinks appropriate in respect of an offence. 20

101 Disposal of family home

- (1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person’s interest in his family home has been acquired as a benefit from his criminal conduct. 25
- (2) Where this section applies, then, before the administrator disposes of any right or interest in the person’s family home he shall –
 - (a) obtain the relevant consent; or 30
 - (b) where he is unable to do so, apply to the court for authority to carry out the disposal.
- (3) On an application being made to it under subsection (2)(b), the court, after having regard to all the circumstances of the case including –
 - (a) the needs and financial resources of the spouse or former spouse of the person concerned; 35
 - (b) the needs and financial resources of any child of the family;
 - (c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b), 40
 may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.
- (4) Subsection (3) shall apply –
 - (a) to an action for division and sale of the family home of the person concerned; or 45

- (b) to an action for the purpose of obtaining vacant possession of that home,
 brought by the administrator as it applies to an application under subsection (2)(b) and, for the purposes of this subsection, any reference in subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action. 5
- (5) In this section –
- “family home”, in relation to any person (in this subsection referred to as “the relevant person”) means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person’s spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family; 10
- “child of the family” includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and 15
- “relevant consent” means in relation to the disposal of any right or interest in a family home – 20
- (a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person; 25
- (b) where paragraph (a) does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.
- Procedural matters* 30

102 Postponement

- (1) The court may postpone proceedings under section 94 for a specified period; and a period of postponement may be extended.
- (2) A period of postponement (including one as extended) must not end after the permitted period ends. 35
- (3) But subsection (2) does not apply if there are exceptional circumstances.
- (4) The permitted period is the period of two years starting with the date of conviction or such additional period not exceeding two years as the court may, on cause shown, specify.
- (5) But if – 40
- (a) the accused appeals against his conviction for the offence (or any of the offences) concerned, and
- (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (4), 45
- the permitted period is that period of three months.

- (6) A postponement or extension may be made –
 - (a) on application by the accused;
 - (b) on application by the prosecutor;
 - (c) by the court of its own motion.
 - (7) The date of conviction is – 5
 - (a) the date on which the accused was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- 103 Effect of postponement** 10
 - (1) If the court postpones proceedings under section 94 it may proceed to sentence the accused for the offence (or any of the offences) concerned.
 - (2) Subsection (1) is without prejudice to sections 201 and 202 of the Procedure Act.
 - (3) In sentencing the accused for the offence (or any of the offences) concerned in the postponement period the court must not – 15
 - (a) impose a fine on him, or
 - (b) make an order falling within section 100(3)
 - (4) If the court proceeds to sentence the accused under subsection (1), section 95 does not apply. 20
 - (5) Where the court postpones proceedings under section 94 following conviction on indictment, section 109(1) of the Procedure Act (intimation of intention to appeal against conviction or conviction and sentence) has effect as if the reference to the final determination of the proceedings were a reference to the relevant day. 25
 - (6) Despite subsection (5), the accused may appeal under section 106 of the Procedure Act against any confiscation order made, or any other sentence passed, after the end of the postponement period, in respect of the conviction.
 - (7) Where the court postpones proceedings under section 94 following conviction on complaint – 30
 - (a) section 176(1) of the Procedure Act (stated case: manner and time of appeal) has effect in relation to an appeal under section 175(2)(a) or (d) as if the reference to the final determination of the proceedings were a reference to the relevant day, and
 - (b) the draft stated case in such an appeal must be prepared and issued 35within 3 weeks of the relevant day.
 - (8) Despite subsection (7), the accused may appeal under section 175(2)(b), and the prosecutor may appeal under section 175(3)(b), of the Procedure Act against any confiscation order made, or any other sentence passed, after the end of the postponement period, in respect of the conviction. 40
 - (9) The relevant day is –
 - (a) in the case of an appeal against conviction where the court has sentenced the accused under subsection (1), the day on which the postponement period commenced;
 - (b) in any other case, the day on which sentence is passed in open court. 45

- (10) The postponement period is the period for which proceedings under section 94 are postponed.

104 Statement of information

- (1) When the court is proceeding under section 94 the prosecutor must, within such period as the court may specify, give the court a statement of information. 5
- (2) If the prosecutor believes the accused has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues –
 - (a) whether the accused has a criminal lifestyle;
 - (b) whether he has benefited from his general criminal conduct; 10
 - (c) his benefit from the conduct.
- (3) A statement under subsection (2) must include information the prosecutor believes is relevant in connection with applying the assumptions in section 99.
- (4) If the prosecutor does not believe the accused has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues – 15
 - (a) whether the accused has benefited from his particular criminal conduct;
 - (b) his benefit from the conduct.
- (5) If the prosecutor gives the court a statement of information he may at any time give the court a further statement of information. 20
- (6) But the court must not make any of those assumptions in relation to particular property or expenditure if the assumption is shown to be incorrect.
- (7) If the court does not make one or more of those assumptions it must state its reasons. 25
- (8) The relevant day is the first day of the period of six years ending with –
 - (a) the day when proceedings for the offence concerned were instituted against the accused, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days. 30
- (9) The date of conviction is –
 - (a) the date on which the accused was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions are on different dates, the date of the latest. 35

105 Accused's response to statement of information

- (1) If the prosecutor gives the court a statement of information and the court is satisfied that he has served a copy on the accused, the court shall order the accused –
 - (a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and 40
 - (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.

- (2) If the accused accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 104(2) or (4) (as the case may be).
 - (3) If the accused fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from –
 - (a) any allegation in respect of which he has complied with the requirement;
 - (b) any allegation that he has benefited from his general or particular criminal conduct.
 - (4) Where –
 - (a) an allegation in a statement of information is challenged by the accused, or
 - (b) the matters referred to in subsection (1)(b) are challenged by the prosecutor,the court must consider the matters being challenged at a hearing.
 - (5) The judge presiding at the hearing may, if he is not the trial judge and he considers it in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.
 - (6) If the court makes an order under this section it may at any time vary it by making another one.
 - (7) No acceptance under this section that the accused has benefited from conduct is admissible in evidence in proceedings for an offence.
- 106 Provision of information by accused**
- (1) For the purpose of obtaining information to help it in carrying out its functions under section 94 the court may at any time order the accused to give it information specified in the order.
 - (2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
 - (3) If the accused fails without reasonable excuse to comply with an order under this section the court may draw such inference as it thinks appropriate.
 - (4) If the prosecutor accepts to any extent an assertion made by the accused –
 - (a) in giving information required by an order under this section, or
 - (b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 98,the court may treat the acceptance as conclusive of the matters to which it relates.
 - (5) If the court makes an order under this section it may at any time vary it by making another order.

Reconsideration

107 No order made: reconsideration of case

- (1) This section applies if –
 - (a) the first condition in section 94 is satisfied but no court has proceeded under that section, 5
 - (b) the prosecutor has evidence which was not available to him on the date of conviction,
 - (c) as soon as practicable and before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and 10
 - (d) after considering the evidence the court thinks it is appropriate for it to proceed under section 94.
- (2) The court may proceed under section 94, and when it does so subsections (3) to (6) below apply.
- (3) If the court has already sentenced the accused for the offence (or any of the offences) concerned sections 94(4) and 95 do not apply. 15
- (4) Section 97(2) does not apply, and the rules applying instead are that the court must take account of –
 - (a) conduct occurring before the relevant date;
 - (b) property obtained before that date; 20
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (5) In relation to the assumptions that the court may make under section 99 –
 - (a) the first and second assumptions do not apply with regard to property first held by the accused on or after the relevant date; 25
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (6) In proceeding under section 94(6)(b) the court must have regard in particular to – 30
 - (a) any fine imposed on the accused in respect of the offence (or any of the offences) concerned;
 - (b) any order which falls within section 100(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 98; 35
 - (c) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act. 40
- (7) The relevant date is –
 - (a) if the court made a decision not to proceed under section 94, the date of the decision;
 - (b) if the court did not make such a decision, the date of the conviction. 45
- (8) The date of conviction is –

- (a) the date on which the accused was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (9) In this section references to the court are to the court which had jurisdiction in respect of the offence or offences concerned to make a confiscation order. 5

108 No order made: reconsideration of benefit

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that in proceeding under section 94 the court has decided that— 10
 - (a) the accused has a criminal lifestyle but has not benefited from his general criminal conduct, or
 - (b) the accused does not have a criminal lifestyle and has not benefited from his particular criminal conduct.
- (3) The second condition is that— 15
 - (a) the prosecutor has evidence which was not available to him when the court decided that the accused had not benefited from his general or particular criminal conduct,
 - (b) as soon as practicable and before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and 20
 - (c) after considering the evidence the court concludes that it would have decided that the accused had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it. 25
- (4) If this section applies the court—
 - (a) must make a fresh decision under section 94(5)(b) or (c) as to whether the accused has benefited from his general or particular criminal conduct (as the case may be);
 - (b) may make a confiscation order under that section. 30
- (5) Subsections (6) to (9) below apply if the court proceeds under section 94 in pursuance of this section.
- (6) If the court has already sentenced the accused for the offence (or any of the offences) concerned sections 94(4) and 95 do not apply.
- (7) Section 97(2) does not apply, and the rules applying instead are that the court must take account of— 35
 - (a) conduct occurring before the date of the original decision that the accused had not benefited from his general or particular criminal conduct;
 - (b) property obtained before that date; 40
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (8) In relation to the assumptions that the court may make under section 99—
 - (a) the first and second assumptions do not apply with regard to property first held by the accused on or after the date of the original decision that 45

- the accused had not benefited from his general or particular criminal conduct;
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date. 5
- (9) In proceeding under section 94(6)(b) the court must have regard in particular to –
- (a) any fine imposed on the accused in respect of the offence (or any of the offences) concerned; 10
 - (b) any order which falls within section 100(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 98; 15
 - (c) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned under section 249 of the Procedure Act.
- (10) The date of conviction is the date found by applying section 107(8).
- (11) In this section references to the court are to the court which had jurisdiction in respect of the offence or offences concerned to make a confiscation order. 20

109 Order made: reconsideration of benefit

- (1) This section applies if –
- (a) a court has made a confiscation order,
 - (b) the prosecutor believes that if the court were to find the amount of the accused's benefit in pursuance of this section it would exceed the amount found as his benefit for the purposes of the order, 25
 - (c) as soon as practicable and before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence on which his belief is based, and 30
 - (d) after considering the evidence the court thinks it is appropriate for it to proceed under this section.
- (2) The court must make a new calculation of the accused's benefit from the conduct concerned, and when it does so subsections (3) to (5) below apply.
- (3) Section 97(2) does not apply, and the rules applying instead are that the court must take account of – 35
- (a) conduct occurring up to the time it decided the accused's benefit for the purposes of the confiscation order;
 - (b) property obtained up to that time;
 - (c) property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time. 40
- (4) In applying section 97(3) the confiscation order must be ignored.
- (5) In relation to the assumptions that the court may make under section 99 –
- (a) the first and second assumptions do not apply with regard to property first held by the accused after the time the court decided his benefit for the purposes of the confiscation order; 45

- (b) the third assumption does not apply with regard to expenditure incurred by him after that time;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.
 - (6) If the amount found under the new calculation of the accused’s benefit exceeds the amount found as his benefit for the purposes of the confiscation order the court –
 - (a) must make a new calculation of the recoverable amount for the purposes of section 94, and
 - (b) if it exceeds the amount calculated as the recoverable amount when the confiscation order was made, may vary the order by substituting for the amount required to be paid under it such amount as it thinks is just.
 - (7) In applying subsection (6)(a) the court must –
 - (a) take the new calculation of the accused’s benefit;
 - (b) apply section 98 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
 - (8) In applying subsection (6)(b) the court must have regard in particular to –
 - (a) any fine imposed on the accused for the offence (or any of the offences) concerned;
 - (b) any order which falls within section 100(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 98.
 - (9) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.
 - (10) The date of conviction is the date found by applying section 107(8).

110 Order made: reconsideration of available amount

 - (1) This section applies if –
 - (a) a court has made a confiscation order,
 - (b) the amount required to be paid was an amount not exceeding the amount found under section 96(2), and
 - (c) the prosecutor applies to the court to make a new calculation of the available amount.
 - (2) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 98 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.
 - (3) If the amount found under the new calculation exceeds the amount found as the available amount for the purposes of the confiscation order the court may vary the order by substituting for the amount required to be paid such amount as –
 - (a) it thinks is just, but

- (b) does not exceed the amount found (when the confiscation order was made) as the accused's benefit from the conduct concerned.
- (4) In arriving at the just amount the court must have regard in particular to –
 - (a) any fine imposed on the accused for the offence (or any of the offences) concerned; 5
 - (b) any order which falls within section 100(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the accused for the purposes of section 98. 10
- (5) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

111 Inadequacy of available amount

- (1) This section applies if –
 - (a) a court has made a confiscation order, and 15
 - (b) the accused or the prosecutor applies to the court to vary or discharge the order under this section.
- (2) In such a case the court must calculate the available amount and in doing so it must apply section 98 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation. 20
- (3) If the court finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid it may discharge the confiscation order.
- (4) If a person's estate has been sequestrated or he has been adjudged bankrupt, or if an order to the winding up of a company has been made, the court must take into account the extent to which realisable property held by him or by the company may be distributed among creditors. 25
- (5) The court may disregard any inadequacy which it thinks is attributable (wholly or partly) to anything done by the accused for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part. 30
- (6) In subsection (5) "company" means any company which may be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

112 Information 35

- (1) This section applies if –
 - (a) the court proceeds under section 94 in pursuance of section 107 or 108, or
 - (b) the prosecutor applies under section 109, 110 or 111.
- (2) In such a case – 40
 - (a) the prosecutor must give the court a statement of information within such period as the court may specify;
 - (b) section 104 applies accordingly (with appropriate modifications where the prosecutor applies under section 109, 110 or 111);

- (c) sections 105 and 106 apply accordingly.

Accused absconds

113 Conviction or other disposal of accused

- (1) This section applies if an accused absconds after –
- (a) he is convicted of an offence or offences, whether in solemn or summary proceedings, or 5
 - (b) in the case of summary proceedings in respect of an offence (without proceeding to conviction) an order is made discharging him absolutely.
- (2) If this section applies the court may, on the application of the prosecutor, proceed under section 94 in the same way as it may proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3). 10
- (3) If the court proceeds under section 94 as applied by this section, this Part has effect with these modifications –
- (a) any person the court thinks is likely to be affected by an order under section 94 is entitled to appear before the court and make representations; 15
 - (b) the court must not make an order under section 94 unless the prosecutor has taken reasonable steps to contact the accused;
 - (c) section 94(10) applies as if the reference to subsection (2) were to subsection (1) of this section; 20
 - (d) sections 99, 104(3), 105 and 106 do not apply;
 - (e) sections 107, 108 and 109 do not apply while the accused is still an absconder.
- (4) Once the accused has ceased to be an absconder section 107 has effect as if subsection (1)(a) read – 25
- “(a) in a case where section 113 applies the court did not proceed under section 94.”.

114 Accused neither convicted nor acquitted

- (1) This section applies if –
- (a) proceedings for an offence or offences are instituted against an accused but are not concluded, 30
 - (b) he is unlawfully at large, and
 - (c) the period of two years (starting with the day the court believes he first became unlawfully at large) has ended.
- (2) If this section applies the court may, on an application by the prosecutor, proceed under section 94 in the same way as it may proceed if the conditions there mentioned are satisfied; but this is subject to subsection (3). 35
- (3) If the court proceeds under section 94 as applied by this section, this Part has effect with these modifications –
- (a) any person the court thinks is likely to be affected by an order under section 94 is entitled to appear before the court and make representations; 40
 - (b) the court must not make an order under section 94 unless the prosecutor has taken reasonable steps to contact the accused;

- (c) sections 99, 104(3), 105 and 106 do not apply;
 - (d) sections 107, 108 and 109 do not apply while the accused is still unlawfully at large.
- (4) Subsections (5) and (6) apply once the accused has ceased to be unlawfully at large. 5
- (5) Section 107 has effect as if subsection (1)(a) read –
 - “(a) in a case where section 114 applies the court did not proceed under section 94.”.
- (6) Sections 107, 108 and 109 have effect as if references to the date of conviction were to – 10
 - (a) the day when proceedings for the offence were instituted against the accused, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.
- (7) If – 15
 - (a) the court makes an order under section 94 as applied by this section, and
 - (b) the accused is later convicted of the offence (or any of the offences) concerned,

section 94 does not apply so far as that conviction is concerned. 20

115 Variation of order

- (1) This section applies if –
 - (a) the court makes a confiscation order under section 94 as applied by section 114,
 - (b) the accused ceases to be unlawfully at large, 25
 - (c) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and
 - (d) before the end of the period of six years starting with the date on which the order was made he applies to the court to consider the evidence on which his belief is based. 30
- (2) If (after considering the evidence) the court concludes that the accused’s belief is well founded it may vary the order by substituting for the amount required to be paid such amount as it thinks is just.

116 Discharge of order 35

- (1) Subsection (2) applies if –
 - (a) the court makes a confiscation order under section 94 as applied by section 114,
 - (b) the accused is later tried for the offence or offences concerned and acquitted of the offence or offences, and 40
 - (c) he applies to the court to discharge the order.
- (2) In such a case the court must discharge the order.
- (3) Subsection (4) applies if –

- (a) the court makes a confiscation order under section 94 as applied by section 114,
 - (b) the accused ceases to be unlawfully at large,
 - (c) subsection (1)(b) does not apply, and
 - (d) he applies to the court to discharge the order. 5
- (4) In such a case the court may discharge the order if it finds that—
 - (a) there has been undue delay in continuing the proceedings mentioned in section 114(1), or
 - (b) the prosecutor does not intend to proceed with the prosecution.
- (5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it thinks is appropriate. 10

Appeals

117 Appeal by prosecutor

- (1) Section 108 of the Procedure Act (Lord Advocate’s right of appeal in solemn proceedings) is amended as provided in subsections (2) to (4). 15
- (2) In subsection (1), after paragraph (c) insert—
 - “(ca) a decision under section 94 of the Proceeds of Crime Act 2001 not to make a confiscation order;”.
- (3) In subsection (2)(b)(ii), for the words “or (c)” substitute “, (c) or (ca)”.
- (4) After subsection (2) insert— 20
 - “(3) For the purposes of subsection (2)(b)(i) above in its application to a confiscation order by virtue of section 94(9) of the Proceeds of Crime Act 2001, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.” 25
- (5) Section 175 of the Procedure Act (right of appeal in summary proceedings) is amended as provided in subsections (6) to (8).
- (6) In subsection (4), after paragraph (c) insert—
 - “(ca) a decision under section 94 of the Proceeds of Crime Act 2001 not to make a confiscation order;”. 30
- (7) In subsection (4A)(b)(ii), for the words “or (c)” substitute “, (c) or (ca)”.
- (8) After subsection (4A) insert—
 - “(4B) For the purposes of subsection (4A)(b)(i) above in its application to a confiscation order by virtue of section 94(9) of the Proceeds of Crime Act 2001, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.” 35

Payment and enforcement

118 Time for payment

- (1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section. 5
- (2) If the accused shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.
- (3) The specified period –
 - (a) must start with the day on which the confiscation order is made, and 10
 - (b) must not exceed six months.
- (4) If within the specified period the accused applies to the sheriff court for the period to be extended and the court, after giving the prosecutor an opportunity of being heard, believes there are exceptional circumstances, it may make an order extending the period. 15
- (5) The extended period –
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed 12 months.
- (6) An order under this section does not prevent the exercise by any administrator appointed in relation to the confiscation order of his powers and duties under this Part; and the court may, pending such exercise, postpone any decision as to making any such order. 20

119 Interest on unpaid sums

- (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether when the order is made or within a period specified under section 118), he must pay interest on the amount for the period for which it remains unpaid. 25
- (2) The rate of interest is the rate payable under a decree of the Court of Session.
- (3) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order. 30

120 Application of provisions about fine enforcement

- (1) The provisions of the Procedure Act specified in subsection (2) apply, with the qualifications mentioned in that subsection, in relation to a confiscation order as if the amount ordered to be paid were a fine imposed on the accused by the court making the confiscation order. 35
- (2) Those provisions are –
 - (a) section 211(3) to (6);
 - (b) section 214(4) to (6), but as if the references in subsection (4) to payment by instalments were omitted;
 - (c) section 216, but as if subsection (1) – 40
 - (i) gave the prosecutor an opportunity to be heard at any enquiry under that subsection; and

- (ii) applied whether the offender was in prison or not;
 - (d) section 217;
 - (e) section 218(2) and (3);
 - (f) section 219, provided that—
 - (i) where a court imposes a period of imprisonment in respect of both a fine and a confiscation order the amounts in respect of which the period is imposed must, for the purposes of subsection (2), be aggregated; 5
 - (ii) before imposing a period of imprisonment by virtue of that section the court must require a report from any administrator appointed in relation to the confiscation order as to whether and how he is likely to exercise his powers and duties under this Part and must take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition; and 10 15
 - (iii) where an administrator has not been appointed in relation to the confiscation order, or where the accused does not ask under section 214(2)(b) of the Procedure Act for time for payment of any confiscation order imposed by the court, the prosecutor may apply to the court to postpone the imposition of any period of imprisonment for a period not exceeding 3 months to enable the prosecutor to apply to the court for the appointment of an administrator. 20
 - (g) section 220, but as if the reference in subsection (1) to payment of a sum by the person included a reference to payment of the sum in respect of the person by an administrator appointed in relation to the confiscation order; 25
 - (h) section 221, except where an administrator is appointed in relation to the confiscation order;
 - (i) section 222, except that for the purposes of that section “confiscation order” in subsection (1) above must be construed as including such an order within the meaning of the Drug Trafficking Act 1994 (c. 37), the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) or of Part 2 or 4 of this Act. 30 35
 - (j) section 223;
 - (k) section 224.
- (3) Where a court, by virtue of subsection (1), orders the amount ordered to be paid under a confiscation order to be recovered by civil diligence under section 221 of the Procedure Act, any arrestment executed by a prosecutor under subsection (3) of section 126 of this Act is to be treated as having been executed by the court as if that subsection authorised such execution. 40
- (4) Subsection (5) applies where —
- (a) a warrant for apprehension of the accused is issued for a default in payment of the amount ordered to be paid under a confiscation order in respect of an offence or offences, and 45
 - (b) at the time the warrant is issued the accused is liable to serve a period of imprisonment or detention (other than one of life imprisonment or detention for life) in respect of the offence (or any of the offences).

- (5) In such a case any period of imprisonment or detention to which the accused is liable by virtue of section 219 of the Procedure Act runs from the expiry of the period of imprisonment or detention mentioned in subsection (4)(b).

Restraint orders etc

121	Conditions for exercise of powers	5
(1)	The court may exercise the powers conferred by section 122 if any of the following conditions is satisfied.	
(2)	The first condition is that—	
	(a) a criminal investigation has been instituted in Scotland with regard to an offence, and	10
	(b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.	
(3)	The second condition is that—	
	(a) proceedings for an offence have been instituted in Scotland and not concluded, and	15
	(b) there is reasonable cause to believe that the accused has benefited from his criminal conduct.	
(4)	The third condition is that—	
	(a) an application by the prosecutor has been made under section 107, 108, 113 or 114 and not concluded, or the court believes that such an application is to be made, and	20
	(b) there is reasonable cause to believe that the accused has benefited from his criminal conduct.	
(5)	The fourth condition is that—	
	(a) an application by the prosecutor has been made under section 109 and not concluded, or the court believes that such an application is to be made, and	25
	(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused's benefit exceeds the amount found as his benefit for the purposes of the confiscation order.	30
(6)	The fifth condition is that—	
	(a) an application by the prosecutor has been made under section 110 and not concluded, or the court believes that such an application is to be made, and	35
	(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the amount found as the available amount for the purposes of the confiscation order.	
(7)	The second condition is not satisfied if the court believes that—	40
	(a) there has been undue delay in continuing the proceedings, or	
	(b) the prosecutor does not intend to proceed.	
(8)	If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—	
	(a) there has been undue delay in continuing the application, or	45

- (b) the prosecutor does not intend to proceed.
 - (9) If the first condition is satisfied –
 - (a) references in this Part to the accused are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence; 5
 - (c) section 144(7) has effect as if proceedings for the offence had been instituted against the accused when the investigation was instituted.
 - (10) In this section, sections 122 to 140 and Schedule 2 “the court” means –
 - (a) the Court of Session, where a trial diet or a diet fixed for the purposes of section 76 of the Procedure Act in proceedings for the offence or offences concerned is to be, is being or has been held in the High Court of Justiciary; 10
 - (b) the sheriff exercising his civil jurisdiction, where a diet referred to in paragraph (a) is to be, is being or has been held in the sheriff court.
- 122 Restraint orders etc 15**
 - (1) If any condition set out in section 121 is satisfied the court may make an order (a restraint order) interdicting any specified person from dealing with any realisable property held by him.
 - (2) A restraint order may provide that it applies –
 - (a) to all realisable property held by the specified person whether or not the property is described in the order; 20
 - (b) to realisable property transferred to the specified person after the order is made.
 - (3) A restraint order may be made subject to exceptions, and an exception may in particular –
 - (a) make provision for reasonable living expenses and reasonable legal expenses; 25
 - (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
 - (c) be made subject to conditions. 30
 - (4) But an exception to a restraint order may not make provision for any legal expenses which –
 - (a) relate to an offence in respect of which the order is made, and
 - (b) are incurred by a person against whom proceedings for the offence have been instituted or by a recipient of a tainted gift. 35
 - (5) Where the court makes a restraint order it may make an order interdicting any person who is not subject to the restraint order from dealing with property to which the restraint order applies.
 - (6) An order under subsection (5) may be made subject to exceptions, and an exception may in particular –
 - (a) make provision for reasonable living expenses; 40
 - (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
 - (c) be made subject to conditions.

- (7) A restraint order does not affect property for the time being subject to a charging order or property subject to a charge under the Drug Trafficking Offences Act 1986 (c. 32), Part 6 of the Criminal Justice Act 1988 (c. 33), the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)) or the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

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- (8) Dealing with property includes –

 - (a) making a payment towards a debt;
 - (b) removing the property from Scotland;
 - (c) transferring or disposing of the property.

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123 Application, recall and variation

- (1) This section applies to –

 - (a) a restraint order;
 - (b) an order under section 122(4).

15
- (2) An order may be made only on an ex parte application by the prosecutor, which must be heard in chambers.

15
- (3) The prosecutor must intimate an order to every person affected by it.

20
- (4) Subsection (3) does not affect the time when the order becomes effective.

20
- (5) The prosecutor and any other person having an interest may apply to the court to recall an order or to vary it; and subsections (6) to (11) apply in such a case.

20
- (6) If an application under subsection (5) in relation to an order has been made but not determined, realisable property to which the order applies must not be realised.

25
- (7) The court may –

 - (a) recall the order;
 - (b) vary the order.

25
- (8) In the case of a restraint order, if the condition in section 121 which was satisfied was that proceedings were instituted or an application was made, the court must recall the order on the conclusion of the proceedings or of the application (as the case may be).

30
- (9) In the case of a restraint order, if the condition in section 121 which was satisfied was that an investigation was instituted or an application was to be made, the court must recall the order if within a reasonable time proceedings for the offence are not instituted or the application is not made (as the case may be).

35
- (10) Where the court recalls an order on the application of a person other than the prosecutor, it may order that property of that person ceases to be realisable property.

40
- (11) Where the court recalls a restraint order in a case in which an order has been made under section 122(4), the clerk of court must inform every person affected by the order under that provision.

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124 Appeals

- (1) If on an application for a restraint order the court decides not to make one, the prosecutor may reclaim or appeal to the Court of Session against the decision.
- (2) The prosecutor and any person having an interest may reclaim or appeal to the Court of Session against the decision of the court on an application under section 123(5). 5
- (3) The prosecutor and any person having an interest in the decision of the Court of Session on a reclaiming motion or an appeal under subsection (1) or (2) may appeal to the House of Lords.
- (4) For the purpose of disposing of an appeal under subsection (3) the House of Lords has the same powers as the Court of Session had on the reclaiming motion or appeal under subsection (1) or (2). 10

125 Inhibition of property affected by order

- (1) On the application of the Lord Advocate, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against— 15
 - (a) any person specified in a restraint order, or
 - (b) any person subject to an order under section 122(4).
- (2) That property is the heritable realisable property to which the restraint order applies (whether generally or such of it as is specified in the application). 20
- (3) The warrant for inhibition—
 - (a) has effect as if granted on the dependence of an action for debt by the Lord Advocate 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 Lord Advocate in the Register of Inhibitions and Adjudications. 25
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (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. 30
- (5) The execution of an inhibition under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property.
- (6) An inhibition executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted. 35
- (7) If an inhibition ceases to have effect to any extent by virtue of subsection (6) the Lord Advocate 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. 40

126 Arrestment of property affected by order

- (1) On the application of the prosecutor the court may, in relation to moveable realisable property to which a restraint order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.
- (2) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor. 5
- (3) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
- (4) The execution of an arrestment under this section in respect of property does not prejudice the exercise of an administrator's powers under or for the purposes of this Part in respect of that property. 10
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the restraint order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted. 15
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the prosecutor must apply to the court for an order recalling, or as the case may be, restricting the arrestment.

127 Restraint orders: administrators and seizure

- (1) If the court makes a restraint order it may at any time, on the application of the prosecutor – 20
 - (a) appoint an administrator to take possession of any realisable property to which the order applies and (in accordance with the court's directions) to manage or otherwise deal with the property;
 - (b) order a person who has possession of property in respect of which an administrator is appointed to give him possession of it. 25
- (2) An appointment of an administrator may be made subject to conditions or exceptions.
- (3) Where the court makes an order under subsection (1)(b), the clerk of court must notify the accused and any person subject to the order of the making of the order. 30
- (4) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment. 35
- (5) If a restraint order or an order under section 42 or 193 is in force a constable may seize any realisable property to which it applies to prevent its removal from Scotland.
- (6) Property seized under subsection (5) must be dealt with in accordance with the directions of the court which made the order. 40
- (7) The court may on the application of the prosecutor or any person affected by the order –
 - (a) recall the appointment.
 - (b) vary the terms of the appointment.

128 Restraint orders: restriction on proceedings and remedies

- (1) While a restraint order has effect, the court may sist any action, execution or any 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 a restraint order has been made or applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit. 5
- (3) Before exercising any power conferred by subsection (2), the court must give an opportunity to be heard to— 10
 - (a) the applicant for the restraint order;
 - (b) any administrator appointed under section 127.

Realisation of property: general

129 Confiscation order made: administrators

- (1) This section applies if— 15
 - (a) a confiscation order is made,
 - (b) it is not satisfied, and
 - (c) it is not subject to appeal.
- (2) In such a case the court may on the application of the prosecutor exercise the powers conferred on it by this section. 20
- (3) The court may appoint an administrator in respect of realisable property.
- (4) The court may confer the powers mentioned in subsection (5) on an administrator appointed under section 127 or under subsection (3) above.
- (5) Those powers are— 25
 - (a) power to take possession of any realisable property, subject to any conditions or exceptions specified by the court;
 - (b) power to realise any realisable property, in such manner as the court may specify.
- (6) The court may order any person who has possession of realisable property to give possession of it to an administrator referred to in subsection (4). 30
- (7) The clerk of court must notify the accused and any person subject to an order under subsection (6) of the making of the order.
- (8) Any dealing of the accused or any such person in relation to property to which the order applies is of no effect in a question with the administrator unless the accused or, as the case may be, that person had no knowledge of the administrator's appointment. 35
- (9) The court— 40
 - (a) may order a person holding an interest in realisable property to make to an administrator referred to in subsection (4) such payment as the court specifies in respect of a beneficial interest held by the accused or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

- (10) The court must not –
- (a) confer the power mentioned in subsection (5)(b) in respect of property, or
 - (b) exercise the power conferred on it by subsection (9) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it. 5

130 Power of entry and search

- A restraint order or a confiscation order may confer on the administrator power – 10
- (a) to enter any premises;
 - (b) to search for or inspect anything, authorised by the court;
 - (c) to take possession of the realisable property, subject to any conditions or exceptions the court specifies;
 - (d) without prejudice to any other powers he has, to manage or otherwise deal with the realisable property. 15

131 Discharge

- (1) This section applies if –
- (a) an administrator stands appointed under section 127 in respect of realisable property, and 20
 - (b) the court appoints an administrator under section 129
- (2) The court must order the first mentioned administrator to transfer to the other administrator all property held by him by virtue of the powers conferred on him by section 130.
- (3) If the administrator appointed under section 127 complies with an order under subsection (2) he is discharged – 25
- (a) from his appointment under that section,
 - (b) from any obligation under this Act arising from his appointment.

132 Application of sums by administrator

- (1) This section applies to sums which – 30
- (a) are in the hands of an administrator appointed under section 127 or 129(3), and
 - (b) fall within subsection (2).
- (2) These sums fall within this subsection –
- (a) the proceeds of the realisation of property under section 127 or 129(5)(b); 35
 - (b) any sums (other than those mentioned in paragraph (a)) in which the accused holds an interest.
- (3) The sums must be applied as follows –
- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 417; 40

-
- (b) second, they must be applied in payment of any amount of compensation directed under section 100(6) to be paid out of the sums recovered under the confiscation order;
 - (c) third, they must be applied on the accused’s behalf towards satisfaction of the confiscation order. 5
 - (4) If the amount payable under any confiscation order has been fully paid and any sums remain in the administrator’s hands he must distribute them –
 - (a) among such persons who held (or hold) interests in the property concerned as the court directs, and
 - (b) in such proportions as it directs. 10
 - (5) Before making a direction under subsection (4) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
 - (6) For the purposes of subsections (4) and (5) the property concerned is –
 - (a) the property represented by the proceeds mentioned in subsection (2)(a); 15
 - (b) the sums mentioned in subsection (2)(b).
 - (7) The appropriate clerk of court is the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 120(1) of this Act. 20
 - (8) The following rules apply if under the preceding provisions of this section sums are to be applied both in payment of compensation and of other matters –
 - (a) the administrator must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 100 (6) bears to the total amount payable under the confiscation order; 25
 - (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it; 30
 - (c) the amount deducted must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section (1) of 120(1) of this Act.
 - 133 Sums received by clerk of court** 35
 - (1) This section applies if a clerk of court receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 132 or otherwise).
 - (2) The clerk of court’s receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows. 40
 - (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as –
 - (a) are payable under this subsection by virtue of section 417, but
 - (b) are not already paid under section 132(3)(a).

- (4) If the Lord Advocate has reimbursed the administrator in respect of remuneration or expenses under section 135 the clerk of court must next apply the sums in reimbursing the Lord Advocate.
- (5) If the clerk of court received the sums under section 132 he must next apply them in payment of the administrator's remuneration and expenses. 5
- (6) If a direction was made under section 100(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount.
- (7) If any amount remains after the clerk of court makes any payments required by the preceding provisions of this section, the amount must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section 120(1) of this Act. 10
- (8) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters – 15
 - (a) the clerk of court must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 100(6) bears to the total amount payable under the confiscation order; 20
 - (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it;
 - (c) the amount deducted must be disposed of in accordance with section 211(5) or (6) of the Procedure Act as applied by section 120(1) of this Act. 25

Exercise of powers

134 Powers of court and administrator

- (1) This section applies to –
 - (a) the powers conferred on a court by sections 121 to 133 and 136 and Schedule 2; 30
 - (b) the powers of an administrator appointed under section 127 or 129(3).
- (2) The powers –
 - (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the accused; 35
 - (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property or of the proceeds of realisation; 40
 - (c) must be exercised without taking account of any obligation of the accused or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the accused;
 - (d) may be exercised in respect of a debt owed by the Crown. 45
- (3) Subsection (2) has effect subject to the following rules –

- (a) the powers must be exercised with a view to allowing a person other than the accused or a recipient of a tainted gift to retain or recover the value of any interest held by him;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; 5
 - (c) in a case where a confiscation order has not been made against the accused, property must not be realised if the court so orders under subsection (4).
- (4) If on an application by the accused or by the recipient of a tainted gift the court decides that property cannot be replaced it may order that it must not be realised. 10
- (5) An order under subsection (4) may be revoked or varied.

Administrators: general

135 Protection of administrators 15

- (1) If an administrator appointed under section 127 or 129(3) –
 - (a) takes action in relation to property which is not realisable property,
 - (b) would be entitled to take the action if it were realisable property, and
 - (c) believes on reasonable grounds that he is entitled to take the action,
 he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence. 20
- (2) Subsection (3) applies if an administrator incurs expenses in the exercise of his functions at a time when –
 - (a) a confiscation order has not been made, or
 - (b) a confiscation order has been made but the administrator has recovered no money. 25
- (3) As soon as is practicable after they have been incurred the expenses must be reimbursed by the Lord Advocate.
- (4) Subsection (5) applies if –
 - (a) an amount is due in respect of the administrator’s remuneration and expenses, but 30
 - (b) nothing (or not enough) is available to be applied in payment of them under section 133(4).
- (5) The remuneration and expenses must be paid (or must be paid to the extent of the shortfall) by the Lord Advocate. 35

136 Protection of persons affected

- (1) This section applies where an administrator is appointed under section 127 or 129(3).
- (2) The following persons may apply to the court –
 - (a) any person affected by action taken by the administrator; 40
 - (b) any person who may be affected by action the administrator proposes to take;

-
- (c) any person subject to an order under section 129(6).
- (3) On an application under this section the court may make such order as it thinks appropriate (including, in the case of an application under subsection (2)(c), an order removing the administrator from office).
- 137 Administrators: further provision** 5
- Schedule 2, which makes further provision about administrators appointed under section 127 and 129(3), has effect.
- 138 Administrators: restriction on proceedings and remedies**
- (1) Where an administrator is appointed under section 127 or 129, the court may sist any action, execution or other legal process in respect of the property to which the order appointing the administrator relates. 10
- (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 application has been made for the appointment of an administrator or that an administrator has been appointed in relation to that property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit. 15
- (3) Before exercising any power conferred by subsection (2) the court must give an opportunity to be heard to –
- (a) the prosecutor;
- (b) if appointed, the administrator. 20
- 139 Serious default**
- (1) If the following three conditions are satisfied the court may order the payment of such compensation as it thinks is just.
- (2) The first condition is satisfied if a criminal investigation has been instituted with regard to an offence and proceedings are not instituted for the offence. 25
- (3) The first condition is also satisfied if proceedings for an offence are instituted against a person and –
- (a) they do not result in his conviction for the offence, or
- (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it. 30
- (4) If subsection (2) applies the second condition is that –
- (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
- (b) the investigation would not have continued if the default had not occurred. 35
- (5) If subsection (3) applies the second condition is that –
- (a) in any criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person mentioned in subsection (9), and
- (b) the proceedings would not have been instituted or continued if the default had not occurred. 40

- (6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it –
 - (a) by or in pursuance of an order under this Part, or
 - (b) by or in pursuance of an order under section 48, 50 or 52 or an order under section 42 of the Proceeds of Crime (Scotland) Act 1995 (c. 43). 5
- (7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is instituted.
- (8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are instituted. 10
- (9) *Compensation under this section is payable to the applicant and –*
 - (a) if the person in default was a constable of a police force (within the meaning of the Police (Scotland) Act 1967 (c. 77)), the compensation is payable by the police authority or joint police board for the police area for which that force is maintained; 15
 - (b) if the person in default was a constable not falling within paragraph (a), the compensation is payable by the body under whose authority he acts;
 - (c) if the person in default was a procurator fiscal or was acting on behalf of the Lord Advocate, the compensation is payable by the Lord Advocate; 20
 - (d) if the person in default was a customs officer, the compensation is payable by the Commissioners of Customs and Excise;
 - (e) if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners. 25
- (10) Nothing in this section affects any delictual liability in relation to a serious default.

Compensation

140 Confiscation order varied or discharged

- (1) This section applies if – 30
 - (a) the court varies a confiscation order under section 115 or discharges one under section 116, and
 - (b) an application is made to the court by a person who held realisable property and has suffered loss as a result of the making of the order.
- (2) The court may order the payment to the applicant of such compensation as it believes is just. 35
- (3) Compensation payable under this section is payable by the Lord Advocate.

Enforcement abroad

141 Enforcement abroad

- (1) This section applies if – 40
 - (a) any of the conditions in section 121 are satisfied,

- (b) the prosecutor believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and
 - (c) the prosecutor sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.
- (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property. 5
- (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that— 10
 - (a) any person is prohibited from dealing with realisable property,
 - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed. 15
- (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.
- (6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of the realisation. 20
- (7) A certificate purporting to be issued by or on behalf of the requested government is sufficient evidence of the facts it states if it states—
 - (a) that the property has been realised in pursuance of a request under subsection (3), 25
 - (b) the date of realisation, and
 - (c) the proceeds of realisation.
- (8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation. 30

Interpretation

142 Criminal lifestyle

- (1) An accused has a criminal lifestyle if (and only if) the offence (or any of the offences) concerned satisfies any of these tests— 35
 - (a) it is a drug trafficking offence;
 - (b) it is a money laundering offence;
 - (c) it is specified in regulations made under this section by the Scottish Ministers;
 - (d) it constitutes conduct forming part of a course of criminal activity; 40
 - (e) it is an offence committed over a period of at least six months.
- (2) Conduct forms part of a course of criminal activity if the accused has benefited from the conduct and—

- (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
- (b) in the period of six years ending with the day when those proceedings were instituted (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited. 5

143 Conduct and benefit

- (1) Criminal conduct is conduct which –
 - (a) constitutes an offence in Scotland, or 10
 - (b) would constitute such an offence if it had occurred in Scotland.
- (2) General criminal conduct of the accused is all his criminal conduct, and it is immaterial –
 - (a) whether conduct occurred before or after the passing of this Act;
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act. 15
- (3) Particular criminal conduct of the accused is all his criminal conduct which falls within the following paragraphs –
 - (a) conduct which constitutes the offence or offences concerned;
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned. 20
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage. 25
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and in some other. 30
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

144 Tainted gifts and their recipients

- (1) Subsections (2) and (3) apply if –
 - (a) no court has made a decision as to whether the accused has a criminal lifestyle, or 35
 - (b) a court has decided that the accused has a criminal lifestyle.
- (2) A gift is tainted if it was made by the accused at any time after the relevant day.
- (3) A gift is also tainted if it was made by the accused at any time and was of property –
 - (a) which was obtained by the accused as a result of or in connection with his general criminal conduct, or 40

- (b) which (in whole or part and whether directly or indirectly) represented in the accused's hands property obtained by him as a result of or in connection with his general criminal conduct.
- (4) Subsection (5) applies if a court has decided that an accused does not have a criminal lifestyle. 5
- (5) A gift is tainted if it was made by the accused at any time after –
 - (a) the date on which the offence concerned was committed, or
 - (b) if there are two or more offences and they were committed on different dates, the earliest of those dates.
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed. 10
- (7) A gift may be a tainted gift whether it was made before or after the passing of this Act.
- (8) The relevant day is the first day of the period of six years ending with –
 - (a) the day when proceedings for the offence concerned were instituted against the accused, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.15
- (9) If the accused transfers property to another person (whether directly or indirectly) for a consideration whose value is significantly less than the value of the property at the time the accused obtained it, he is to be treated as making a gift. 20
- (10) If subsection (8) applies the property given is to be treated as such share in the property transferred as is represented by the fraction –
 - (a) whose numerator is the difference between the two values mentioned in subsection (8), and
 - (b) whose denominator is the value of the consideration provided by the accused.25
- (11) References to a recipient of a tainted gift are to a person to whom the accused has (whether directly or indirectly) made the gift. 30

145 Value: the basic rule

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person.
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time. 35
- (4) This section has effect subject to sections 146 and 147.

146 Value of property obtained from conduct

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision. 40

- (2) The value of the property at the material time is the greater of the following –
 - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (3). 5
- (3) The property found under this subsection is –
 - (a) if the person holds the property obtained, that property;
 - (b) if he holds no part of the property obtained, any property which directly or indirectly represents it in his hands;
 - (c) if he holds part of the property obtained, that part and any property which directly or indirectly represents the other part in his hands. 10
- (4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 145.

147 Value of tainted gifts

- (1) The value at any time (the material time) of a tainted gift is the greater of the following – 15
 - (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (2). 20
- (2) The property found under this subsection is –
 - (a) if the recipient holds the property given, that property;
 - (b) if the recipient holds no part of the property given, any property which directly or indirectly represents it in his hands;
 - (c) if the recipient holds part of the property given, that part and any property which directly or indirectly represents the other part in his hands. 25
- (3) Where the recipient of a tainted gift of money shows, on the balance of probabilities, that all or any part of the money has not been used to purchase goods or services or to earn interest or any other return, the value of the gift or, as the case may be, that part of it is to be taken as the face value of the money or part of the money. 30
- (4) In deciding the value of a tainted gift the court may disregard the amount, or part of the amount, of the gift if it considers it improbable that the amount or part could be realised. 35
- (5) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 145.

148 Free property

- Property is free unless an order is in force in respect of it under –
- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders), 40
 - (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15) (deprivation orders),
 - (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime),

- (d) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (deprivation orders),
- (e) section 23 or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders), or
- (f) section 251, 267, 294(2) or 297(2) of this Act.

149 Realisable property

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- (1) Realisable property is –
 - (a) any free property held by the accused;
 - (b) any free property held by the recipient of a tainted gift.
- (2) Property is not realisable if it is –
 - (a) held on trust by the accused or the recipient of a tainted gift for a person other than the accused or such a recipient, or 10
 - (b) for the time being subject to a restraint order, under Part 2, this Part, or Part 4, in other proceedings.

150 Property: general provisions

- (1) Property is all property wherever situated and includes – 15
 - (a) money;
 - (b) all forms of property whether heritable or moveable and whether corporeal or incorporeal.
- (2) The following rules apply in relation to property –
 - (a) property is held by a person if he holds an interest in it; 20
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to his property vested in his permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)), trustee in bankruptcy or liquidator; 25
 - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested; 30
 - (f) references to an interest, in relation to property, include references to a right.

151 Proceedings

- (1) Proceedings for an offence are instituted against a person –
 - (a) on his arrest without warrant; 35
 - (b) when he is charged with the offence without being arrested;
 - (c) when a warrant to arrest him is granted;
 - (d) when a warrant to cite him is granted;
 - (e) when he first appears on petition or when an indictment or complaint is served on him. 40
- (2) If more than one time is found under subsection (1) in relation to proceedings they are instituted at the earliest of those times.
- (3) Proceedings for an offence are concluded when –

- (a) the trial diet is deserted simpliciter,
 - (b) the accused is acquitted or, under section 65 or 147 of the Procedure Act, discharged or liberated,
 - (c) the court sentences the accused without making a confiscation order and without postponing a decision as regards making such an order, 5
 - (d) the court decides, after such a postponement, not to make a confiscation order,
 - (e) the accused's conviction is quashed, or
 - (f) the accused is pardoned.
- (4) If a confiscation order is made against the accused in proceedings for an offence, the proceedings are concluded – 10
 - (a) when the order is satisfied or discharged, or
 - (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.
- 152 Applications** 15
 - (1) An application under section 107, 108, 113 or 114 is concluded –
 - (a) in a case where the court decides not to make a confiscation order against the accused, when it makes the decision;
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order; 20
 - (c) in a case where the application is withdrawn, when the prosecutor notifies the withdrawal to the court to which the application was made.
 - (2) An application under section 109 or 110 is concluded – 25
 - (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
 - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order; 30
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.
- 153 Satisfaction of confiscation orders** 35

A confiscation order is satisfied –

 - (a) when no amount is due under it;
 - (b) where the accused against whom it was made serves a term of imprisonment or detention in default of payment of the amount due under the order, on the completion of that term of imprisonment or detention. 40
- 154 Drug trafficking offences**
 - (1) Each of the following offences under the Misuse of Drugs Act 1971 (c. 38) is a drug trafficking offence –

- (a) an offence under section 4(2) or (3) (production and supply of controlled drugs);
 - (b) an offence under section 5(3) (possession of controlled drugs with intent to supply);
 - (c) an offence under section 8 (permitting certain activities); 5
 - (d) an offence under section 20 (assisting in or inducing commission outside UK of offence punishable under a corresponding law).
- (2) An offence is a drug trafficking offence if –
 - (a) it is an offence under section 50(2) or (3), 68(2) or 170 of the Customs and Excise Management Act 1979 (c. 2) (import, export and fraudulent evasion), and 10
 - (b) it is an offence in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38).
- (3) Each of the following offences under the Criminal Justice (International Co-operation) Act 1990 (c. 5) is a drug trafficking offence – 15
 - (a) an offence under section 12 (manufacture or supply of substance specified in Schedule 2 to that Act);
 - (b) an offence under section 14 (concealing or transferring drug trafficking proceeds); 20
 - (c) an offence under section 19 (using ship for illicit traffic in controlled drugs).
- (4) Each of the following offences is a drug trafficking offence –
 - (a) an offence under section 37 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (acquisition, possession or use of drug trafficking proceeds); 25
 - (b) an offence under section 38 of that Act (assisting another to retain drug trafficking proceeds);
 - (c) an offence of conspiring, inciting or attempting to commit an offence falling within subsections (1) to (3) above or paragraph (a) of this subsection. 30

155 Money laundering offences

- (1) An offence under section 321, 322 or 323 is a money laundering offence.
- (2) An offence of conspiring, inciting or attempting to commit any of those offences is a money laundering offence. 35

156 Other interpretative provisions

- (1) In this Part –
 - “accused” means a person against whom proceedings for an offence have been instituted (whether or not he has been convicted);
 - “clerk of court” includes the sheriff clerk; 40
 - “confiscation order” means an order under section 94;
 - “conviction”, in relation to an offence, includes a finding that the offence has been committed;
 - “court” must be construed in accordance with sections 94(11) and 121(10);

“criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence;

“the Procedure Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46);

“restraint order” means an order under section 122.

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(2) A reference to the offence (or offences) concerned must be construed in accordance with section 94(10).

(3) A reference to sentencing the accused for an offence includes a reference to dealing with him otherwise in respect of the offence.

10

General

157 Rules of court

(1) Provision may be made by act of sederunt as to –

- (a) giving notice or serving any document for the purposes of this Part;
- (b) the account of court’s functions under Schedule 2;
- (c) the accounts to be kept by the administrator in relation to the exercise of his functions.

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(2) Subsection (1) is without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) or section 5 of the Court of Session Act 1988 (c. 36).

PART 4

20

CONFISCATION: NORTHERN IRELAND

Confiscation orders

158 Making of order

(1) The Crown Court must proceed under this section if the following two conditions are satisfied.

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(2) The first condition is that a defendant falls within either of the following paragraphs –

- (a) he is convicted of an offence or offences in proceedings before the Crown Court;
- (b) he is committed to the Crown Court in respect of an offence or offences under section 221 below (committal with a view to a confiscation order being considered).

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(3) The second condition is that –

- (a) the prosecutor or the Director asks the court to proceed under this section, or
- (b) the court believes it is appropriate for it to do so.

35

(4) The court must proceed as follows –

- (a) it must decide whether the defendant has a criminal lifestyle;
- (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;

40

- (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- (5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must –
 - (a) decide the recoverable amount, and 5
 - (b) make an order (a confiscation order) requiring him to pay that amount.
- (6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct. 10
- (7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.
- (8) The first condition is not satisfied if the defendant absconds (but section 180 may apply).
- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2). 15

159 Time for making order

A confiscation order must be made before the court sentences the defendant for the offence (or any of the offences) concerned.

160 Recoverable amount 20

- (1) The recoverable amount for the purposes of section 158 is an amount equal to the defendant's benefit from the conduct concerned.
- (2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is –
 - (a) the available amount, or 25
 - (b) a nominal amount, if the available amount is nil.
- (3) But if section 158(6) applies the recoverable amount is such amount as –
 - (a) the court believes is just, but
 - (b) does not exceed the amount found under subsection (1) or (2) (as the case may be). 30
- (4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which –
 - (a) a recovery order is in force under section 267, or
 - (b) a forfeiture order is in force under section 297(2),
 must be ignored. 35
- (5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

161 Defendant's benefit

- (1) If the court is proceeding under section 158 this section applies for the purpose of – 40

- (a) deciding whether the defendant has benefited from conduct, and
 - (b) deciding his benefit from the conduct.
- (2) The court must –
 - (a) take account of conduct occurring up to the time it makes its decision;
 - (b) take account of property obtained up to that time. 5
- (3) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts –
 - (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
 - (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (4). 10
- (4) These are the provisions –
 - (a) the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41); 15
 - (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
 - (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
 - (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43); 20
 - (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
 - (h) Part 2 or 3 of this Act.

162 Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of – 25
 - (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority, and
 - (b) the total of the values (at that time) of all tainted gifts. 30
- (2) An obligation has priority if it is an obligation of the defendant –
 - (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
 - (b) to pay a sum which would be included among the preferential debts if the defendant’s bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date. 35
- (3) “Preferential debts” has the meaning given by Article 346 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

163 Assumptions to be made in case of criminal lifestyle 40

- (1) If the court decides under section 158 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of –
 - (a) deciding whether he has benefited from his general criminal conduct, and

- (b) deciding his benefit from the conduct.
- (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him –
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it. 5
- (3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him –
 - (a) as a result of his general criminal conduct, and
 - (b) at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct. 10
- (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it. 15
- (6) But the court must not make a required assumption in relation to particular property or expenditure if –
 - (a) the assumption is shown to be incorrect, or
 - (b) there would be a serious risk of injustice if the assumption were made.
- (7) If the court does not make one or more of the required assumptions it must state its reasons. 20
- (8) The relevant day is the first day of the period of six years ending with –
 - (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days. 25
- (9) The date of conviction is –
 - (a) the date on which the defendant was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest. 30

164 Time for payment

- (1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section. 35
- (2) If the defendant shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.
- (3) The specified period –
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed six months. 40
- (4) If within the specified period the defendant applies to the Crown Court for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period.

- (5) The extended period –
 - (a) must start with the day on which the confiscation order is made, and
 - (b) must not exceed 12 months.

165 Interest on unpaid sums

- (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid. 5
- (2) The rate of interest is the same rate as that for the time being applying to a money judgment of the High Court.
- (3) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order. 10

166 Effect of order on court's other powers

- (1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- (2) The court must take account of the confiscation order before – 15
 - (a) it imposes a fine on the defendant, or
 - (b) it makes an order falling within subsection (3).
- (3) These orders fall within this subsection –
 - (a) an order involving payment by the defendant, other than an order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders); 20
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders); 25
 - (d) an order under section 23 or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- (4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.
- (5) Subsection (6) applies if – 30
 - (a) a court makes both a confiscation order and an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) against the same person in the same proceedings, and
 - (b) the court believes he will not have sufficient means to satisfy both the orders in full. 35
- (6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means. 40
- (7) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it believes is appropriate in respect of an offence.

Procedural matters

167 Postponement

- (1) The court may postpone proceedings under section 158 for a specified period; and a period of postponement may be extended.
- (2) A period of postponement (including one as extended) must not end after the permitted period ends. 5
- (3) But subsection (2) does not apply if there are exceptional circumstances.
- (4) The permitted period is the period of two years starting with the date of conviction.
- (5) But if – 10
 - (a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and
 - (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (4), 15the permitted period is that period of three months.
- (6) A postponement or extension may be made –
 - (a) on application by the defendant;
 - (b) on application by the prosecutor or the Director (as the case may be);
 - (c) by the court of its own motion. 20
- (7) If –
 - (a) proceedings are postponed for a period, and
 - (b) an application to extend the period is made before it ends,the application may be granted even after the period ends.
- (8) The date of conviction is – 25
 - (a) the date on which the defendant was convicted of the offence concerned, or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.
- (9) References to appealing include references to applying under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (statement of case). 30

168 Effect of postponement

- (1) If the court postpones proceedings under section 158 it may proceed to sentence the defendant for the offence (or any of the offences) concerned. 35
- (2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not –
 - (a) impose a fine on him,
 - (b) make an order falling within section 166(3), or
 - (c) make an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)). 40

- (3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by –
 - (a) imposing a fine on him,
 - (b) making an order falling within section 166(3), or
 - (c) making an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994.5
- (4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.
- (5) For the purposes of –
 - (a) section 16(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (time limit for notice of appeal or of application for leave to appeal), and
 - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (c. 33) (time limit for notice of application for leave to refer a case under section 36 of that Act),10
the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3). 15
- (6) If the court proceeds to sentence the defendant under subsection (1) –
 - (a) section 158 has effect as if the defendant’s particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned;
 - (b) section 159 must be ignored.20
- (7) The postponement period is the period for which proceedings under section 158 are postponed. 25

169 Statement of information

- (1) If the court is proceeding under section 158 in a case where section 158(3)(a) applies, the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders.
- (2) If the court is proceeding under section 158 in a case where section 158(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders. 30
- (3) If the prosecutor or the Director (as the case may be) believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues –
 - (a) whether the defendant has a criminal lifestyle;
 - (b) whether he has benefited from his general criminal conduct;
 - (c) his benefit from the conduct.35
- (4) A statement under subsection (3) –
 - (a) must include information the prosecutor or Director believes is relevant in connection with applying the assumptions in section 163;
 - (b) must, if the prosecutor or Director believes there would be a serious risk of injustice if a required assumption were made, include information he believes is relevant in connection with deciding whether it should not be made.40
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- (5) If the prosecutor or the Director (as the case may be) does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor or the Director believes are relevant in connection with deciding these issues –
 - (a) whether the defendant has benefited from his particular criminal conduct; 5
 - (b) his benefit from the conduct.
- (6) If the prosecutor or the Director gives the court a statement of information –
 - (a) he may at any time give the court a further statement of information;
 - (b) he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders. 10
- (7) If the court makes an order under this section it may at any time vary it by making another one.

170 Defendant’s response to statement of information

- (1) If the prosecutor or the Director gives the court a statement of information and a copy is served on the defendant, the court may order the defendant –
 - (a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and
 - (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on. 20
- (2) If the defendant accepts to any extent an allegation in a statement of information the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 169(3) or (5) (as the case may be).
- (3) If the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from –
 - (a) any allegation in respect of which he has complied with the requirement; 25
 - (b) any allegation that he has benefited from his general or particular criminal conduct. 30
- (4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.
- (5) If the court makes an order under this section it may at any time vary it by making another one. 35
- (6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

171 Provision of information by defendant

- (1) This section applies if –
 - (a) the court is proceeding under section 158 in a case where section 158(3)(a) applies, or 40
 - (b) it is proceeding under section 158 in a case where section 158(3)(b) applies or it is considering whether to proceed.

- (2) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date. 5
- (4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.
- (5) If the prosecutor or the Director (as the case may be) accepts to any extent an allegation made by the defendant –
 - (a) in giving information required by an order under this section, or 10
 - (b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 162,
 the court may treat the acceptance as conclusive of the matters to which it relates.
- (6) For the purposes of this section an allegation may be accepted in a manner ordered by the court. 15
- (7) If the court makes an order under this section it may at any time vary it by making another one.

Reconsideration

172 No order made: reconsideration of case 20

- (1) This section applies if –
 - (a) the first condition in section 158 is satisfied but no court has proceeded under that section,
 - (b) there is evidence which was not available to the prosecutor on the relevant date, 25
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and
 - (d) after considering the evidence the court believes it is appropriate for it to proceed under section 158. 30
- (2) If this section applies the court must proceed under section 158, and when it does so subsections (3) to (8) below apply.
- (3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned –
 - (a) section 158 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 35
 - (b) section 159 must be ignored.
- (4) Section 161(2) does not apply, and the rules applying instead are that the court must – 40
 - (a) take account of conduct occurring before the relevant date;
 - (b) take account of property obtained before that date;

- (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (5) In section 163 –
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date; 5
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (6) The recoverable amount for the purposes of section 158 is such amount as – 10
 - (a) the court believes is just, but
 - (b) does not exceed the amount found under section 160.
- (7) In arriving at the just amount the court must have regard in particular to –
 - (a) the amount found under section 160;
 - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; 15
 - (c) any order which falls within section 166(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 162; 20
 - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).
- (8) If an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 has been made against the defendant in respect of the offence or offences concerned, section 166(5) and (6) above do not apply. 25
- (9) The relevant date is –
 - (a) if the court made a decision not to proceed under section 158, the date of the decision; 30
 - (b) if the court did not make such a decision, the date of conviction.
- (10) The date of conviction is –
 - (a) the date on which the defendant was convicted of the offence concerned, or 35
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

173 No order made: reconsideration of benefit

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that in proceeding under section 158 the court has decided that – 40
 - (a) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct, or
 - (b) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct. 45

- (3) If the court proceeded under section 158 because the Director asked it to, the second condition is that—
 - (a) the Director has evidence which was not available to him when the court decided that the defendant had not benefited from his general or particular criminal conduct, 5
 - (b) before the end of the period of six years starting with the date of conviction the Director applies to the Crown Court to consider the evidence, and
 - (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it. 10
- (4) If the court proceeded under section 158 because the prosecutor asked it to or because it believed it was appropriate for it to do so, the second condition is that— 15
 - (a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct,
 - (b) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence, and 20
 - (c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it. 25
- (5) If this section applies the court—
 - (a) must make a fresh decision under section 158(4)(b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be);
 - (b) may make a confiscation order under that section. 30
- (6) Subsections (7) to (12) below apply if the court proceeds under section 158 in pursuance of this section.
- (7) If the court has already sentenced the defendant for the offence (or any of the offences) concerned—
 - (a) section 158 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 35
 - (b) section 159 must be ignored.
- (8) Section 161(2) does not apply, and the rules applying instead are that the court must— 40
 - (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) take account of property obtained before that date; 45
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) In section 163—

- (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date; 5
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (10) The recoverable amount for the purposes of section 158 is such amount as –
 - (a) the court believes is just, but 10
 - (b) does not exceed the amount found under section 160.
- (11) In arriving at the just amount the court must have regard in particular to –
 - (a) the amount found under section 160;
 - (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; 15
 - (c) any order which falls within section 166(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 162;
 - (d) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders). 20
- (12) If an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 has been made against the defendant in respect of the offence or offences concerned, section 166(5) and (6) above do not apply. 25
- (13) The date of conviction is the date found by applying section 172(10).

174 Order made: reconsideration of benefit

- (1) This section applies if – 30
 - (a) a court has made a confiscation order,
 - (b) the prosecutor or the Director believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the amount found as his benefit for the purposes of the order,
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor or the Director applies to the Crown Court to consider the evidence on which his belief is based, and 35
 - (d) after considering the evidence the court believes it is appropriate for it to proceed under this section.
- (2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) below apply. 40
- (3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 158 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned. 45

- (4) Section 161(2) does not apply, and the rules applying instead are that the court must –
 - (a) take account of conduct occurring up to the time it decided the defendant’s benefit for the purposes of the confiscation order;
 - (b) take account of property obtained up to that time; 5
 - (c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (5) In applying section 161(3) the confiscation order must be ignored.
- (6) In section 163 –
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order; 10
 - (b) the third assumption does not apply with regard to expenditure incurred by him after that time;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time. 15
- (7) If the amount found under the new calculation of the defendant’s benefit exceeds the amount found as his benefit for the purposes of the confiscation order the court –
 - (a) must make a new calculation of the recoverable amount for the purposes of section 158, and 20
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (8) In applying subsection (7)(a) the court must – 25
 - (a) take the new calculation of the defendant’s benefit;
 - (b) apply section 162 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation. 30
- (9) In applying subsection (7)(b) the court must have regard in particular to –
 - (a) any fine imposed on the defendant for the offence (or any of the offences) concerned;
 - (b) any order which falls within section 166(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 162; 35
 - (c) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders). 40
- (10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) if a court has made a direction under section 166(6).
- (11) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money. 45
- (12) The date of conviction is the date found by applying section 172(10).

175 Order made: reconsideration of available amount

- (1) This section applies if –
 - (a) a court has made a confiscation order,
 - (b) the amount required to be paid was the amount found under section 160(2), and 5
 - (c) an applicant falling within subsection (2) applies to the Crown Court to make a new calculation of the available amount.
- (2) These applicants fall within this subsection –
 - (a) the prosecutor;
 - (b) the Director; 10
 - (c) a receiver appointed under section 201 or 203.
- (3) In a case where this section applies the court must make the new calculation, and in doing so it must apply section 162 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation. 15
- (4) If the amount found under the new calculation exceeds the amount found as the available amount for the purposes of the confiscation order the court may vary the order by substituting for the amount required to be paid such amount as – 20
 - (a) it believes is just, but
 - (b) does not exceed the amount found (when the confiscation order was made) as the defendant’s benefit from the conduct concerned.
- (5) In deciding what is just the court must have regard in particular to –
 - (a) any fine imposed on the defendant for the offence (or any of the offences) concerned; 25
 - (b) any order which falls within section 166(3) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 162; 30
 - (c) any order which has been made against him in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders).
- (6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) if a court has made a direction under section 166(6). 35
- (7) In deciding under this section whether one amount exceeds another the court must take account of any change in the value of money.

176 Inadequacy of available amount: variation of order

- (1) This section applies if – 40
 - (a) a court has made a confiscation order, and
 - (b) the defendant, or a receiver appointed under section 201 or 203, applies to the Crown Court to vary the order under this section.
- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 162 as if references to the time the confiscation order is 45

made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

- (3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just. 5
- (4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors. 10
- (5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.
- (6) In subsection (4) “company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) or the Insolvency Act 1986 (c. 45). 15

177 Inadequacy of available amount: discharge of order

- (1) This section applies if –
 - (a) a court has made a confiscation order, 20
 - (b) the prosecutor applies to the Crown Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is less than £1,000.
- (2) In such a case the court must calculate the available amount, and in doing so it must apply section 162 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation. 25
- (3) If the court –
 - (a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid, and 30
 - (b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,
 it may discharge the confiscation order.
- (4) The specified reasons are –
 - (a) in a case where any of the realisable property is situated in Northern Ireland and consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred; 35
 - (b) any reason specified by the Secretary of State by order.
- (5) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c). 40

178 Small amount outstanding: discharge of order

- (1) This section applies if –
 - (a) a court has made a confiscation order,

- (b) a chief clerk applies to the Crown Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is £50 or less.
- (2) In such a case the court may discharge the order.
- (3) The Secretary of State may by order vary the amount for the time being specified in subsection (1)(c). 5

179 Information

- (1) This section applies if –
 - (a) the court proceeds under section 158 in pursuance of section 172 or 173, or 10
 - (b) the prosecutor or the Director applies under section 174.
- (2) In such a case –
 - (a) the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders;
 - (b) section 169 applies accordingly (with appropriate modifications where the prosecutor or the Director applies under section 174); 15
 - (c) section 170 applies accordingly;
 - (d) section 171 applies as it applies in the circumstances mentioned in section 171(1).

Defendant absconds 20

180 Defendant convicted or committed

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that a defendant absconds after –
 - (a) he is convicted of an offence or offences in proceedings before the Crown Court, or 25
 - (b) he is committed to the Crown Court in respect of an offence or offences under section 221 below (committal with a view to a confiscation order being considered).
- (3) The second condition is that –
 - (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and 30
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 158 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5). 35
- (5) If the court proceeds under section 158 as applied by this section, this Part has effect with these modifications –
 - (a) any person the court believes is likely to be affected by an order under section 158 is entitled to appear before the court and make representations; 40

- (b) the court must not make an order under section 158 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant;
 - (c) section 158(9) applies as if the reference to subsection (2) were to subsection (2) of this section; 5
 - (d) sections 163, 169(4), 170 and 171 must be ignored;
 - (e) sections 172, 173 and 174 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 172 has effect as if subsection (1)(a) read – 10
 - “(a) at a time when the first condition in section 180 was satisfied the court did not proceed under section 158,”.
- (7) If the court does not believe it is appropriate for it to proceed under this section, once the defendant ceases to be an absconder section 172 has effect as if subsection (1)(b) read – 15
 - “(b) there is evidence which was not available to the prosecutor or the Director on the relevant date,”.

181 Defendant neither convicted nor acquitted

- (1) This section applies if the following two conditions are satisfied.
- (2) The first condition is that – 20
 - (a) proceedings for an offence or offences are started against a defendant but are not concluded,
 - (b) he absconds, and
 - (c) the period of two years (starting with the day the court believes he absconded) has ended. 25
- (3) The second condition is that –
 - (a) the prosecutor or the Director applies to the Crown Court to proceed under this section, and
 - (b) the court believes it is appropriate for it to do so.
- (4) If this section applies the court must proceed under section 158 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5). 30
- (5) If the court proceeds under section 158 as applied by this section, this Part has effect with these modifications –
 - (a) any person the court believes is likely to be affected by an order under section 158 is entitled to appear before the court and make representations; 35
 - (b) the court must not make an order under section 158 unless the prosecutor or the Director (as the case may be) has taken reasonable steps to contact the defendant; 40
 - (c) section 158(9) applies as if the reference to subsection (2) were to subsection (2) of this section;
 - (d) sections 163, 169(4) and 170 to 173 must be ignored;
 - (e) section 174 must be ignored while the defendant is still an absconder.
- (6) Once the defendant has ceased to be an absconder section 174 has effect as if references to the date of conviction were to – 45

- (a) the day when proceedings for the offence concerned were started against the defendant, or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (7) If— 5
 - (a) the court makes an order under section 158 as applied by this section, and
 - (b) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned,

section 158 does not apply so far as that conviction is concerned. 10

182 Variation of order

- (1) This section applies if—
 - (a) the court makes a confiscation order under section 158 as applied by section 181,
 - (b) the defendant ceases to be an absconder, 15
 - (c) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order), and
 - (d) before the end of the period of six years starting with the date on which the order was made he applies to the Crown Court to consider the evidence on which his belief is based. 20
- (2) If (after considering the evidence) the court concludes that the defendant's belief is well founded—
 - (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order), and 25
 - (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

183 Discharge of order

- (1) Subsection (2) applies if— 30
 - (a) the court makes a confiscation order under section 158 as applied by section 181,
 - (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts, and
 - (c) he applies to the Crown Court to discharge the order. 35
- (2) In such a case the court must discharge the order.
- (3) Subsection (4) applies if—
 - (a) the court makes a confiscation order under section 158 as applied by section 181,
 - (b) the defendant ceases to be an absconder, 40
 - (c) subsection (1)(b) does not apply, and
 - (d) he applies to the Crown Court to discharge the order.
- (4) In such a case the court may discharge the order if it finds that—

- (a) there has been undue delay in continuing the proceedings mentioned in section 181(2), or
 - (b) the prosecutor does not intend to proceed with the prosecution.
- (5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate. 5

Appeals

184 Appeal by prosecutor or Director

- (1) If the Crown Court makes a confiscation order the prosecutor or the Director may appeal to the Court of Appeal in respect of the order.
- (2) If the Crown Court decides not to make a confiscation order the prosecutor or the Director may appeal to the Court of Appeal against the decision. 10
- (3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 172, 173, 180 or 181.

185 Court's powers on appeal

- (1) On an appeal under section 184(1) the Court of Appeal may confirm, quash or vary the confiscation order. 15
- (2) On an appeal under section 184(2) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may –
 - (a) itself proceed under section 158 (ignoring subsections (1) to (3)), or
 - (b) direct the Crown Court to proceed afresh under section 158. 20
- (3) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the Court of Appeal may make.
- (4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must –
 - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; 25
 - (b) have regard to any order which falls within section 166(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 162. 30
- (5) If the Court of Appeal proceeds under section 158 or the Crown Court proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply.
- (6) If a court has already sentenced the defendant for the offence (or any of the offences) concerned – 35
 - (a) section 158 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned; 40
 - (b) section 159 must be ignored.

- (7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders) –
 - (a) the court must have regard to it, and 5
 - (b) section 166(5) and (6) above do not apply.
- (8) Section 161(2) does not apply, and the rules applying instead are that the court must –
 - (a) take account of conduct occurring before the relevant date;
 - (b) take account of property obtained before that date; 10
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) In section 163 –
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date; 15
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (10) Section 179 applies as it applies in the circumstances mentioned in subsection (1) of that section. 20
- (11) If the Court of Appeal –
 - (a) makes a confiscation order, and
 - (b) appoints the Director as the enforcement authority for the order under section 187, 25it must direct the Crown Court to proceed under section 203.
- (12) The relevant date is the date on which the Crown Court decided not to make a confiscation order.

186 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 184. 30
- (2) An appeal under this section lies at the instance of –
 - (a) the defendant or the prosecutor (if the prosecutor appealed under section 184);
 - (b) the defendant or the Director (if the Director appealed under section 184). 35
- (3) On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the House of Lords may confirm, quash or vary the order.
- (4) On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the House of Lords may – 40
 - (a) confirm the decision, or
 - (b) direct the Crown Court to proceed afresh under section 158 if it believes the decision was wrong.

- (5) In proceeding afresh in pursuance of this section the Crown Court must comply with any directions the House of Lords may make.
- (6) If a court varies a confiscation order under this section or makes a confiscation order in pursuance of a direction under this section it must—
 - (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; 5
 - (b) have regard to any order which falls within section 166(3) and has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 162. 10
- (7) If the Crown Court proceeds afresh under section 158 in pursuance of a direction under this section subsections (8) to (12) apply.
- (8) If a court has already sentenced the defendant for the offence (or any of the offences) concerned— 15
 - (a) section 158 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned;
 - (b) section 159 must be ignored. 20
- (9) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (compensation orders)—
 - (a) the Crown Court must have regard to it, and 25
 - (b) section 166(5) and (6) above do not apply.
- (10) Section 161(2) does not apply, and the rules applying instead are that the Crown Court must—
 - (a) take account of conduct occurring before the relevant date;
 - (b) take account of property obtained before that date; 30
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (11) In section 163—
 - (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date; 35
 - (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date;
 - (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (12) Section 179 applies as it applies in the circumstances mentioned in subsection (1) of that section. 40
- (13) The relevant date is—
 - (a) in a case where the Crown Court made a confiscation order which was quashed by the Court of Appeal, the date on which the Crown Court made the order; 45
 - (b) in any other case, the date on which the Crown Court decided not to make a confiscation order.

Enforcement authority

187 Enforcement authority

- (1) Subsection (2) applies if a court makes a confiscation order and any of the following paragraphs applies –
 - (a) the court proceeded under section 158 after being asked to do so by the Director; 5
 - (b) the court proceeded under section 158 by virtue of an application by the Director under section 172, 173, 180 or 181;
 - (c) the court proceeded under section 158 as a result of an appeal by the Director under section 184(2) or 186; 10
 - (d) before the court made the order the Director applied to the court to appoint him as the enforcement authority for the order.
- (2) In any such case the court must appoint the Director as the enforcement authority for the order.

Enforcement as fines etc 15

188 Enforcement as fines etc

- (1) This section applies if a court makes a confiscation order.
- (2) Section 35(1)(c), (2), (4) and (5) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) (functions of court as to fines) apply as if the amount ordered to be paid were a fine imposed on the defendant by the Crown Court. 20
- (3) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of Article 35 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I.9)) (parent or guardian to pay fine etc. instead of child).

189 Director's application for enforcement 25

- (1) If the Director believes that the conditions set out in subsection (2) are satisfied he may make an ex parte application to the Crown Court for the issue of a summons against the defendant.
- (2) The conditions are that –
 - (a) a confiscation order has been made; 30
 - (b) the Director has been appointed as the enforcement authority for the order;
 - (c) the order is not satisfied;
 - (d) the order is not subject to appeal;
 - (e) the Director has done all that is practicable (apart from this section) to enforce the order. 35
- (3) If it appears to the Crown Court that the conditions are satisfied it may issue a summons ordering the defendant to appear before the court at the time and place specified in the summons.
- (4) If the defendant fails to appear before the Crown Court in pursuance of the summons the court may issue a warrant for his arrest. 40

- (5) If—
- (a) the defendant appears before the Crown Court in pursuance of the summons or of a warrant issued under subsection (4), and
 - (b) the court is satisfied that the conditions set out in subsection (2) are satisfied,
- it may issue a warrant committing the defendant to prison or to detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29 (N.I.)) for default in payment of the amount ordered to be paid by the confiscation order. 5
- (6) Subsection (7) applies if the amount remaining to be paid under the confiscation order when the warrant under subsection (5) is issued is less than the amount ordered to be paid. 10
- (7) In such a case the court must substitute for the term of imprisonment or detention fixed in respect of the order under section 35(1) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) such term as bears to the original term the same proportion as the amount remaining to be paid bears to the amount ordered to be paid. 15

190 Provisions about imprisonment or detention

- (1) Subsection (2) applies if—
- (a) a warrant committing the defendant to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences, and
 - (b) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences).
- (2) In such a case the term of imprisonment or of detention to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b) above. 20
- (3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29 (N.I.)), which he is liable to serve in respect of the offence (or any of the offences). 30
- (4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored— 35
- (a) any sentence of imprisonment or order for detention suspended under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 which has not taken effect at the time the warrant is issued;
 - (b) any term of imprisonment or detention fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) (term to be served in default of payment of fine etc) for which a warrant committing the defendant to prison or detention has not been issued at that time. 40
- (5) If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned. 45

191 Reconsideration etc: variation of prison term

- (1) Subsection (2) applies if –
 - (a) a court varies a confiscation order under section 174, 175, 176, 182, 185 or 186,
 - (b) the effect of the variation is to vary the maximum period applicable in relation to the order under section 35(2) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)), and 5
 - (c) the result is that that maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of that Act. 10
- (2) In such a case the court must fix a reduced term of imprisonment or detention in respect of the confiscation order under section 35(1)(c) of that Act in place of the term previously fixed.
- (3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not. 15
- (4) In such a case the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under section 35(1)(c) of that Act.
- (5) If the effect of section 165 is to increase the maximum period applicable in relation to a confiscation order under section 35(2) of that Act, on the application of the appropriate person the Crown Court may amend the term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of that Act. 20
- (6) The appropriate person is –
 - (a) the Director, if he was appointed as the enforcement authority for the order under section 187; 25
 - (b) the prosecutor, in any other case.

Restraint orders

192 Conditions for exercise of powers

- (1) The High Court may exercise the powers conferred by section 193 if any of the following conditions is satisfied. 30
- (2) The first condition is that –
 - (a) a criminal investigation has been started in Northern Ireland with regard to an offence, and
 - (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct. 35
- (3) The second condition is that –
 - (a) proceedings for an offence have been started in Northern Ireland and not concluded,
 - (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct. 40
- (4) The third condition is that –
 - (a) an application by the prosecutor or the Director has been made under section 172, 173, 180 or 181 and not concluded, or the court believes that such an application is to be made, and

- (b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.
- (5) The fourth condition is that –
 - (a) an application by the prosecutor or the Director has been made under section 174 and not concluded, or the court believes that such an application is to be made, and 5
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the amount found as his benefit for the purposes of the confiscation order. 10
- (6) The fifth condition is that –
 - (a) an application by the prosecutor or the Director has been made under section 175 and not concluded, or the court believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the amount found as the available amount for the purposes of the confiscation order. 15
- (7) The second condition is not satisfied if the court believes that –
 - (a) there has been undue delay in continuing the proceedings, or 20
 - (b) the prosecutor does not intend to proceed.
- (8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that –
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor or the Director (as the case may be) does not intend to proceed. 25
- (9) If the first condition is satisfied –
 - (a) references in this Part to the defendant are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence; 30
 - (c) section 228(8) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

193 Restraint orders

- (1) If any condition set out in section 192 is satisfied the High Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him. 35
- (2) A restraint order may provide that it applies –
 - (a) to all realisable property held by the specified person whether or not the property is described in the order;
 - (b) to realisable property transferred to the specified person after the order is made. 40
- (3) A restraint order may be made subject to exceptions, and an exception may in particular –
 - (a) make provision for reasonable living expenses and reasonable legal expenses; 45

- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
 - (c) be made subject to conditions.
- (4) But an exception to a restraint order may not make provision for any legal expenses which – 5
 - (a) relate to an offence which falls within subsection (5), and
 - (b) are incurred by a person against whom proceedings for the offence have been started or by a recipient of a tainted gift.
- (5) These offences fall within this subsection – 10
 - (a) the offence mentioned in section 192(2) or (3), if the first or second condition (as the case may be) is satisfied;
 - (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.
- (6) Subsection (7) applies if – 15
 - (a) the court makes a restraint order, and
 - (b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).
- (7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective. 20
- (8) A restraint order does not affect property for the time being subject to a charge under any of these provisions – 25
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (9) Dealing with property includes removing it from Northern Ireland. 30

194 Application, discharge and variation

- (1) A restraint order – 35
 - (a) may be made only on an application by an applicant falling within subsection (2);
 - (b) may be made on an ex parte application to a judge in chambers.
- (2) These applicants fall within this subsection –
 - (a) the prosecutor;
 - (b) the Director;
 - (c) an accredited financial investigator.
- (3) An application to discharge or vary a restraint order or an order under section 193(7) may be made to the High Court by – 40
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) Subsections (5) to (7) apply to an application under subsection (3).

- (5) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (6) If the condition in section 192 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be). 5
- (7) If the condition in section 192 which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be). 10

195 Appeal to Court of Appeal

- (1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If an application is made under section 194(3) in relation to a restraint order or an order under section 193(7) the following persons may appeal to the Court of Appeal in respect of the High Court's decision on the application— 15
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may— 20
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

196 Appeal to House of Lords

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 195. 25
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the House of Lords may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate. 30

197 Seizure

- (1) If a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from Northern Ireland.
- (2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order. 35

198 Supplementary

- (1) The person applying for a restraint order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which— 40

- (a) the application relates, or
 - (b) a restraint order made in pursuance of the application relates.
- (2) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for a restraint order relates, make an entry inhibiting any dealing with the land without the consent of the High Court. 5
- (3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under subsection (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section. 10
- (4) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order discharging the restraint order may require that the entry be vacated.
- (5) In this section – 15
 - “Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970; and
 - “Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Management receivers 20

199 Appointment

- (1) Subsection (2) applies if –
 - (a) the High Court makes a restraint order, and
 - (b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards). 25
- (2) The High Court may by order appoint a receiver in respect of any realisable property to which the restraint order applies.

200 Powers

- (1) If the court appoints a receiver under section 199 it may act under this section on the application of the person who applied for the restraint order. 30
- (2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies –
 - (a) power to take possession of the property, subject to any conditions or exceptions the court specifies; 35
 - (b) power to manage or otherwise deal with the property;
 - (c) power to start, carry on or defend any legal proceedings in respect of the property;
 - (d) power to sell so much of the property as is necessary to meet the receiver’s remuneration and expenses. 40
- (3) The court may by order confer on the receiver power to enter any premises in Northern Ireland and to do any of the following –
 - (a) search for or inspect anything authorised by the court;

- (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
 - (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions –
 - (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
 - (5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.
 - (6) The court –
 - (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
 - (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions –
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
 - (8) The court must not –
 - (a) confer the power mentioned in subsection (2)(b) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property,unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
 - (9) Managing or otherwise dealing with property includes –
 - (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

Enforcement receivers

201 Appointment

- (1) This section applies if –
 - (a) a confiscation order is made,
 - (b) it is not satisfied, and 5
 - (c) it is not subject to appeal.
- (2) On the application of the prosecutor the Crown Court may by order appoint a receiver in respect of realisable property.

202 Powers

- (1) If the court appoints a receiver under section 201 it may act under this section on the application of the prosecutor. 10
- (2) The court may by order confer on the receiver the following powers in relation to the realisable property –
 - (a) power to take possession of the property, subject to any conditions or exceptions the court specifies; 15
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise the property, in such manner as the court may specify;
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in Northern Ireland and to do any of the following –
 - (a) search for or inspect anything authorised by the court;
 - (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court. 25
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions –
 - (a) hold property;
 - (b) enter into contracts; 30
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver. 35
- (6) The court –
 - (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; 40
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions –
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)); 5
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not – 10
 - (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subsection (6) in respect of property,unless it gives persons holding interests in the property a reasonable 15opportunity to make representations to it.
- (9) Managing or otherwise dealing with property includes –
 - (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; 20
 - (c) incurring capital expenditure in respect of the property.

Director's receivers

203 Appointment

- (1) This section applies if –
 - (a) a confiscation order is made, and 25
 - (b) the Director is appointed as the enforcement authority for the order under section 187.
- (2) But this section does not apply if –
 - (a) the Court of Appeal directs the Crown Court to proceed under this section, and 30
 - (b) when the Crown Court comes to do so the confiscation order has been satisfied.
- (3) If this section applies the Crown Court must make an order for the appointment of a receiver in respect of realisable property.
- (4) An order under subsection (3) – 35
 - (a) must confer power on the Director to nominate the person who is to be the receiver, and
 - (b) takes effect when the Director nominates that person.
- (5) The Director must not nominate a person under subsection (4) unless at the time he does so the confiscation order – 40
 - (a) is not satisfied, and
 - (b) is not subject to appeal.
- (6) A person nominated to be the receiver under subsection (4) may be –

- (a) a member of the staff of the Agency;
 - (b) a person providing services under arrangements made by the Director.
- (7) If this section applies section 201 does not apply.

204 Powers

- (1) If the court makes an order for the appointment of a receiver under section 203 it may act under this section on the application of the Director. 5
- (2) The court may by order confer on the receiver the following powers in relation to the realisable property –
 - (a) power to take possession of the property, subject to any conditions or exceptions the court specifies; 10
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise the property, in such manner as the court may specify;
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in Northern Ireland and to do any of the following – 15
 - (a) search for or inspect anything authorised by the court;
 - (b) make or obtain a copy, photograph or other record of anything so authorised;
 - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court. 20
- (4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions –
 - (a) hold property;
 - (b) enter into contracts; 25
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver. 30
- (6) The court –
 - (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; 35
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions – 40
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37); 45

- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).
- (8) The court must not –
 - (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or 5
 - (b) exercise the power conferred on it by subsection (6) in respect of property,
 unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) Managing or otherwise dealing with property includes – 10
 - (a) selling the property or any part of it or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.

Application of sums 15

205 Enforcement receivers

- (1) This section applies to sums which are in the hands of a receiver appointed under section 201 if they are –
 - (a) the proceeds of the realisation of property under section 202;
 - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest. 20
- (2) The sums must be applied as follows –
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 417; 25
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant’s behalf towards satisfaction of the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver’s hands he must distribute them – 30
 - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
 - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it. 35
- (5) For the purposes of subsections (3) and (4) the property concerned is –
 - (a) the property represented by the proceeds mentioned in subsection (1)(a); 40
 - (b) the sums mentioned in subsection (1)(b).
- (6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the appropriate chief clerk on account of the amount payable under the order.

- (7) The appropriate chief clerk is the chief clerk of the court at the place where the confiscation order was made.

206 Sums received by chief clerk

- (1) This section applies if a chief clerk receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 205 or otherwise). 5
- (2) The chief clerk's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as – 10
 - (a) are payable under this subsection by virtue of section 417, but
 - (b) are not already paid under section 205(2)(a).
- (4) If the chief clerk received the sums under section 205 he must next apply them – 15
 - (a) first, in payment of the remuneration and expenses of a receiver appointed under section 199, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 200(2)(d);
 - (b) second, in payment of the remuneration and expenses of the receiver appointed under section 201. 20
- (5) If a direction was made under section 166(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the chief clerk must next apply the sums in payment of that amount.
- (6) If any amount remains after the chief clerk makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954 (c. 9 (N.I.)) (application of fines) as if it were a fine. 25
- (7) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters – 30
 - (a) the chief clerk must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 166(6) bears to the total amount payable under the confiscation order;
 - (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it; 35
 - (c) the amount deducted must be treated for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954 as if it were a fine. 40
- (8) Subsection (4) does not apply if the receiver is a member of the staff of the Director of Public Prosecutions for Northern Ireland or of the Commissioners of Customs and Excise; and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere.

207 Director’s receivers

- (1) This section applies to sums which are in the hands of a receiver appointed under section 203 if they are –
 - (a) the proceeds of the realisation of property under section 204;
 - (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest. 5
- (2) The sums must be applied as follows –
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 417; 10
 - (b) second, they must be applied in making any payments directed by the Crown Court;
 - (c) third, they must be applied on the defendant’s behalf towards satisfaction of the confiscation order by being paid to the Director on account of the amount payable under it. 15
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver’s hands he must distribute them –
 - (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
 - (b) in such proportions as it directs. 20
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is –
 - (a) the property represented by the proceeds mentioned in subsection (1)(a); 25
 - (b) the sums mentioned in subsection (1)(b).

208 Sums received by Director

- (1) This section applies if the Director receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 207 or otherwise). 30
- (2) The Director’s receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as –
 - (a) are payable under this subsection by virtue of section 417, but
 - (b) are not already paid under section 207(2)(a). 35
- (4) If the Director received the sums under section 207 he must next apply them –
 - (a) first, in payment of the remuneration and expenses of a receiver appointed under section 199, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 200(2)(d); 40
 - (b) second, in payment of the remuneration and expenses of the receiver appointed under section 203.

- (5) If a direction was made under section 166(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the Director must next apply the sums in payment of that amount.
- (6) The following rules apply if under the preceding provisions of this section sums are to be applied in payment both of compensation and of other matters – 5
 - (a) the Director must deduct from the amount to be applied in payment of the compensation such an amount as bears to the other matters the same proportion as the amount specified in the direction under section 166(6) bears to the total amount payable under the confiscation order; 10
 - (b) despite the deduction under paragraph (a), the person entitled to the compensation must be treated as having received the whole amount to be applied in payment of it.
- (7) Subsection (4) does not apply if the receiver is a member of the staff of the Agency or a person providing services under arrangements made by the Director. 15

Restrictions

209 Restraint orders

- (1) Subsections (2) and (3) apply if a court makes a restraint order.
- (2) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (3) except with the leave of the High Court and subject to any terms the High Court may impose. 20
- (3) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy. 25
- (4) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 30
- (5) Before exercising any power conferred by subsection (4), the court must give an opportunity to be heard to – 35
 - (a) the applicant for the restraint order, and
 - (b) any receiver appointed under section 199 (if the restraint order has been made).

210 Enforcement receivers

- (1) Subsections (2) and (3) apply if a court makes an order under section 201 appointing a receiver in respect of any realisable property.
- (2) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (3) except with the leave of the Crown Court and subject to any terms the Crown Court may impose. 40

- (3) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (4) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 201 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 5
- (5) Before exercising any power conferred by subsection (4), the court must give an opportunity to be heard to—
 - (a) the prosecutor, and 10
 - (b) the receiver (if the order under section 201 has been made).

211 Director's receivers

- (1) Subsections (2) and (3) apply if—
 - (a) the Crown Court has made an order under section 203 for the appointment of a receiver in respect of any realisable property, and 15
 - (b) the order has taken effect.
- (2) If the order is for the appointment of a receiver in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (3) except with the leave of the Crown Court and subject to any terms the Crown Court may impose. 20
- (3) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.
- (4) If a court (whether the Crown Court or any other court) in which proceedings are pending in respect of any property is satisfied that an order under section 203 for the appointment of a receiver in respect of the property has taken effect, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 25
- (5) Before exercising any power conferred by subsection (4), the court must give an opportunity to be heard to— 30
 - (a) the Director, and
 - (b) the receiver.

Receivers: further provisions

212 Protection

- If a receiver appointed under section 199, 201 or 203— 35
 - (a) takes action in relation to property which is not realisable property,
 - (b) would be entitled to take the action if it were realisable property, and
 - (c) believes on reasonable grounds that he is entitled to take the action,
 he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence. 40

213 Further applications

- (1) This section applies to a receiver appointed under section 199, 201 or 203.
- (2) The receiver may apply –
 - (a) to the High Court if he is appointed under section 199;
 - (b) to the Crown Court if he is appointed under section 201 or 203, 5
 for an order giving directions as to the exercise of his powers.
- (3) The following persons may apply to the High Court if the receiver is appointed under section 199 or to the Crown Court if the receiver is appointed under section 201 or 203 –
 - (a) any person affected by action taken by the receiver; 10
 - (b) any person who may be affected by action the receiver proposes to take.
- (4) On an application under this section the court may make such order as it believes is appropriate.

214 Discharge and variation

- (1) The following persons may apply to the High Court to vary or discharge an order made under section 199 or 200 or to the Crown Court to vary or discharge an order made under any of sections 201 to 204 – 15
 - (a) the receiver;
 - (b) the person who applied for the order or (if the order was made under section 203 or 204) the Director; 20
 - (c) any person affected by the order.
- (2) On an application under this section the court –
 - (a) may discharge the order;
 - (b) may vary the order.
- (3) But in the case of an order under section 199 or 200 – 25
 - (a) if the condition in section 192 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be);
 - (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be). 30

215 Management receivers: discharge

- (1) This section applies if – 35
 - (a) a receiver stands appointed under section 199 in respect of realisable property (the management receiver), and
 - (b) the court appoints a receiver under section 201 or makes an order for the appointment of a receiver under section 203.
- (2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 200. 40

- (3) But in a case where the court makes an order under section 203 its order under subsection (2) above does not take effect until the order under section 203 takes effect.
- (4) If the management receiver complies with an order under subsection (2) he is discharged –
 - (a) from his appointment under section 199;
 - (b) from any obligation under this Act arising from his appointment.

5

216 Appeal to Court of Appeal

- (1) If on an application for an order under any of sections 199 to 202 or section 204 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision. 10
- (2) If the court makes an order under any of sections 199 to 202 or section 204, the following persons may appeal to the Court of Appeal in respect of the court's decision –
 - (a) the person who applied for the order; 15
 - (b) any person affected by the order.
- (3) If on an application for an order under section 213 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (4) If the court makes an order under section 213, the following persons may appeal to the Court of Appeal in respect of the court's decision – 20
 - (a) the person who applied for the order;
 - (b) any person affected by the order;
 - (c) the receiver.
- (5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 214 – 25
 - (a) the person who applied for the order in respect of which the application was made or (if the order was made under section 203 or 204) the Director;
 - (b) any person affected by the court's decision; 30
 - (c) the receiver.
- (6) On an appeal under this section the Court of Appeal may –
 - (a) confirm the decision, or
 - (b) make such order as it believes if appropriate.

217 Appeal to House of Lords 35

- (1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under section 216.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (3) On an appeal under this section the House of Lords may – 40
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

Seized money

218 Seized money

- (1) This section applies to money which –
 - (a) is held by a person, and
 - (b) is held in an account maintained by him with a bank or a building society. 5
- (2) This section also applies to money which is held by a person and which –
 - (a) has been seized by a constable under Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (general power of seizure etc), and 10
 - (b) is held in an account maintained by a police force with a bank or a building society.
- (3) This section also applies to money which is held by a person and which –
 - (a) has been seized by a customs officer under Article 21 of the 1989 Order as applied by order made under Article 85(1) of that Order, and 15
 - (b) is held in an account maintained by the Commissioners of Customs and Excise with a bank or a building society.
- (4) This section applies if the following conditions are satisfied –
 - (a) a restraint order has effect in relation to money to which this section applies; 20
 - (b) a receiver has not been appointed under section 201 in relation to the money;
 - (c) a confiscation order is made against the person by whom the money is held;
 - (d) the Director has not been appointed as the enforcement authority for the confiscation order; 25
 - (e) any period allowed under section 164 for payment of the amount ordered to be paid under the confiscation order has ended.
- (5) In such a case on the application of the prosecutor a magistrates’ court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order. 30
- (6) If a bank or building society fails to comply with an order under subsection (5) –
 - (a) the magistrates’ court may order it to pay an amount not exceeding £5,000, and 35
 - (b) for the purposes of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)) the sum is to be treated as adjudged to be paid by a conviction of the magistrates’ court.
- (7) In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in subsection (6)(a). 40
- (8) For the purposes of this section –
 - (a) a bank is a deposit-taking business within the meaning of the Banking Act 1987 (c. 22);
 - (b) “building society” has the same meaning as in the Building Societies Act 1986 (c. 53); 45

- (c) “appropriate chief clerk” has the same meaning as in section 205(7).

Financial investigators

219 Applications and appeals

- (1) This section applies to –
 - (a) an application under section 193, 194, 199, 200 or 214; 5
 - (b) an appeal under section 195, 196, 216 or 217.
- (2) An accredited financial investigator must not make such an application or bring such an appeal unless he is authorised to do so by –
 - (a) a police officer who is not below the rank of superintendent,
 - (b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank, or 10
 - (c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 436.
- (3) If such an application is made or appeal brought by an accredited financial investigator any subsequent step in the application or appeal or any further application or appeal relating to the same matter may be taken, made or brought by a different accredited financial investigator who is authorised as mentioned in subsection (2). 15
- (4) If – 20
 - (a) an application for a restraint order is made by an accredited financial investigator, and
 - (b) a court is required under section 209(5) to give the applicant for the order an opportunity to be heard,the court may give the opportunity to a different accredited financial investigator who is authorised as mentioned in subsection (2). 25

Exercise of powers

220 Powers of court and receiver

- (1) This section applies to –
 - (a) the powers conferred on a court by sections 192 to 211 and sections 213 to 218; 30
 - (b) the powers of a receiver appointed under section 199, 201 or 203.
- (2) The powers –
 - (a) must be exercised with a view to the value for the time being of realisable property being made available (by the property’s realisation) for satisfying any confiscation order that has been or may be made against the defendant; 35
 - (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property; 40
 - (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with

- the object of satisfying any confiscation order that has been or may be made against the defendant;
- (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following rules –
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him; 5
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; 10
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be realised if the court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold. 15
- (5) An order under subsection (4) may be revoked or varied.

Committal

221 Committal by magistrates' court

- (1) This section applies if – 20
- (a) a defendant is convicted of an offence by a magistrates' court, and
 - (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 158.
- (2) In such a case the magistrates' court – 25
- (a) must commit the defendant to the Crown Court in respect of the offence, and
 - (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).
- (3) An offence falls within this subsection if – 30
- (a) the defendant has been convicted of it by the magistrates' court or any other court, and
 - (b) the magistrates' court has power to deal with him in respect of it.
- (4) If a committal is made under this section in respect of an offence or offences – 35
- (a) section 158 applies accordingly, and
 - (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 222.
- (5) A committal under this section may be in custody or on bail.

222 Sentencing by Crown Court

- (1) If a defendant is committed to the Crown Court under section 221 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 158). 40

- (2) The Crown Court –
 - (a) must inquire into the circumstances of the case, and
 - (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

Compensation

5

223 Serious default

- (1) If the following three conditions are satisfied the Crown Court may order the payment of such compensation as it believes is just.
- (2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence. 10
- (3) The first condition is also satisfied if proceedings for an offence are started against a person and –
 - (a) they do not result in his conviction for the offence, or
 - (b) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it. 15
- (4) If subsection (2) applies the second condition is that –
 - (a) in the criminal investigation there has been a serious default by a person mentioned in subsection (9), and
 - (b) the investigation would not have continued if the default had not occurred. 20
- (5) If subsection (3) applies the second condition is that –
 - (a) in any criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (9), and
 - (b) the proceedings would not have been started or continued if the default had not occurred. 25
- (6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.
- (7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started. 30
- (8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.
- (9) Compensation under this section is payable to the applicant and –
 - (a) if the person in default was or was acting as a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), the compensation is payable by the Chief Constable; 35
 - (b) if the person in default was a member of the Director of Public Prosecutions for Northern Ireland or was acting on his behalf, the compensation is payable by the Director of Public Prosecutions for Northern Ireland; 40
 - (c) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office;
 - (d) if the person in default was a customs officer, the compensation is payable by the Commissioners of Customs and Excise;

- (e) *if the person in default was an officer of the Commissioners of Inland Revenue, the compensation is payable by those Commissioners.*

224 Order varied or discharged

- (1) This section applies if –
 - (a) the court varies a confiscation order under section 182 or discharges one under section 183, and 5
 - (b) an application is made to the Crown Court by a person who held realisable property and has suffered loss as a result of the making of the order.
- (2) The court may order the payment of such compensation as it believes is just. 10
- (3) *Compensation under this section is payable –*
 - (a) *to the applicant;*
 - (b) *by the Lord Chancellor.*

Enforcement abroad

225 Enforcement abroad 15

- (1) This section applies if –
 - (a) any of the conditions in section 192 is satisfied,
 - (b) the prosecutor or the Director believes that realisable property is situated in a country or territory outside the United Kingdom (the receiving country), and 20
 - (c) the prosecutor or the Director (as the case may be) sends a request for assistance to the Secretary of State with a view to it being forwarded under this section.
- (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property. 25
- (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that –
 - (a) any person is prohibited from dealing with realisable property; 30
 - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed. 35
- (5) If the Secretary of State believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.
- (6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation. 40
- (7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states –

- (a) that property has been realised in pursuance of a request under subsection (3),
 - (b) the date of realisation, and
 - (c) the proceeds of realisation.
- (8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation. 5

Interpretation

226 Criminal lifestyle 10

- (1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.
- (2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests –
 - (a) it is a drug trafficking offence; 15
 - (b) it is a money laundering offence;
 - (c) it is specified in regulations under this section by the Secretary of State;
 - (d) it constitutes conduct forming part of a course of criminal activity;
 - (e) it is an offence committed over a period of at least six months.
- (3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and –
 - (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
 - (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited. 20 25

227 Conduct and benefit

- (1) Criminal conduct is conduct which –
 - (a) constitutes an offence in Northern Ireland, or
 - (b) would constitute such an offence if it occurred in Northern Ireland. 30
- (2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial –
 - (a) whether conduct occurred before or after the passing of this Act; 35
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.
- (3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs –
 - (a) conduct which constitutes the offence or offences concerned; 40
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned;

- (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct. 5
- (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other. 10
- (7) If a person benefits from conduct his benefit is the value of the property obtained.

228 Tainted gifts

- (1) Subsections (2) and (3) apply if – 15
 - (a) no court has made a decision as to whether the defendant has a criminal lifestyle, or
 - (b) a court has decided that the defendant has a criminal lifestyle.
- (2) A gift is tainted if it was made by the defendant at any time after the relevant day. 20
- (3) A gift is also tainted if it was made by the defendant at any time and was of property –
 - (a) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
 - (b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct. 25
- (4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.
- (5) A gift is tainted if it was made by the defendant at any time after – 30
 - (a) the date on which the offence concerned was committed, or
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.
- (6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed. 35
- (7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (8) A gift may be a tainted gift whether it was made before or after the passing of this Act. 40
- (9) The relevant day is the first day of the period of six years ending with –
 - (a) the day when proceedings for the offence concerned were started against the defendant, or

- (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

229 Gifts and their recipients

- (1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time the defendant obtained it, he is to be treated as making a gift. 5
- (2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction –
 - (a) whose numerator is the difference between the two values mentioned in subsection (1), and 10
 - (b) whose denominator is the value of the property at the time the defendant obtained it.
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

230 Value: the basic rule 15

- (1) This section applies for the purpose of deciding the value at any time of property then held by a person.
- (2) Its value is the market value of the property at that time.
- (3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4). 20
- (4) The provisions are –
 - (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33); 25
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)) ;
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)). 30
- (5) This section has effect subject to sections 231 and 232.

231 Value of property obtained from conduct

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision. 35
- (2) The value of the property at the material time is the greater of the following –
 - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (3). 40
- (3) The property found under this subsection is as follows –

- (a) if the person holds the property obtained, the property found under this subsection is that property;
 - (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands; 5
 - (c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 230. 10

232 Value of tainted gifts

- (1) The value at any time (the material time) of a tainted gift is the greater of the following –
- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money; 15
 - (b) the value (at the material time) of the property found under subsection (2).
- (2) The property found under this subsection is as follows –
- (a) if the recipient holds the property given, the property found under this subsection is that property; 20
 - (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands;
 - (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands. 25
- (3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 230.

233 Free property

- Property is free unless an order is in force in respect of it under any of these provisions – 30
- (a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);
 - (c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime); 35
 - (d) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (deprivation orders);
 - (e) section 23 or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);
 - (f) section 251, 267, 294(2) or 297(2) of this Act. 40

234 Realisable property

- Realisable property is –
- (a) any free property held by the defendant;
 - (b) any free property held by the recipient of a tainted gift.

235 Property: general provisions

- (1) Property is all property wherever situated and includes –
 - (a) money;
 - (b) all forms of real or personal property;
 - (c) things in action and other intangible or incorporeal property. 5
- (2) The following rules apply in relation to property –
 - (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second; 10
 - (d) references to property held by a person include references to property vested in his trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) or liquidator;
 - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested; 15
 - (f) references to an interest, in relation to land in Northern Ireland or England and Wales, are to any legal estate or equitable interest or power; 20
 - (g) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease;
 - (h) references to an interest, in relation to property other than land, include references to a right (including a right to possession). 25

236 Proceedings

- (1) Proceedings for an offence are started –
 - (a) when a justice of the peace issues a summons or warrant under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) in respect of the offence; 30
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when an indictment is preferred under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (c. 15 (N.I.)). 35
- (2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.
- (3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted.
- (4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned. 40
- (5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded – 45

- (a) when the order is satisfied or discharged, or
 - (b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.
- (6) If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply – 5
 - (a) if an application for leave to appeal under section 184(2) is refused, the proceedings are concluded when the decision to refuse is made;
 - (b) if the time for applying for leave to appeal under section 184(2) expires without an application being made, the proceedings are concluded when the time expires; 10
 - (c) if on an appeal under section 184(2) the Court of Appeal confirms the Crown Court’s decision and an application for leave to appeal under section 186 is refused, the proceedings are concluded when the decision to refuse is made; 15
 - (d) if on appeal under section 184(2) the Court of Appeal confirms the Crown Court’s decision, and the time for applying for leave to appeal under section 186 expires without an application being made, the proceedings are concluded when the time expires;
 - (e) if on appeal under section 184(2) the Court of Appeal confirms the Crown Court’s decision, and on appeal under section 186 the House of Lords confirms the Court of Appeal’s decision, the proceedings are concluded when the House of Lords confirms the decision; 20
 - (f) if on appeal under section 184(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision; 25
 - (g) if on appeal under section 186 the House of Lords directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision. 30
- (7) In applying subsection (6) any power to extend the time for making an application for leave to appeal must be ignored.
- (8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored. 35

237 Applications

- (1) An application under section 172, 173, 180 or 181 is concluded –
 - (a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;
 - (b) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order; 40
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made. 45
- (2) An application under section 174 or 175 is concluded –

- (a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;
 - (b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order; 5
 - (c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.
- 238 Confiscation orders 10**
 - (1) A confiscation order is satisfied when no amount is due under it.
 - (2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored.
- 239 Drug trafficking offences 15**
 - (1) Each of the following offences under the Misuse of Drugs Act 1971 (c. 38) is a drug trafficking offence –
 - (a) an offence under section 4(2) or (3) (production and supply of controlled drugs);
 - (b) an offence under section 5(3) (possession of controlled drugs); 20
 - (c) an offence under section 8 (permitting certain activities);
 - (d) an offence under section 20 (assisting in or inducing commission outside UK of offence punishable under a corresponding law).
 - (2) An offence is a drug trafficking offence if –
 - (a) it is an offence under section 50(2) or (3), 68(2) or 170 of the Customs and Excise Management Act 1979 (c. 2) (import, export and fraudulent evasion), and 25
 - (b) it is an offence in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971. 30
 - (3) Each of the following offences under the Criminal Justice (International Co-operation) Act 1990 (c. 5) is a drug trafficking offence –
 - (a) an offence under section 12 (manufacture or supply of substance specified in Schedule 2 to that Act);
 - (b) an offence under section 19 (using ship for illicit traffic in controlled drugs). 35
 - (4) Each of the following is a drug trafficking offence –
 - (a) an attempt, conspiracy or incitement to commit any of the offences falling within subsections (1) to (3) above;
 - (b) aiding, abetting, counselling or procuring the commission of any of those offences. 40
- 240 Money laundering offences**
 - (1) An offence under section 321, 322 or 323 is a money laundering offence.

- (2) Each of the following is a money laundering offence –
- (a) attempt, conspiracy or incitement to commit an offence specified in subsection (1);
 - (b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).

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241 Other interpretative provisions

- (1) A reference to the offence (or offences) concerned must be construed in accordance with section 158(9).
- (2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. 10
- (3) A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted).
- (4) A reference to sentencing the defendant for an offence includes a reference to dealing with him otherwise in respect of the offence. 15
- (5) The following paragraphs apply to references to orders –
 - (a) a confiscation order is an order under section 158;
 - (b) a restraint order is an order under section 193.
- (6) Sections 226 to 240 and this section apply for the purposes of this Part.

General

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242 Procedure on appeal to the Court of Appeal

- (1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.
- (2) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications). 25

243 Procedure on appeal to the House of Lords

In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (subject to any specified modifications). 30

244 Crown Court Rules

In relation to –

- (a) proceedings under this Part, or
- (b) receivers appointed under this Part,

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Crown Court Rules may make provision corresponding to provision in rules of court (within the meaning of section 120(1) of the Judicature (Northern Ireland) Act 1978 (c. 23)).

PART 5

CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

CHAPTER 1

INTRODUCTORY

245	General purpose of this Part	5
(1)	This Part has effect for the purposes of—	
(a)	enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,	
(b)	enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates’ court or (in Scotland) the sheriff.	10
(2)	The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.	15
246	“Unlawful conduct”	
(1)	Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.	
(2)	Conduct which—	20
(a)	occurs in a country outside the United Kingdom and is unlawful under the criminal law of that country, and	
(b)	if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,	
	is also unlawful conduct.	25
(3)	The court must decide on a balance of probabilities whether it is proved—	
(a)	that any matters alleged to constitute unlawful conduct have occurred, or	
(b)	that any person intended to use any cash in unlawful conduct.	
247	“Property obtained through unlawful conduct”	30
(1)	A person obtains property through unlawful conduct (whether his own conduct or another’s) if he obtains property by or in return for the conduct.	
(2)	In deciding whether any property was obtained through unlawful conduct—	
(a)	it is immaterial whether or not any money, goods or services, were provided in order to put the person in question in a position to carry out the conduct,	35
(b)	it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.	

CHAPTER 2

CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

Proceedings for recovery orders

248 Proceedings for recovery orders in England and Wales or Northern Ireland

- (1) Proceedings for a recovery order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property. 5
- (2) The enforcement authority must serve the claim form –
 - (a) on the respondent, and
 - (b) on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order. 10
- (3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the claim form it must be described in the form in general terms; and the form must state whether it is alleged to be recoverable property or associated property. 15
- (4) The references above to the claim form include the particulars of claim, where they are served subsequently.

249 Proceedings for recovery orders in Scotland

- (1) Proceedings for a recovery order may be taken by the enforcement authority in the Court of Session against any person who the authority thinks holds recoverable property. 20
- (2) The enforcement authority must serve the application –
 - (a) on the respondent, and
 - (b) on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order, wherever domiciled, resident or present. 25
- (3) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the application it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property. 30

250 “Associated property”

- (1) “Associated property” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property –
 - (a) any interest in the recoverable property, 35
 - (b) any other interest in the property in which the recoverable property subsists,
 - (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,
 - (d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner, 40

- (e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.
- (2) References to property being associated with recoverable property are to be read accordingly.
- (3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of sections 273 to 275). 5

Interim receiving orders (England and Wales and Northern Ireland)

251 Application for interim receiving order

- (1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for an interim receiving order (whether before or after starting the proceedings). 10
- (2) An interim receiving order is an order for –
 - (a) the detention, custody or preservation of property, and
 - (b) the appointment of an interim receiver.
- (3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property. 15
- (4) The court may make an interim receiving order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met. 20
- (5) The first condition is that there is a good arguable case –
 - (a) that the property to which the application for the order relates is or includes recoverable property, and
 - (b) that, if any of it is not recoverable property, it is associated property. 25
- (6) The second condition is that, if –
 - (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it, 30
 the authority has taken all reasonable steps to do so.
- (7) In its application for an interim receiving order, the enforcement authority must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the Agency.
- (8) The extent of the power to make an interim receiving order is not limited by sections 252 to 258. 35

252 Functions of interim receiver

- (1) An interim receiving order may authorise or require the interim receiver –
 - (a) to exercise any of the powers mentioned in Schedule 3,
 - (b) to take any other steps the court thinks appropriate, 40
 for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

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- (2) An interim receiving order must require the interim receiver to take any steps which the court thinks necessary to establish –
- (a) whether or not the property to which the order applies is recoverable property or associated property,
 - (b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it. 5
- (3) If –
- (a) the interim receiver deals with any property which is not property to which the order applies, and
 - (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order, 10
- the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.
- 253 Duties of respondent etc. 15**
- (1) An interim receiving order may require any person to whose property the order applies –
- (a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so), 20
 - (b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.
- (2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or to place them in the custody of the interim receiver. 25
- “Document” means anything in which information of any description is recorded. 30
- 254 Supervision of interim receiver and variation of order**
- (1) The interim receiver, the respondent and any other person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver’s functions. 35
- (2) Before giving any directions under subsection (1), the court must (as well as giving the respondent and any other party to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.
- (3) The court may at any time vary or set aside an interim receiving order. 40
- (4) Before doing so, the court must (as well as giving the respondent and any other party to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the court’s decision.

255 Restrictions on dealing etc. with property

- (1) An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.
- (2) Exclusions may be made when the interim receiving order is made or on an application to vary the order. 5
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation, 10and may be made subject to conditions.
- (4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (5) If the excluded property is not specified in the order it must be described in the order in general terms. 15
- (6) The power to make exclusions in relation to recoverable property must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

256 Restriction on proceedings and remedies 20

- (1) While an interim receiving order has effect—
 - (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,
 - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose. 25
- (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit. 30
- (3) Before exercising any power conferred by subsection (2), the court must give the enforcement authority and (if appointed) the interim receiver an opportunity to be heard.
- (4) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose. 35

257 Exclusion of property which is not recoverable etc.

- (1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it. 40

- (2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced. 5
- (3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

258 Reporting

- (1) An interim receiving order must require the interim receiver to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that – 10
 - (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
 - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property, 15
 - (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or
 - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it, 20
 or if he thinks that there has been any other material change of circumstances.
- (2) An interim receiving order must require the interim receiver –
 - (a) to report his findings to the court,
 - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report. 25

Interim administration orders (Scotland)

259 Application for interim administration order

- (1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for an interim administration order (whether before or after starting the proceedings). 30
- (2) An interim administration order is an order for –
 - (a) the detention, custody or preservation of property, and
 - (b) the appointment of an interim administrator.
- (3) An application for an interim administration order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property. 35
- (4) The court may make an interim administration order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met. 40
- (5) The first condition is that there is a *probabilis causa litigandi* –
 - (a) that the property to which the application for the order relates is or includes recoverable property, and

- (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
 - (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it,
the authority has taken all reasonable steps to do so.
- (7) In its application for an interim administration order, the enforcement authority must nominate a suitably qualified person for appointment as interim administrator.
- (8) The extent of the power to make an interim administration order is not limited by sections 260 to 266.

260 Functions of interim administrator

- (1) An interim administration order may authorise or require the interim administrator—
 - (a) to exercise any of the powers mentioned in Schedule 3,
 - (b) to take any other steps the court thinks appropriate,
 - (c) to register the order in the register of inhibitions and adjudications,
for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).
- (2) An interim administration order must require the interim administrator to take any steps which the court thinks necessary to establish—
 - (a) whether or not the property to which the order applies is recoverable property or associated property,
 - (b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.
- (3) If—
 - (a) the interim administrator deals with any property which is not property to which the order applies, and
 - (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,
the interim administrator is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

261 Duties of respondent etc.

- (1) An interim administration order may require any person to whose property the order applies—
 - (a) to bring the property to a place (in Scotland) specified by the interim administrator or place it in the custody of the interim administrator (if, in either case, he is able to do so),
 - (b) to do anything he is reasonably required to do by the interim administrator for the preservation of the property.
- (2) An interim administration order may require any person to whose property the order applies to bring any documents relating to the property which are in

his possession or control to a place (in Scotland) specified by the interim administrator or to place them in the custody of the interim administrator.

“Document” means anything in which information of any description is recorded.

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| 262 | Supervision of interim administrator and variation of order | 5 |
| (1) | The interim administrator, the respondent and any other person affected by any action taken by the interim administrator, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim administrator’s functions. | |
| (2) | Before giving any directions under subsection (1), the court must (as well as giving the respondent and any other party to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be interested in the application. | 10 |
| (3) | The court may at any time vary or recall an interim administration order. | |
| (4) | Before doing so, the court must (as well as giving the respondent and any other party to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be interested in the court’s decision. | 15 |
| 263 | Restrictions on dealing etc. with property | |
| (1) | An interim administration order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property. | 20 |
| (2) | Exclusions may be made when the interim administration order is made or on an application to vary the order. | |
| (3) | An exclusion may, in particular, make provision for the purpose of enabling any person – | 25 |
| | (a) to meet his reasonable living expenses, or | |
| | (b) to carry on any trade, business, profession or occupation, | |
| | and may be made subject to conditions. | |
| (4) | But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part. | 30 |
| (5) | If the excluded property is not specified in the order it must be described in the order in general terms. | |
| (6) | The power to make exclusions in relation to recoverable property must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced. | 35 |
| 264 | Restriction on proceedings and remedies | |
| (1) | While an interim administration order has effect, the court may sist any action, execution or other legal process in respect of the property to which the order applies. | 40 |

- (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 administration order has been applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit. 5
- (3) Before exercising any power conferred by subsection (2), the court must give the enforcement authority and (if appointed) the interim administrator an opportunity to be heard.

265 Exclusion of property which is not recoverable etc.

- (1) If the court decides that any property to which an interim administration order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it. 10
- (2) The court may vary an interim administration order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced. 15
- (3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim administration order has effect, which the court thinks necessary or expedient. 20

266 Reporting

- (1) An interim administration order must require the interim administrator to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—
 - (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property, 25
 - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
 - (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or 30
 - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,
 or if he thinks that there has been any other material change of circumstances.
- (2) An interim receiving order must require the interim administrator—
 - (a) to report his findings to the court, 35
 - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Vesting and realisation of recoverable property

267 Recovery orders 40

- (1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.

- (2) The recovery order must vest the recoverable property in the trustee for civil recovery.
- (3) But the court may not make in a recovery order –
 - (a) any provision in respect of any recoverable property if each of the conditions in subsection (4) is met and it would not be just and equitable to do so, or 5
 - (b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).
- (4) The conditions referred to in subsection (3)(a) are that –
 - (a) the respondent obtained the recoverable property in good faith, 10
 - (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,
 - (c) when he took the steps, he had no notice that the property was recoverable, 15
 - (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.
- (5) In deciding whether it would be just and equitable to make the provision in the recovery order where those conditions are met, the court must have regard to –
 - (a) the degree of detriment that would be suffered by the respondent if the provision were made,
 - (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property. 25
- (6) A recovery order may sever any property.
- (7) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.
- (8) This section is subject to sections 270 to 277. 30

268 Functions of the trustee for civil recovery

- (1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.
- (2) The enforcement authority must nominate a suitably qualified person for appointment as the trustee. 35
- (3) The functions of the trustee are –
 - (a) to secure the detention, custody or preservation of any property vested in him by the recovery order,
 - (b) in relation to Scotland, to register the recovery order in the register of inhibitions and adjudications, if he considers it necessary, 40
 - (c) in the case of property other than money, to realise the value of the property for the benefit of the enforcement authority, and
 - (d) to perform any other functions conferred on him by virtue of this Chapter.

- (4) In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.
- (5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the enforcement authority. 5
- (6) The trustee has the powers mentioned in Schedule 4.

269 Rights of pre-emption, etc.

- (1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property. 10
- (2) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.
A right of return means any right under a provision for the return or reversion of property in specified circumstances. 15
- (3) Where property is vested under a recovery order, any such right is to have effect as if the trustee were the same person in law as the person who held the property and as if no transfer of the property had taken place.
- (4) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property. 20

270 Associated and joint property

- (1) Sections 271 and 272 apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).
- (2) A case is within this subsection if – 25
 - (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form or (in Scotland) application, and
 - (b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is. 30
- (3) A case is within this subsection if –
 - (a) the recoverable property belongs to joint tenants, and
 - (b) one of the tenants is an excepted joint owner.
- (4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed. 35

271 Agreements about associated and joint property

- (1) Where – 40
 - (a) this section applies, and

- (b) the enforcement authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,
the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee. 5
- (2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.
- (3) The amount of the payment is to be the amount which the enforcement authority and that person agree represents – 10
- (a) in a case within section 270(2), the value of the recoverable property,
(b) in a case within section 270(3), the value of the recoverable property less the value of the excepted joint owner’s share.
- (4) But if an interim receiving order or interim administration order applied at any time to the associated property or joint tenancy, the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to any loss suffered by that person as a result of the interim receiving order or interim administration order. 15
- (5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the enforcement authority. 20
- (6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable. 25

272 Associated and joint property: default of agreement

- (1) Where this section applies, the court may make the following provision if –
- (a) there is no agreement under section 271, and
(b) the court thinks it just and equitable to do so. 30
- (2) The recovery order may provide –
- (a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner’s interest to be extinguished, or
(b) in the case of an excepted joint owner, for the severance of his interest. 35
- (3) A recovery order making any provision by virtue of subsection (2)(a) may provide –
- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or
(b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee, 40
- or for both.
- (4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court must have regard to – 45

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),
 - (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property. 5
- (5) If—
 - (a) *an interim receiving order or interim administration order applied at any time to the associated property or joint tenancy, and*
 - (b) *the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the interim receiving order or interim administration order,* 10

a recovery order making any provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.
- (6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss. 15

273 Payments in respect of rights under pension schemes

- (1) This section applies to recoverable property consisting of rights under a pension scheme.
- (2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme— 20
 - (a) to pay to the trustee for civil recovery an amount equal to the value of the rights, and
 - (b) to give effect to any other provision made by virtue of this section and the two following sections in respect of the scheme. 25

This subsection is subject to sections 276 and 277.
- (3) On the payment being made, the property ceases to be recoverable.
- (4) A recovery order made by virtue of subsection (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order. 30
- (5) A recovery order made by virtue of subsection (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in— 35
 - (a) complying with the recovery order, or
 - (b) providing information, before the order was made, to the enforcement authority, interim receiver or interim administrator.
- (6) None of the following provisions apply to a court making a recovery order by virtue of subsection (2)— 40
 - (a) any provision of section 159 of the Pension Schemes Act 1993 (c. 48), section 155 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), section 91 of the Pensions Act 1995 (c. 26) or Article 89 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I.22)) (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning), 45

- (b) any provision of any enactment (whenever passed or made) corresponding to any of the provisions mentioned in paragraph (a),
 - (c) any provision of the pension scheme in question corresponding to any of those provisions.
- (7) For the purposes of subsection (2), regulations may make provision about the calculation and verification of the value of the rights referred to there. 5

274 Consequential adjustment of liabilities under pension schemes

- (1) A recovery order made by virtue of section 273(2) must provide for the liabilities of the pension scheme to be reduced by the amount required to be paid under that subsection. 10
- (2) The order –
 - (a) must provide for the liabilities of the pension scheme in respect of the respondent to cease or to be adjusted, and
 - (b) may provide for any liabilities of the scheme in respect of any other person which derive, directly or indirectly, from rights of the respondent under the scheme to cease or to be adjusted. 15
- (3) For the purposes of subsections (1) and (2), regulations may make provision about the calculation and verification of the amount at any time of any liabilities referred to there.
- (4) Adjusting the liabilities of a pension scheme in respect of any person includes (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the scheme. 20
- (5) The liabilities referred to in subsection (2)(b) do not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (c. 30) or Article 25 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I.11)) (pension sharing orders and agreements). 25

275 Pension schemes: supplementary

- (1) The power conferred by section 273(7) and 274(3) includes power to provide for any values or liabilities to be calculated or verified – 30
 - (a) in a manner which, in the particular case, is approved by a prescribed person, or
 - (b) in accordance with guidance from time to time prepared by a prescribed person.
- (2) Regulations means regulations made by the Secretary of State after consultation with the Scottish Ministers; and prescribed means prescribed by regulations. 35
- (3) A pension scheme means an occupational pension scheme or a personal pension scheme; and those expressions have the same meaning as in the Pension Schemes Act 1993 (c. 48) or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993 (c. 49). 40
- (4) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means –
 - (a) in the case of a scheme established under a trust, the trustees,

- (b) in any other case, the managers.
- (5) References to a pension scheme include –
 - (a) a retirement annuity contract (within the meaning of Part 3 of the Welfare Reform and Pensions Act 1999 (c. 30) or, in relation to Northern Ireland, Part 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999), 5
 - (b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme,
 - (c) an annuity purchased, or entered into, for the purpose of discharging any liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or, in relation to Northern Ireland, Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999. 10
- (6) References to the trustees or managers – 15
 - (a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,
 - (b) in relation to an insurance policy, are to the insurer.
- (7) Subsections (2) to (6) have effect for the purposes of this group of sections (that is, sections 273 and 274 and this section). 20

276 Consent orders

- (1) The court may make a recovery order on terms agreed by the parties if –
 - (a) each party to the agreement is or becomes a party to the proceedings, and
 - (b) where subsection (2) or (3) applies, the condition in the subsection is met. 25
- (2) If the property to which the proceedings relate includes property which –
 - (a) is associated with the recoverable property and is specified or described in the claim form or (in Scotland) application, and
 - (b) is not the respondent’s property, 30

the condition is that the person whose property it is must be a party to the agreement.
- (3) If the recoverable property belongs to joint tenants and one of the tenants is an excepted joint owner, the condition is that the excepted joint owner must be a party to the agreement. 35
- (4) A recovery order made by virtue of this section must make provision for the recoverable property to cease to be recoverable.
- (5) Sections 267(2) and 269 to 275 do not apply to a recovery order made by virtue of this section; and sections 268 and 279 apply to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as they apply to property vested in him by a recovery order or money paid under section 271. 40

277 Limit on recovery

- (1) This section applies if the enforcement authority seeks a recovery order –

-
- (a) in respect of both property which is or represents property obtained through unlawful conduct and related property, or
 - (b) in respect of property which is or represents property obtained through unlawful conduct where he has previously obtained such an order in respect of related property. 5
 - (2) The court is not to make a recovery order if it thinks that the enforcement authority's right to recover the original property has been satisfied by a previous recovery order.
 - (3) Subject to subsection (2), the court may act under subsection (4) if it thinks that— 10
 - (a) a recovery order may be made in respect of two or more related items of recoverable property, but
 - (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the enforcement authority's right to recover the original property. 15
 - (4) The court may in order to satisfy that right to the extent required make a recovery order in respect of—
 - (a) only some of the related items of property, or
 - (b) only a part of any of the related items of property,
 or both. 20
 - (5) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.
 - (6) If—
 - (a) an order is made under section 297 for the forfeiture of recoverable property, and
 - (b) the enforcement authority subsequently seeks a recovery order in respect of related property,
 the order under section 297 is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property. 25
 - (7) If—
 - (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the claimant has obtained property from the defendant ("the judgment property"), 35
 - (b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct, and
 - (c) the enforcement authority subsequently seeks a recovery order in respect of property which is related to the judgment property,
 the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the judgment property. 40

In relation to Scotland, "claimant" and "defendant" are to be read as "pursuer" and "defender".
 - (8) If— 45
 - (a) property 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, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,
the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property referred to in paragraph (a).

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(9) In subsection (8), a confiscation order means –

- (a) an order under section 6, 94 or 158, or
- (b) an order under a corresponding provision of an enactment mentioned in section 9(4)(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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278 Section 277: supplementary

(1) For the purposes of section 277 –

- (a) the original property means the property obtained through unlawful conduct,
- (b) the original property and any items of property which represent the original property are related to each other.

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(2) Subsections (3) and (4) give examples of the satisfaction of the enforcement authority’s right to recover the original property.

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(3) If –

- (a) there is a disposal, other than a part disposal, of the original property, and
- (b) other property (the representative property) is obtained in its place,
the enforcement authority’s right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

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(4) If –

- (a) there is a part disposal of the original property, and
- (b) other property (the representative property) is obtained in place of the property disposed of,
the enforcement authority’s right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

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(5) In subsections (3) and (4), a part disposal means a disposal to which section 309(1) applies.

279 Applying realised proceeds

(1) This section applies to –

- (a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order,
- (b) sums vested in the trustee by a recovery order,
- (c) sums paid to the trustee under section 271 or 273.

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(2) The trustee is to make out of the sums –

- (a) first, any payment required to be made by him by virtue of section 272,
 - (b) second, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 417(10),
- and any sum which remains is to be paid to the enforcement authority. 5

Exemptions etc.

280 Victims of theft, etc.

- (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section. 10
- (2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.
- (3) The condition is that—
 - (a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct, 15
 - (b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and
 - (c) the property he claims belongs to him.
- (4) Property to which a declaration under this section applies is not recoverable property. 20

281 Other exemptions

- (1) Proceedings for a recovery order may not be taken against any person who is identified in, or comes within a description set out in, an order made by the Secretary of State after consultation with the Scottish Ministers.
- (2) Proceedings for a recovery order may not be taken in respect of any recoverable property or associated property if the property comes within a description set out in an order made by the Secretary of State after consultation with the Scottish Ministers. 25
- (3) Provision made by virtue of subsection (2) may be made so as to apply only in circumstances, whether relating to the property or the person who holds it, which come within a description set out in the order. 30
- (4) Proceedings for a recovery order may not be taken in respect of cash found at any place in the United Kingdom unless the proceedings are also taken in respect of property other than cash which is property of the same person.
- (5) Proceedings for a recovery order may not be taken against the Financial Services Authority in respect of any recoverable property held by the authority. 35
- (6) Proceedings for a recovery order may not be taken in respect of any property which is subject to any of the following charges—
 - (a) a collateral security charge, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), 40

- (b) a market charge, within the meaning of Part 7 of the Companies Act 1989 (c. 40),
 - (c) a money market charge, within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995 (S.I. 1995/2049),
 - (d) a system charge, within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469). 5
- (7) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as an insolvency practitioner. 10
 - Acting as an insolvency practitioner has the same meaning as in section 418.

282 Compensation

- (1) If, in the case of any property to which an interim receiving order or interim administration order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation. 15
- (2) Subsection (1) does not apply if the court –
 - (a) has made a declaration in respect of the property by virtue of section 280, or
 - (b) makes a recovery order by virtue of section 276. 20
- (3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning with the decision.
- (4) If, in England and Wales or Northern Ireland, the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance. 25
- (5) *If the court is satisfied that the applicant has suffered loss as a result of the interim receiving order or interim administration order, it may require the enforcement authority to pay compensation to him.*
- (6) If, but for section 269(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation. 30
- (7) *If the court is satisfied that, in consequence of the operation of section 269, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the enforcement authority to pay compensation to him.* 35
- (8) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Miscellaneous

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283 Northern Ireland: interpretation

In relation to the practice and procedure of the High Court in Northern Ireland, expressions used in this Chapter are to be read in accordance with rules of

court (within the meaning of the Interpretation Act (Northern Ireland) 1954 (c.33 (NI))).

284 Payment of interim administrator or trustee (Scotland)

Any fees or expenses incurred by an interim administrator, or a trustee for civil recovery appointed by the Court of Session, in the exercise of his functions are to be reimbursed by the Scottish Ministers as soon as is practicable after they have been incurred. 5

285 Scope of powers

- (1) Orders under this Chapter may be made in respect of a person wherever domiciled, resident or present. 10
- (2) Such an order may be made by the Court of Session in respect of moveable property wherever situated.
- (3) But such an order in respect of a person's moveable property may not be made by the Court of Session where –
 - (a) the person is not domiciled, resident or present in Scotland, and 15
 - (b) the property is not situated in Scotland,
 unless the unlawful conduct took place in Scotland.

286 Financial threshold

- (1) At any time when an order specifying an amount for the purposes of this section has effect, the enforcement authority may not start proceedings for a recovery order unless the authority reasonably believes that the aggregate value of the recoverable property which the authority wishes to be subject to a recovery order is not less than the specified amount. 20
- (2) The power to make an order under subsection (1) is exercisable by the Secretary of State after consultation with the Scottish Ministers. 25
- (3) If the authority applies for an interim receiving order or interim administration order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.
- (4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of an interim receiving order or interim administration order which has been properly applied for. 30

287 Limitation

- (1) After section 27 of the Limitation Act 1980 (c. 58) there is inserted –

“27A Actions for recovery of property obtained through unlawful conduct etc. 35

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2001 (civil recovery of proceeds of unlawful conduct).

- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director’s cause of action accrued.
 - (3) Proceedings under that Chapter are brought when – 5
 - (a) a claim form is issued, or
 - (b) an application is made for an interim receiving order, whichever is the earlier.
 - (4) The Director’s cause of action accrues in respect of any recoverable property – 10
 - (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,
 - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained. 15
 - (5) If – 20
 - (a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel, and
 - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel,
section 3(2) of this Act does not prevent his asserting on an application under section 280 of that Act that the property belongs to him, or the court making a declaration in his favour under that section. 25
 - (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 3(2) of this Act.
 - (7) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part.”

(2) After section 19A of the Prescription and Limitation (Scotland) Act 1973 (c. 52) there is inserted – 30

“19B Actions for recovery of property obtained through unlawful conduct etc.

- (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2001 (civil recovery of proceeds of unlawful conduct). 35
 - (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be commenced after the expiration of the period of twelve years from the date on which the Scottish Ministers’ right of action accrued. 40
 - (3) Proceedings under that Chapter are commenced when –
 - (a) the proceedings are served, or
 - (b) an application is made for an interim administration order, whichever is the earlier.

-
- (4) The Scottish Ministers’ right of action accrues in respect of any recoverable property –
- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained, 5
 - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.
- (5) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part.” 10
- (3) After Article 72 of the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (N.I.11)) there is inserted –
- “72A Actions for recovery of property obtained through unlawful conduct etc.**
- (1) None of the time limits fixed by Parts II and III applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2001 (civil recovery of proceeds of unlawful conduct). 15
- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director’s cause of action accrued. 20
- (3) Proceedings under that Chapter are brought when –
- (a) a claim form is issued, or
 - (b) an application is made for an interim receiving order, whichever is the earlier. 25
- (4) The Director’s cause of action accrues in respect of any recoverable property –
- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained, 30
 - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.
- (5) If –
- (a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and 35
 - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel,
- Article 17(2) does not prevent his asserting on an application under section 280 of that Act that the property belongs to him, or the court making a declaration in his favour under that section. 40
- (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2).
- (7) Expressions used in this Article and Part 5 of that Act have the same meaning in this Article as in that Part.” 45

CHAPTER 3

RECOVERY OF CASH IN SUMMARY PROCEEDINGS

Searches

288 Searches

- (1) If a customs officer or constable who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash –
 - (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
 - (b) the amount of which is not less than the minimum amount, he may search for the cash there. 10
- (2) If a customs officer or constable has reasonable grounds for suspecting that a person (the suspect) is carrying cash which –
 - (a) is recoverable property or is intended by any person for use in unlawful conduct, and
 - (b) the amount of which is not less than the minimum amount, he may exercise the following powers. 15
- (3) The officer or constable may, so far as he thinks it necessary or expedient, require the suspect –
 - (a) to permit a search of any article he has with him,
 - (b) to permit a search of his person. 20
- (4) An officer or constable exercising powers by virtue of subsection (3)(b) may detain the suspect for so long as is necessary for their exercise.
- (5) The powers conferred by this section –
 - (a) are exercisable only so far as reasonably required for the purpose of finding cash, 25
 - (b) are exercisable by a customs officer only if he has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979 (c. 2)).
- (6) Cash means – 30
 - (a) notes and coins in any currency,
 - (b) any other kind of instrument which is within a description set out in an order made by the Treasury, found at any place in the United Kingdom.
- (7) The instruments referred to in subsection (6)(b) are monetary instruments which the Treasury thinks may be realised in the form of notes and coins by a customs officer or constable without the consent or assistance of any other person. 35
- (8) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979). 40

289 Prior approval

- (1) The powers conferred by section 288 may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer. 5
- (3) A judicial officer means –
 - (a) in relation to England and Wales and Northern Ireland, a justice of the peace,
 - (b) in relation to Scotland, the sheriff. 10
- (4) A senior officer means –
 - (a) in relation to the exercise of the power by a customs officer, a customs officer of a rank designated by the Commissioners as equivalent to that of a senior police officer,
 - (b) in relation to the exercise of the power by a constable, a senior police officer. 15
- (5) A senior police officer means a police officer of at least the rank of inspector.
- (6) If the powers are exercised without the approval of a judicial officer in a case where –
 - (a) no cash is seized by virtue of section 293, or 20
 - (b) any cash so seized is not detained for more than 48 hours,the officer or constable who exercised the powers must give a written report to the appointed person.
- (7) The report must give particulars of the circumstances which led him to believe that – 25
 - (a) the powers were exercisable, and
 - (b) it was not practicable to obtain the approval of a judicial officer.
- (8) In this section and section 290, the appointed person means –
 - (a) in relation to England and Wales and Northern Ireland, a person appointed by the Secretary of State, 30
 - (b) in relation to Scotland, a person appointed by the Scottish Ministers.
- (9) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of his appointment, including any remuneration or expenses to be paid to him, are to be determined by the person appointing him. 35

290 Report on exercise of powers

- (1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.
“Financial year” means –
 - (a) the period beginning with the day on which this section comes into force and ending with the next 31 March (which is the first financial year), and 40
 - (b) each subsequent period of twelve months beginning with 1 April.

- (2) The report must give his opinion as to the circumstances and manner in which the powers conferred by section 288 are being exercised without the approval of a judicial officer being given.
- (3) In the report, he may make any recommendations he considers appropriate.
- (4) He must send a copy of his report to the Secretary of State or, as the case may be, the Scottish Ministers, who must arrange for it to be published. 5
- (5) The Secretary of State must lay a copy of any report he receives under this section before Parliament; and the Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament.

291 Code of practice 10

- (1) The Secretary of State must make a code of practice in connection with the exercise by customs officers and (in relation to England and Wales and Northern Ireland) constables of the powers conferred by virtue of section 288.
- (2) Where he proposes to issue a code of practice he must—
 - (a) publish a draft, 15
 - (b) consider any representations made to him about the draft by the Scottish Ministers or any other person,
 - (c) if he thinks it appropriate, modify the draft in the light of any such representations.
- (3) He must lay a draft of the code before Parliament. 20
- (4) When he has laid a draft of the code before Parliament he may bring it into operation by order.
- (5) He may revise the whole or any part of the code issued by him and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code. 25
- (6) A failure by a customs officer or constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant. 30

292 Code of practice: Scotland

- (1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by virtue of section 288.
- (2) Where they propose to issue a code of practice they must—
 - (a) publish a draft, 35
 - (b) consider any representations made to them about the draft,
 - (c) if they think it appropriate, modify the draft in the light of any such representations.
- (3) They must lay a draft of the code before the Scottish Parliament. 40
- (4) When they have laid a draft of the code before the Scottish Parliament they may bring it into operation by order.

- (5) They may revise the whole or any part of the code issued by them and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings. 5
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Seizure and detention

293 Seizure of cash 10

- (1) A customs officer or constable may seize any cash if he has reasonable grounds for suspecting that it is –
 - (a) recoverable property, or
 - (b) intended by any person for use in unlawful conduct.
- (2) This section does not authorise the seizure of an amount of cash less than the minimum amount. 15

294 Detention of seized cash

- (1) While the customs officer or constable continues to have reasonable grounds for his suspicion, cash seized under section 293 may be detained initially for a period of 48 hours. 20
- (2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash –
 - (a) beyond the end of the period of three months beginning with the date of the order, 25
 - (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.
- (3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (2) extending the period.
- (4) An application for an order under subsection (2) – 30
 - (a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise or a constable,
 - (b) in relation to Scotland, may be made by a procurator fiscal,
 and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met. 35
- (5) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either –
 - (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence in respect of the unlawful conduct with which it is connected, or 40
 - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

- (6) Proceedings against any person for an offence are concluded for the purpose of subsection (5)(b) when –
 - (a) the person is convicted or acquitted,
 - (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or 5
 - (c) the jury is discharged without a finding.
- (7) The second condition is –
 - (a) that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct, and
 - (b) that its continued detention is justified while its intended use is further investigated. 10
- (8) An order under subsection (2) must provide for notice to be given to persons affected by it.

295 Interest

- (1) If cash is detained under section 294 for more than 48 hours, it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release. 15
- (2) Subsection (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Chapter.

296 Release of detained cash 20

- (1) This section applies while any cash is detained under section 294.
- (2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if the following condition is met.
- (3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the cash was seized, that the cash to be released –
 - (a) is not recoverable property, and
 - (b) is not intended by any person for use in unlawful conduct. 25
- (4) A customs officer, constable or (in Scotland) procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified. 30
- (5) But cash is not to be released –
 - (a) if an application for its forfeiture is made under section 297, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded, 35
 - (b) if (in the United Kingdom or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.
- (6) Proceedings against any person for an offence are concluded for the purpose of subsection (5)(b) when –
 - (a) the person is convicted or acquitted,
 - (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or 40

- (c) the jury is discharged without a finding.

Forfeiture

297 Forfeiture

- (1) While cash is detained under section 294, an application for the forfeiture of the whole or any part of it may be made – 5
 - (a) to a magistrates' court by the Commissioners of Customs and Excise or a constable,
 - (b) (in Scotland) to the sheriff by the Scottish Ministers.
- (2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part – 10
 - (a) is recoverable property, or
 - (b) is intended by any person for use in unlawful conduct.
- (3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court or sheriff thinks is attributable to the excepted joint owner's share. 15
- (4) Before making an order under subsection (2) in respect of any cash, the court or sheriff must give any person (other than the person from whom the cash was seized) who claims that it belongs to him an opportunity to be heard.
- (5) If it appears to a court or sheriff having power to forfeit the cash or any part of it that – 20
 - (a) a person (other than the person from whom the cash was seized) was deprived of the cash or part, or of property which it represents, by unlawful conduct,
 - (b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and 25
 - (c) the cash or part belongs to him,

the court or sheriff must order it to be released to the person to whom it appears to belong (instead of forfeiting it).
- (6) If, on an application for the forfeiture of any cash on the grounds that it is recoverable property, it appears to the court or sheriff that, by reason of section 306, it is not recoverable property, the court or sheriff must order it to be released. 30

298 Appeal against forfeiture

- (1) Any party to proceedings in which an order is made under section 297 for the forfeiture of cash who is aggrieved by the order may appeal – 35
 - (a) in relation to England and Wales, to the Crown Court,
 - (b) in relation to Scotland, to the Court of Session,
 - (c) in relation to Northern Ireland, to a county court.
- (2) The following provisions have effect in relation to England and Wales and Northern Ireland. 40
- (3) An appeal under subsection (1) must be made within the period of 30 days beginning with the date on which the order is made.

- (4) The appeal is to be by way of a rehearing.
- (5) The court hearing the appeal may make any order it thinks appropriate.
- (6) If the court upholds the appeal, it may order the release of the cash.

299 Application of forfeited cash

- (1) Cash forfeited under this Chapter, and any accrued interest on it – 5
 - (a) if forfeited by a magistrates’ court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,
 - (b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.
- (2) But it is not to be paid in – 10
 - (a) before the end of the period within which an appeal under section 298 may be made, or
 - (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

300 Compensation 15

- (1) If no forfeiture order is made in respect of any cash detained under this Chapter, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates’ court or (in Scotland) the sheriff for compensation.
- (2) If the court or sheriff is satisfied that the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation to be paid to him. 20
- (3) The amount of compensation to be paid under subsection (2) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered, the amount of any interest paid under this Chapter and any other relevant circumstances. 25
- (4) *If the cash was seized by a customs officer, the compensation is to be paid by the Commissioners of Customs and Excise.*
- (5) *If the cash was seized by a constable, the compensation is to be paid as follows –*
 - (a) *in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met,* 30
 - (b) *in the case of a constable of a police force in Scotland, it is to be paid by the police authority or joint police board for the police area for which that force is maintained,*
 - (c) *in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.* 35
- (6) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.
- (7) This section does not apply if the court or sheriff makes an order under section 297(5). 40

Supplementary

301 “The minimum amount”

- (1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers. 5
- (2) For that purpose the amount of any cash held in a sum other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

CHAPTER 4

GENERAL 10

Recoverable property

302 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. 15
- (3) Property 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. 20

303 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. 25
- (2) If a person enters into a transaction by which –
 - (a) he disposes of the original property or of property which (by virtue of this Chapter) represents the original property, and
 - (b) he obtains other property in place of it,
 the other property represents the original property. 30
- (3) If a person disposes of 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).

304 Mixing property

- (1) Subsection (2) applies if a person’s recoverable property is mixed with other property (whether his property or another’s). 35
- (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.

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305 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.

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306 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”.
- (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 (NI)) or section

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- 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, 5
- 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 10
- (b) apart from this subsection, the sum received by them would be recoverable property,
- the property ceases to be recoverable.
- (7) If— 15
- (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, 20
- 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 42, 122 or 193, or
- (b) an order under any corresponding provision of an enactment mentioned in section 9(4)(a) to (g). 25
- (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, 94 or 158, or 30
- (b) an order under a corresponding provision of an enactment mentioned in section 9(4)(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. 35
- (10) Where—
- (a) a person enters into a transaction to which section 303(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 303(2)) of any property obtained on the transaction in place of the property disposed of. 40
- 307 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”)— 45

- (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. 5

Insolvency

308 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. 10
- (2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 294 unless the appropriate court gives leave. 15
- (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,
 - (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, 20
 - (c) an order under section 286 of the 1986 Act, or Article 259 of the 1989 Order, (appointment of interim receiver) has effect in relation to the property, 25
 - (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt, or
 - (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. 30
- (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). 35
- (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). 40
- (7) In this section –
 - (a) the 1986 Act means the Insolvency Act 1986 (c. 45),
 - (b) the 1989 Order means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)),
 - (c) an asset means any property within the meaning of the 1986 Act or, as the case may be, the 1989 Order, 45

- (d) the appropriate court means the court which, in relation to the matter mentioned in subsection (3), is the court for the purposes of the 1986 Act or, in relation to Northern Ireland, the High Court,
- (e) acting as an insolvency practitioner has the same meaning as in section 418,
- (f) other expressions used in this section and in that Act or that Order have the same meaning as in that Act or, as the case may be, Order.

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Interpretation

309 Obtaining and disposing of property

- (1) References to a person disposing of his property include a reference – 10
 - (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. 15
- (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. 20

310 General interpretation

- (1) In this Part –
 - “associated property” has the meaning given by section 250,
 - “cash” has the meaning given by section 288(6), 25
 - “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 256(2) and (3) and 264(2) and (3) and Chapter 3) means the High Court or (in relation to proceedings in Scotland) the Court of Session, 30
 - “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, 35
 - (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 –
 - (a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power, 40
 - (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,

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- “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 259(2),
 - “interim receiving order” has the meaning given by section 251(2),
 - “the minimum amount” (in Chapter 3) has the meaning given by section 301, 5
 - “part”, in relation to property, includes a portion,
 - “premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60),
 - “property obtained through unlawful conduct” has the meaning given by section 247, 10
 - “recoverable property” is to be read in accordance with sections 302 to 307,
 - “recovery order” means an order made by virtue of section 267,
 - “respondent” means – 15
 - (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 an interim receiving order or interim administration order, the person against whom he intends to bring such proceedings, 20
 - “share”, in relation to an excepted joint owner, has the meaning given by section 270(4),
 - “unlawful conduct” has the meaning given by section 246, 25
 - “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. 30
 - (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. 35
 - (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. 40
 - (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 278.

PART 6

REVENUE FUNCTIONS

General functions

311 Director's general Revenue functions

- | | |
|--|----|
| (1) For the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that— | 5 |
| (a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), or | 10 |
| (b) a company is chargeable to corporation tax on its profits arising in respect of a chargeable period and the profits arise as a result of the company's or another person's criminal conduct (whether wholly or partly and whether directly or indirectly). | 15 |
| (2) If the qualifying condition is satisfied the Director may serve on the Commissioners of Inland Revenue (the Board) a notice which— | |
| (a) specifies the person or the company (as the case may be) and the period, and | |
| (b) states that the Director intends to carry out, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice. | 20 |
| (3) Service of a notice under subsection (2) vests in the Director, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice; but this is subject to section 312. | 25 |
| (4) The Director— | |
| (a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2); | |
| (b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied. | 30 |
| (5) A notice under subsection (2) and a notice of withdrawal under subsection (4) may be in respect of one or more periods. | |
| (6) Service of a notice under subsection (4) divests the Director of the functions concerned in relation to the person or the company (as the case may be) and in respect of the period or periods specified in the notice. | 35 |
| (7) The vesting of a function in the Director under this section does not divest the Board or an officer of the Board of the function. | |
| (8) If— | |
| (a) apart from this section the Board's authorisation would be required for the exercise of a function, and | 40 |
| (b) the function is vested in the Director under this section,
the authorisation is not required in relation to the function as so vested. | |

- (9) It is immaterial whether a chargeable period or any part of it falls before or after the passing of this Act.

312 Revenue functions regarding employment

- (1) Subsection (2) applies if –
- (a) the Director serves a notice or notices under section 311(2) in relation to a company and in respect of a period or periods, and 5
 - (b) the company is an employer.
- (2) The general Revenue functions vested in the Director do not include functions relating to any requirement which –
- (a) is imposed on the company in its capacity as employer, and 10
 - (b) relates to a year of assessment which does not fall wholly within the period or periods.
- (3) Subsection (4) applies if –
- (a) the Director serves a notice or notices under section 311(2) in relation to an individual and in respect of a year or years of assessment, and 15
 - (b) the individual is a self-employed earner.
- (4) The general Revenue functions vested in the Director do not include functions relating to any liability to pay Class 2 contributions in respect of a period which does not fall wholly within the year or years of assessment.
- (5) In this section in its application to Great Britain – 20
- (a) “self-employed earner” has the meaning given by section 2(1)(b) of the Social Security Contributions and Benefits Act 1992 (c. 4);
 - (b) “Class 2 contributions” must be construed in accordance with section 1(2)(c) of that Act.
- (6) In this section in its application to Northern Ireland – 25
- (a) “self-employed earner” has the meaning given by section 2(1)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);
 - (b) “Class 2 contributions” must be construed in accordance with section 1(2)(c) of that Act. 30

313 Source of income

- (1) *For the purpose of the exercise by the Director of any function vested in him by virtue of this Part it is immaterial that he cannot identify a source for any income.*
- (2) *An assessment made by the Director under section 29 of the Taxes Management Act 1970 (c. 9) (assessment where loss of tax discovered) in respect of income charged to tax under Case 6 of Schedule D must not be reduced or quashed only because it does not specify (to any extent) the source of the income.* 35
- (3) If the Director serves on the Board a notice of withdrawal under section 311(4), any assessment made by him under section 29 of the Taxes Management Act 1970 is invalid to the extent that it does not specify a source for the income. 40
- (4) *Subsections (2) and (3) apply in respect of years of assessment whenever occurring.*

314 Appeals

- (1) An appeal in respect of the exercise by the Director of general Revenue functions shall be to the Special Commissioners.
- (2) The Presiding Special Commissioner may nominate one or more assessors to assist the Special Commissioners in any appeal to be heard by them by virtue of subsection (1). 5
- (3) An assessor nominated under subsection (2) –
 - (a) must have special knowledge and experience of the matter to which the appeal relates, and
 - (b) must be selected from a panel of persons appointed for the purposes of this section by the Lord Chancellor after consultation with the Scottish Ministers. 10
- (4) Regulations made under section 56B of the Taxes Management Act 1970 (c. 9) may include provision as to the manner in which an assessor nominated under subsection (2) is to assist the Special Commissioners. 15
- (5) *The remuneration of an assessor nominated under subsection (2) must be paid by the Lord Chancellor and must be at such rate as he decides.*

Inheritance tax functions

315 Director's functions: transfers of value

- (1) For the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that –
 - (a) there has been a transfer of value within the meaning of the Inheritance Tax Act 1984 (c. 51), and
 - (b) the value transferred by it is attributable (in whole or part) to criminal property. 20
- (2) If the qualifying condition is satisfied the Director may serve on the Board a notice which –
 - (a) specifies the transfer of value, and
 - (b) states that the Director intends to carry out the Revenue inheritance tax functions in relation to the transfer. 25
- (3) Service of a notice under subsection (2) vests in the Director the Revenue inheritance tax functions in relation to the transfer.
- (4) The Director –
 - (a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);
 - (b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied. 30
- (5) Service of a notice under subsection (4) divests the Director of the Revenue inheritance tax functions in relation to the transfer.
- (6) The vesting of a function in the Director under this section does not divest the Board or an officer of the Board of the function. 35
- (7) It is immaterial whether a transfer of value is suspected to have occurred before or after the passing of this Act. 40

316 Director’s functions: certain settlements

- (1) For the purposes of this section the qualifying condition is that the Director has reasonable grounds to suspect that –
 - (a) all or part of the property comprised in a settlement is relevant property for the purposes of Chapter 3 of Part 3 of the Inheritance Tax Act 1984 (c. 51) (settlements without interest in possession), and 5
 - (b) the relevant property is (in whole or part) criminal property.
- (2) If the qualifying condition is satisfied the Director may serve on the Board a notice which –
 - (a) specifies the settlement concerned, 10
 - (b) states that the Director intends to carry out the Revenue inheritance tax functions in relation to the settlement, and
 - (c) states the period for which he intends to carry them out.
- (3) Service of a notice under subsection (2) vests in the Director the Revenue inheritance tax functions in relation to the settlement for the period. 15
- (4) The Director –
 - (a) may at any time serve on the Board a notice of withdrawal of the notice under subsection (2);
 - (b) must serve such a notice of withdrawal on the Board if the qualifying condition ceases to be satisfied. 20
- (5) Service of a notice under subsection (4) divests the Director of the Revenue inheritance tax functions in relation to the settlement for the period.
- (6) The vesting of a function in the Director under this section does not divest the Board or an officer of the Board of the function.
- (7) It is immaterial whether the settlement is commenced or a charge to tax arises or a period or any part of it falls before or after the passing of this Act. 25

General

317 Functions

- (1) The general Revenue functions are such of the functions vested in the Board or in an officer of the Board as relate to any of the following matters – 30
 - (a) income tax;
 - (b) capital gains tax;
 - (c) corporation tax;
 - (d) national insurance contributions;
 - (e) statutory sick pay; 35
 - (f) statutory maternity pay;
 - (g) student loans.
- (2) The Revenue inheritance tax functions are such functions vested in the Board or in an officer of the Board as relate to inheritance tax.
- (3) But the general Revenue functions and the Revenue inheritance tax functions do not include any of the following functions – 40
 - (a) functions relating to the making of subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30));

<ul style="list-style-type: none"> (b) the function of the prosecution of offences; (c) the function of authorising an officer for the purposes of section 20BA of the Taxes Management Act 1970 (c. 9) (orders for delivery of documents); (d) the function of giving information under that section; (e) the function of approving an officer’s application for the purposes of section 20C of the Taxes Management Act 1970 (warrant to enter and search premises); (f) the function of applying under that section. 	5
<ul style="list-style-type: none"> (4) For the purposes of this section in its application to Great Britain – <ul style="list-style-type: none"> (a) national insurance contributions are contributions payable under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4); (b) “statutory sick pay” must be construed in accordance with section 151(1) of that Act; (c) “statutory maternity pay” must be construed in accordance with section 164(1) of that Act; (d) “student loans” must be construed in accordance with the Education (Student Loans) (Repayment) Regulations 2000 (S.I. 2000/944). 	10
<ul style="list-style-type: none"> (5) For the purposes of this section in its application to Northern Ireland – <ul style="list-style-type: none"> (a) national insurance contributions are contributions payable under Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7); (b) “statutory sick pay” must be construed in accordance with section 147(1) of that Act; (c) “statutory maternity pay” must be construed in accordance with section 160(1) of that Act; (d) “student loans” must be construed in accordance with the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000 (S.R. 2000/121). 	20
<ul style="list-style-type: none"> (c) “statutory maternity pay” must be construed in accordance with section 160(1) of that Act; (d) “student loans” must be construed in accordance with the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000 (S.R. 2000/121). 	25
<p>318 Exercise of Revenue functions</p>	30
<ul style="list-style-type: none"> (1) This section applies in relation to the exercise by the Director of – <ul style="list-style-type: none"> (a) general Revenue functions; (b) Revenue inheritance tax functions. (2) Paragraph (b) of section 1(5) does not apply. (3) The Director must apply – <ul style="list-style-type: none"> (a) any interpretation of the law which has been published by the Board; (b) any concession which has been published by the Board and which is available generally to any person falling within its terms. (4) The Director must also take account of any material published by the Board which does not fall within subsection (3). (5) The Director must provide the Board with such documents and information as they consider appropriate. (6) “Concession” includes any practice, interpretation or other statement in the nature of a concession. 	35
	40

319 Declarations

- (1) As soon as practicable after the appointment of a person as the Director he must make a declaration in the form set out in Schedule 5 before a member of the Board.
- (2) Every member of the staff of the Agency who is authorised under section 1(5)(a) to carry out any of the functions of the Director under this Part must, as soon as practicable after being so authorised, make a declaration in the form set out in Schedule 5 before a person nominated by the Director for the purpose. 5

320 Interpretation

- (1) Criminal conduct is conduct which — 10
 - (a) constitutes an offence in any part of the United Kingdom, or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (2) But criminal conduct does not include conduct constituting an offence relating to a matter under the care and management of the Board. 15
- (3) In applying subsection (1) it is immaterial whether conduct occurred before or after the passing of this Act.
- (4) Property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and it is immaterial — 20
 - (a) who carried out the conduct;
 - (b) who benefited from it.
- (5) A person benefits from conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other. 25
- (7) If a person benefits from conduct his benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct.
- (8) Property is all property wherever situated and includes — 30
 - (a) money;
 - (b) all forms of property, real or personal, heritable or moveable;
 - (c) things in action and other intangible or incorporeal property.
- (9) The following rules apply in relation to property —
 - (a) property is obtained by a person if he obtains an interest in it; 35
 - (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
 - (c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease; 40
 - (d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).
- (10) Any reference to an officer of the Board includes a reference to —

- (a) a collector of taxes;
 - (b) an inspector of taxes.
- (11) Expressions used in this Part and in the Taxes Acts have the same meaning as in the Taxes Acts (within the meaning given by section 118 of the Taxes Management Act 1970 (c. 9)). 5
- (12) This section applies for the purposes of this Part.

PART 7

MONEY LAUNDERING

Offences

321 Concealing etc 10

- (1) A person commits an offence if he –
 - (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property; 15
 - (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.
- (2) But a person does not commit such an offence if –
 - (a) he makes an authorised disclosure under section 328;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; 20
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it. 25

322 Arrangements

- (1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. 30
- (2) But a person does not commit such an offence if –
 - (a) he makes an authorised disclosure under section 328;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; 35
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

323 Acquisition, use and possession

- (1) A person commits an offence if he –
 - (a) acquires criminal property;
 - (b) uses criminal property;
 - (c) has possession of criminal property. 5
- (2) But a person does not commit such an offence if –
 - (a) he makes an authorised disclosure under section 328;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property for adequate consideration; 10
 - (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) For the purposes of this section – 15
 - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession; 20
 - (c) the provision for a person of goods or services which help him to carry out criminal conduct is not consideration.

324 Failure to disclose: regulated sector

- (1) A person commits an offence if each of the following three conditions is satisfied. 25
- (2) The first condition is that he –
 - (a) knows or suspects, or
 - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter – 30
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.
- (4) The third condition is that he does not disclose the information or other matter to a constable, a customs officer or a nominated officer as soon as is practicable after it comes to him. 35
- (5) But a person does not commit an offence under this section if –
 - (a) he has a reasonable excuse for not disclosing the information or other matter;
 - (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances. 40
- (6) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned –

- (a) issued by a supervisory authority or any other appropriate body,
 - (b) approved by the Treasury, and
 - (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (7) A disclosure to a nominated officer is a disclosure which – 5
 - (a) is made to a person nominated by the alleged offender’s employer to receive disclosures under this section, and
 - (b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose. 10
- (8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him – 15
 - (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
 - (b) by (or by a representative of) a person seeking legal advice from the adviser, or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- (9) But subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose. 20
- (10) Schedule 6 has effect for the purpose of determining what is –
 - (a) a business in the regulated sector;
 - (b) a supervisory authority.
- (11) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender. 25

325 Tipping off

- (1) A person commits an offence if –
 - (a) he knows or suspects that a disclosure falling within section 327 or 328 has been made, and
 - (b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a). 30
- (2) But a person does not commit an offence under subsection (1) if –
 - (a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1); 35
 - (b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
 - (c) he is a professional legal adviser and the disclosure falls within subsection (3). 40
- (3) A disclosure falls within this subsection if it is a disclosure –
 - (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
 - (b) to any person in connection with legal proceedings or contemplated legal proceedings. 45

- (4) But a disclosure does not fall within subsection (3) if it is made with a view to furthering a criminal purpose.

326 Penalties

- (1) A person guilty of an offence under section 321, 322 or 323 is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or 5
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (2) A person guilty of an offence under section 324 or 325 is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Disclosures

327 Protected disclosures 15

- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of a business in the regulated sector. 20
- (3) The second condition is that the information or other matter –
- (a) causes the discloser to know or suspect, or
 - (b) gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser. 25
- (5) A disclosure to a nominated officer is a disclosure which –
- (a) is made to a person nominated by the discloser's employer to receive disclosures under this section, and 30
 - (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (6) The reference to a business in the regulated sector must be construed in accordance with Schedule 6.

328 Authorised disclosures 35

- (1) For the purposes of this Part a disclosure is authorised if –
- (a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property, and
 - (b) the first or second condition set out below is satisfied.
- (2) The first condition is that – 40

- (a) the disclosure is made before the alleged offender does the prohibited act, and
 - (b) he does the act with the consent of the constable, customs officer or nominated officer (as the case may be).
- (3) The second condition is that— 5
 - (a) the disclosure is made after the alleged offender does the prohibited act,
 - (b) there is a good reason for his failure to make the disclosure before he did the act, and
 - (c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it. 10
- (4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (5) A disclosure to a nominated officer is a disclosure which— 15
 - (a) is made to a person nominated by the alleged offender’s employer to receive authorised disclosures, and
 - (b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose,

and the reference in subsection (2) to a nominated officer must be construed accordingly. 20
- (6) References to the prohibited act are to an act mentioned in section 321(1), 322(1) or 323(1) (as the case may be).

Interpretation

- 329 Interpretation** 25
- (1) This section applies for the purposes of this Part.
 - (2) Criminal conduct is conduct which—
 - (a) constitutes an offence in any part of the United Kingdom, or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there. 30
 - (3) Property is criminal property if—
 - (a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
 - (b) the alleged offender knows or suspects that it constitutes or represents such a benefit. 35
 - (4) It is immaterial—
 - (a) who carried out the conduct;
 - (b) who benefited from it;
 - (c) whether the conduct occurred before or after the passing of this Act.
 - (5) A person benefits from conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct. 40

- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
- (7) If a person benefits from conduct his benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct. 5
- (8) “Property” has the same meaning as in –
 - (a) Part 2, if an offence under section 321, 322 or 323 is alleged to have been committed in England and Wales;
 - (b) Part 3, if an offence under section 321, 322 or 323 is alleged to have been committed in Scotland; 10
 - (c) Part 4, if an offence under section 321, 322 or 323 is alleged to have been committed in Northern Ireland.
- (9) The following rules apply in relation to property –
 - (a) property is obtained by a person if he obtains an interest in it;
 - (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power; 15
 - (c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease; 20
 - (d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).
- (10) Money laundering is an act which –
 - (a) constitutes an offence under section 321, 322 or 323,
 - (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), 25
 - (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
 - (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom. 30
- (11) References to a constable include references to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service.

PART 8

INVESTIGATIONS 35

CHAPTER 1

INVESTIGATIONS

330 Investigations

- (1) For the purposes of this Part a confiscation investigation is an investigation into – 40
 - (a) whether a person has benefited from his criminal conduct, or
 - (b) the extent or whereabouts of his benefit from his criminal conduct.

-
- (2) For the purposes of this Part a civil recovery investigation is an investigation into –
- (a) whether property is recoverable property or associated property,
 - (b) who holds the property, or
 - (c) its extent or whereabouts. 5
- (3) But an investigation is not a civil recovery investigation if –
- (a) proceedings for a recovery order have been started in respect of the property in question,
 - (b) an interim receiving order applies to the property in question,
 - (c) an interim administration order applies to the property in question, or 10
 - (d) the property in question is detained under section 294.
- (4) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.
- 331 Offences of prejudicing investigation 15**
- (1) This section applies if a person knows or suspects that an appropriate officer or (in Scotland) a proper person is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation or a money laundering investigation which is being or is about to be conducted.
- (2) The person commits an offence if – 20
- (a) he makes a disclosure which is likely to prejudice the investigation, or
 - (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.
- (3) A person does not commit an offence under subsection (2)(a) if – 25
- (a) he does not know or suspect that the disclosure is likely to prejudice the investigation,
 - (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act, or 30
 - (c) he is a professional legal adviser and the disclosure falls within subsection (4).
- (4) A disclosure falls within this subsection if it is a disclosure – 35
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
 - (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (5) But a disclosure does not fall within subsection (4) if it is made with a view to furthering a criminal purpose. 40
- (6) A person does not commit an offence under subsection (2)(b) if –
- (a) he does not know or suspect that the documents are relevant to the investigation, or
 - (b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer or (in Scotland) proper person carrying out the investigation. 45

- (7) A person guilty of an offence under subsection (2) is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.
- (8) For the purposes of this section –
 - (a) “appropriate officer” must be construed in accordance with section 365;
 - (b) “proper person” must be construed in accordance with section 397.

CHAPTER 2

ENGLAND AND WALES AND NORTHERN IRELAND 10

Judges and courts

332 Judges

- (1) In this Chapter references to a judge in relation to an application must be construed in accordance with this section.
- (2) In relation to an application for the purposes of a confiscation investigation or a money laundering investigation a judge is –
 - (a) in England and Wales, a Circuit judge;
 - (b) in Northern Ireland, a Crown Court judge.
- (3) In relation to an application for the purposes of a civil recovery investigation a judge is a judge of the High Court.

333 Courts

In this Chapter references to the court are to –

- (a) the Crown Court, in relation to an order for the purposes of a confiscation investigation or a money laundering investigation;
- (b) the High Court, in relation to an order for the purposes of a civil recovery investigation.

Production orders

334 Production orders

- (1) A judge may, on an application made to him by an appropriate officer, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application for a production order must state that –
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation.
- (3) The application must also state that –
 - (a) the order is sought for the purposes of the investigation;

- (b) the order is sought in relation to material, or material of a description, specified in the application;
 - (c) a person specified in the application appears to be in possession or control of the material.
- (4) A production order is an order either – 5
 - (a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate officer for him to take away, or
 - (b) requiring that person to give an appropriate officer access to the material, 10

within the period stated in the order.
- (5) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances. 15

335 Requirements for making of production order

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that –
 - (a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct; 20
 - (b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;
 - (c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence. 25
- (3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it. 30
- (4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

336 Order to grant entry

- (1) This section applies if a judge makes a production order requiring a person to give an appropriate officer access to material on any premises. 35
- (2) The judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.
- (3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material. 40

337 Further provisions

- (1) A production order may not require a person to produce, or give access to, privileged material, except that a lawyer may be required to produce material containing only the name and address of a client of his.
- (2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court. 5
- (3) But material held with the intention of furthering a criminal purpose is not privileged.
- (4) A production order may not require a person to produce, or give access to, excluded material. 10
- (5) A production order has effect in spite of any restriction on the disclosure of information (however imposed).
- (6) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order. 15
- (7) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.
- (8) But if an appropriate officer has reasonable grounds for believing that—
 - (a) the material may need to be produced for the purposes of any legal proceedings, and
 - (b) it might otherwise be unavailable for those purposes,it may be retained until the proceedings are concluded. 20

338 Computer information

- (1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer. 25
- (2) If the order is an order requiring a person to produce the material to an appropriate officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible. 30
- (3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

339 Government departments

- (1) A production order may be made in relation to material in the possession or control of an authorised government department. 35
- (2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.
- (3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department. 40
- (4) If an order contains such a requirement—

-
- (a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;
 - (b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned. 5
 - (5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 334(4)) the person on whom it is served must report the reasons for the failure to –
 - (a) a Circuit judge or (in Northern Ireland) a Crown Court judge, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation; 10
 - (b) a High Court judge, in the case of an order made for the purposes of a civil recovery investigation.
 - (6) An authorised government department is a government department, or a Northern Ireland department, which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44). 15

340 Supplementary

- (1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry. 20
- (3) An application to discharge or vary a production order or an order to grant entry may be made to the court by –
 - (a) the person who applied for the order; 25
 - (b) any person affected by the order.
- (4) The court –
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) If an accredited financial investigator, a constable or a customs officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be by the same accredited financial investigator, constable or customs officer. 30
- (6) References to a person who applied for a production order or an order to grant entry must be construed accordingly. 35
- (7) Production orders and orders to grant entry have effect as if they were orders of the court.
- (8) Subsections (2) to (7) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Search and seizure warrants

341 Search and seizure warrants

- (1) A judge may, on an application made to him by an appropriate officer, issue a search and seizure warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled. 5
- (2) The application for a search and seizure warrant must state that—
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation. 10
- (3) The application must also state—
 - (a) that the warrant is sought for the purposes of the investigation;
 - (b) that the warrant is sought in relation to the premises specified in the application;
 - (c) that the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 342(6), (7) or (8) on the premises. 15
- (4) A search and seizure warrant is a warrant authorising an appropriate person—
 - (a) to enter and search the premises specified in the application for the warrant, and
 - (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made. 20
- (5) An appropriate person is—
 - (a) a constable, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a named member of the staff of the Agency, if the warrant is sought for the purposes of a civil recovery investigation. 25
- (6) The requirements for the issue of a search and seizure warrant are—
 - (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
 - (b) that section 342 is satisfied in relation to the warrant. 30

342 Requirements where production order not available

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- (1) This section is satisfied in relation to a search and seizure warrant if—
 - (a) subsection (2) applies, and
 - (b) either the first or the second set of conditions is complied with.
- (2) This subsection applies if there are reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property; 40

-
- (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (3) The first set of conditions is that there are reasonable grounds for believing that— 5
- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought, and
- (b) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4). 10
- (4) The reasons are—
- (a) that it is not practicable to communicate with any person against whom the production order could be made;
- (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; 15
- (c) that the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.
- (5) The second set of conditions is that—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7) or (8), and 20
- (b) any one or more of the requirements in subsection (9) is met.
- (6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct, and 25
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it— 30
- (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph, and 35
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it— 40
- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought. 45
- (9) The requirements are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

- (b) that entry to the premises will not be granted unless a warrant is produced;
 - (c) that the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them. 5
- (10) An appropriate person is –
 - (a) a constable, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a member of the staff of the Agency, if the warrant is sought for the purposes of a civil recovery investigation. 10

343 Further provisions: general

- (1) A search and seizure warrant does not confer the right to seize privileged material, except material containing only the name and address of a lawyer's client.
- (2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court. 15
- (3) But material held with the intention of furthering a criminal purpose is not privileged.
- (4) A search and seizure warrant does not confer the right to seize excluded material. 20

344 Further provisions: confiscation and money laundering

- (1) This section applies to –
 - (a) search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation, and 25
 - (b) powers of seizure under them.
- (2) In relation to such warrants and powers, the Secretary of State may make an order which applies the provisions to which subsections (3) and (4) apply subject to any specified modifications.
- (3) This subsection applies to the following provisions of the Police and Criminal Evidence Act 1984 (c. 60) – 30
 - (a) section 15 (search warrants - safeguards);
 - (b) section 16 (execution of warrants);
 - (c) section 21 (access and copying);
 - (d) section 22 (retention). 35
- (4) This subsection applies to the following provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) –
 - (a) Article 17 (search warrants - safeguards);
 - (b) Article 18 (execution of warrants);
 - (c) Article 23 (access and copying); 40
 - (d) Article 24 (retention).

345 Further provisions: civil recovery

- (1) This section applies to search and seizure warrants sought for the purposes of civil recovery investigations.
- (2) An application for a warrant may be made *ex parte* to a judge in chambers.
- (3) A warrant may be issued subject to conditions. 5
- (4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (5) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form – 10
 - (a) in which it can be taken away, and
 - (b) in which it is visible and legible.
- (6) If –
 - (a) the Director gives written authority for members of staff of the Agency to accompany the person a warrant names when executing it, and
 - (b) a warrant is issued,the authorised members have the same powers under it as the person it names. 15
- (7) A warrant may include provision authorising a person who is exercising powers under it to do other things which – 20
 - (a) are specified in the warrant, and
 - (b) need to be done in order to give effect to it.
- (8) Copies may be taken of any material seized under a warrant.
- (9) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued. 25
- (10) But if the Director has reasonable grounds for believing that –
 - (a) the material may need to be produced for the purposes of any legal proceedings, and
 - (b) it might otherwise be unavailable for those purposes,it may be retained until the proceedings are concluded. 30

Disclosure orders

346 Disclosure orders

- (1) A judge may, on an application made to him by the Director, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled. 35
- (2) No application for a disclosure order may be made in relation to a money laundering investigation.
- (3) The application for a disclosure order must state that –
 - (a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation, or 40

- (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
 - (4) A disclosure order is an order authorising the Director to give to any person the Director considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following –
 - (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
 - (b) provide information specified in the notice, by a time and in a manner so specified;
 - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
 - (5) Relevant information is information (whether or not contained in a document) which the Director considers to be relevant to the investigation.
 - (6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.
- 347 Requirements for making of disclosure order**
 - (1) These are the requirements for the making of a disclosure order.
 - (2) There must be reasonable grounds for suspecting that –
 - (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.
 - (3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
- 348 Offences**
 - (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.
 - (2) A person guilty of an offence under subsection (1) is liable on summary conviction to –
 - (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.
 - (3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he –
 - (a) makes a statement which he knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.

- (4) A person guilty of an offence under subsection (3) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
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349 Statements

- (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.
- (2) But subsection (1) does not apply –
- (a) in the case of proceedings under Part 2 or 4,
 - (b) on a prosecution for an offence under section 348(1) or (3),
 - (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 (c. 6) or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or
 - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
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- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless –
- (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
- by him or on his behalf in the proceedings arising out of the prosecution.
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350 Further provisions

- (1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of a client of his.
- (2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.
- (3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.
- (4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.
- (5) But information or material held with the intention of furthering a criminal purpose is not privileged.
- (6) A disclosure order does not confer the right to require a person to produce excluded material.
- (7) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).
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- (8) The Director may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.
- (9) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made. 5
- (10) But if the Director has reasonable grounds for believing that—
 - (a) the documents may need to be produced for the purposes of any legal proceedings, and
 - (b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded. 10

351 Supplementary

- (1) An application for a disclosure order may be made ex parte to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders. 15
- (3) An application to discharge or vary a disclosure order may be made to the court by—
 - (a) the Director;
 - (b) any person affected by the order.
- (4) The court— 20
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) Subsections (2) to (4) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Customer information orders 25

352 Customer information orders

- (1) A judge may, on an application made to him by a senior appropriate officer, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application for a customer information order must state that— 30
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property. 35
- (3) The application must also state that—
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought against the financial institution or financial institutions specified in the application.
- (4) An application for a customer information order may specify— 40
 - (a) all financial institutions,

- (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions.
- (5) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application. 5
- (6) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires. 10
- (7) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it. 15

353 Meaning of customer information

- (1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to – 20
 - (a) the matters specified in subsection (2) if the person is an individual;
 - (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.
- (2) The matters referred to in subsection (1)(a) are – 25
 - (a) the account number or numbers;
 - (b) the person’s full name;
 - (c) his date of birth;
 - (d) his most recent address and any previous addresses;
 - (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so; 30
 - (f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering; 35
 - (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;
 - (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts. 40
- (3) The matters referred to in subsection (1)(b) are –
 - (a) the account number or numbers;
 - (b) the person’s full name;
 - (c) a description of any business which the person carries on; 45
 - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act

- 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) or corresponding legislation of any country or territory outside the United Kingdom;
- (e) any number assigned to it for the purposes of value added tax in the United Kingdom; 5
- (f) its registered office, and any previous registered offices, under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) or anything similar under corresponding legislation of any country or territory outside the United Kingdom;
- (g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000 (c. 12) or anything similar under corresponding legislation of any country or territory outside Great Britain; 10
- (h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so; 15
- (i) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
- (j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts. 20
- (4) The Secretary of State may by order provide for information of a description specified in the order –
 - (a) to be customer information, or 25
 - (b) no longer to be customer information.
- (5) Money laundering is an act which –
 - (a) constitutes an offence under section 321, 322 or 323 of this Act or section 18 of the Terrorism Act 2000 (c. 11), or
 - (b) would constitute an offence specified in paragraph (a) if done in the United Kingdom. 30

354 Requirements for making of customer information order

- (1) These are the requirements for the making of a customer information order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct. 35
- (3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that –
 - (a) the property specified in the application for the order is recoverable property or associated property; 40
 - (b) the person specified in the application holds all or some of the property.
- (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the 45

order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

355 Offences

- (1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order. 5
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution commits an offence if, in purported compliance with a customer information order, it— 10
 - (a) makes a statement which it knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable— 15
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

356 Statements

- (1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings. 20
- (2) But subsection (1) does not apply— 25
 - (a) in the case of proceedings under Part 2 or 4,
 - (b) on a prosecution for an offence under section 355(1) or (3), or
 - (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless— 30
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

357 Further provisions

- (1) A customer information order does not require a financial institution to provide privileged information. 35
- (2) Privileged information is any information which the institution would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court. 40
- (3) But information held with the intention of furthering a criminal purpose is not privileged.

- (4) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

358 Supplementary

- (1) An application for a customer information order may be made ex parte to a judge in chambers. 5
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.
- (3) An application to discharge or vary a customer information order may be made to the court by – 10
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) The court –
 - (a) may discharge the order;
 - (b) may vary the order. 15
- (5) If an accredited financial investigator, a police officer or a customs officer applies for a customer information order, an application to discharge or vary the order need not be by the same accredited financial investigator, police officer or customs officer.
- (6) References to a person who applied for a customer information order must be construed accordingly. 20
- (7) Subsections (2) to (6) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Account monitoring orders

359 Account monitoring orders 25

- (1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application for an account monitoring order must state that –
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or 30
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
- (3) The application must also state that – 35
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.
- (4) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another). 40

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- (5) The application for an account monitoring order may specify information relating to—
- (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (6) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the application to an appropriate officer in the manner, and at or by the time or times, stated in the order.
- (7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.
- 360 Requirements for making of account monitoring order**
- (1) These are the requirements for the making of an account monitoring order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.
- (3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that—
- (a) the property specified in the application for the order is recoverable property or associated property;
 - (b) the person specified in the application holds all or some of the property.
- (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
- 361 Statements**
- (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But subsection (1) does not apply—
- (a) in the case of proceedings under Part 2 or 4,
 - (b) in the case of proceedings for contempt of court, or
 - (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—
- (a) evidence relating to it is adduced, or

- (b) a question relating to it is asked,
 by or on behalf of the financial institution in the proceedings arising out of the prosecution.

362 Applications

- (1) An application for an account monitoring order may be made ex parte to a judge in chambers. 5
- (2) An application for an account monitoring order may be varied by the person who made the application.
- (3) If an accredited financial investigator, a constable or a customs officer applies for an account monitoring order the application may be varied by a different accredited financial investigator, constable or customs officer. 10
- (4) References to a person who applied for an account monitoring order must be construed accordingly.

363 Information: privilege and disclosure

- (1) An account monitoring order does not require a financial institution to provide privileged information. 15
- (2) Privileged information is any information which the institution would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.
- (3) But information held with the intention of furthering a criminal purpose is not privileged. 20
- (4) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

364 Confiscation and money laundering

- (1) This section applies only to account monitoring orders made for the purposes of a confiscation investigation or a money laundering investigation. 25
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.
- (3) An application to discharge or vary an account monitoring order may be made to the court by – 30
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) The court – 35
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) If an accredited financial investigator, a constable or a customs officer applies for an account monitoring order, an application to discharge or vary the order need not be by the same accredited financial investigator, constable or customs officer. 40

- (6) References to a person who applied for an account monitoring order must be construed accordingly.
- (7) Account monitoring orders have effect as if they were orders of the court.

Interpretation

365 Officers	5
(1) In relation to a confiscation investigation these are appropriate officers – (a) the Director; (b) an accredited financial investigator; (c) a constable; (d) a customs officer.	10
(2) In relation to a confiscation investigation these are senior appropriate officers – (a) the Director; (b) a police officer who is not below the rank of superintendent; (c) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank; (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 436.	15
(3) In relation to a civil recovery investigation the Director (and only the Director) is – (a) an appropriate officer; (b) a senior appropriate officer.	20
(4) In relation to a money laundering investigation these are appropriate officers – (a) an accredited financial investigator; (b) a constable; (c) a customs officer.	25
(5) For the purposes of section 331, in relation to a money laundering investigation a person authorised for the purposes of money laundering investigations by the Director General of the National Criminal Intelligence Service is also an appropriate officer.	30
(6) In relation to a money laundering investigation these are senior appropriate officers – (a) a police officer who is not below the rank of superintendent; (b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank; (c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 436.	35
(7) But a person is not an appropriate officer or a senior appropriate officer in relation to a money laundering investigation if he is – (a) a member of the staff of the Agency, or (b) a person providing services under arrangements made by the Director.	40

366 Miscellaneous

“Document”, “excluded material” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984 (c. 60) or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

5

CHAPTER 3

SCOTLAND

Production orders

367 Production orders

- (1) The sheriff may, on an application made to him by the appropriate person, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled. 10
- (2) In making a production order in relation to property subject to a civil recovery investigation, the sheriff shall act in the exercise of his civil jurisdiction.
- (3) An application for a production order need not be intimated to the person specified in the application. 15
- (4) The application for a production order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation. 20
- (5) A production order is an order either —
 - (a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to a proper person for him to take away, or 25
 - (b) requiring that person to give a proper person access to the material, within the period stated in the order.
- (6) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances. 30

368 Requirements for making of production order

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct; 35
 - (b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property; 40

- (c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.

- (3) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought. 5

369 Order to grant entry

- (1) This section applies if a sheriff makes a production order requiring a person to give a proper person access to material on any premises.
- (2) The sheriff may, on an application made to him by the appropriate person and specifying the premises, make an order to grant entry in relation to the premises. 10
- (3) An order to grant entry is an order requiring any person who appears to the appropriate person to be entitled to grant entry to the premises to allow a proper person to enter the premises to obtain access to the material. 15

370 Further provisions

- (1) A production order may not require a person to produce, or give access to, any items subject to legal privilege.
- (2) A production order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise). 20
- (3) A proper person may take copies of any material which is produced, or to which access is given, in compliance with a production order.
- (4) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made. 25
- (5) But if a proper person has reasonable grounds for believing that—
- (a) the material may need to be produced for the purposes of any legal proceedings, and
 - (b) it might otherwise be unavailable for those purposes, 30
- it may be retained until the proceedings are concluded.

371 Computer information

- (1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.
- (2) If the order is an order requiring a person to produce the material to a proper person for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible. 35
- (3) If the order is an order requiring a person to give a proper person access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible. 40

372 Government departments

- (1) A production order may be made in relation to material in the possession or control of an authorised government department.
- (2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it. 5
- (3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department.
- (4) If an order contains such a requirement –
 - (a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned; 10
 - (b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.
- (5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 367(4)) the person on whom it is served must report the reasons for the failure to – 15
 - (a) the sheriff in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) the sheriff exercising a civil jurisdiction in the case of an order made for the purposes of a civil recovery investigation. 20
- (6) In this section, “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44) and the Scottish Administration.

373 Supplementary 25

- (1) An application for a production order or an order to grant entry may be made ex parte to a sheriff in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of production orders and orders to grant entry.
- (3) Rules of court under subsection (2) relating to production orders and orders to grant entry – 30
 - (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46) be made by act of adjournal;
 - (b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) be made by act of sederunt. 35
- (4) An application to discharge or vary a production order or an order to grant entry may be made to the sheriff by – 40
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (5) The sheriff may –
 - (a) discharge the order;
 - (b) vary the order.

Search warrants

374 Search warrants

- (1) The sheriff may, on an application made to him by the appropriate person, issue a search warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled. 5
- (2) In issuing a search warrant in relation to property subject to a civil recovery investigation, the sheriff shall act in the exercise of his civil jurisdiction.
- (3) An application for a search warrant need not be intimated to the person specified in the application.
- (4) The application for a search warrant must state that— 10
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation.
- (5) A search warrant is a warrant authorising a proper person— 15
 - (a) to enter and search the premises specified in the application for the warrant, and
 - (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made. 20
- (6) The requirements for the issue of a search warrant are—
 - (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or 25
 - (b) that section 375 is satisfied in relation to the warrant.
- (7) If a search warrant is sought for the purposes of a civil recovery investigation, an application may be made ex parte to a sheriff in chambers.

375 Requirements where production order not available

- (1) This section is satisfied in relation to a search warrant if— 30
 - (a) subsection (2) applies, and
 - (b) either the first or the second set of conditions is complied with.
- (2) This subsection applies if there are reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct; 35
 - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;
 - (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence. 40
- (3) The first set of conditions is that there are reasonable grounds for believing that—

-
- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought, and
 - (b) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4). 5
 - (4) The reasons are –
 - (a) that it is not practicable to communicate with any person against whom the production order could be made;
 - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant access to the material or to grant entry to the premises on which the material is situated; 10
 - (c) that the investigation might be seriously prejudiced unless a proper person is able to secure immediate access to the material.
 - (5) The second set of conditions is that –
 - (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7) or (8), and 15
 - (b) any one or more of the requirements in subsection (9) is met.
 - (6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it – 20
 - (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct, and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought. 25
 - (7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it –
 - (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph, and 30
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought. 35
 - (8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it –
 - (a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought. 40
 - (9) The requirements are –
 - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that entry to the premises will not be granted unless a warrant is produced; 45
 - (c) that the investigation might be seriously prejudiced unless a proper person arriving at the premises is able to secure immediate entry to them.

376 Further provisions: general

A search warrant does not confer the right to seize any items subject to legal privilege.

377 Further provisions: confiscation, civil recovery and money laundering

- (1) This section applies to search warrants sought for the purposes of confiscation investigations, civil recovery investigations or money laundering investigations. 5
- (2) A warrant issued in relation to a civil recovery investigation may be issued subject to conditions.
- (3) A warrant continues in force until the end of the period of one month starting with the day on which it is issued. 10
- (4) A warrant authorises the person executing it to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the constable believes relates to any matter relevant to the investigation, to be produced in a form – 15
 - (a) in which it can be taken away, and
 - (b) in which it is visible and legible.
- (5) A warrant issued in relation to a civil recovery investigation may include provision authorising the person executing it to do other things which – 20
 - (a) are specified in the warrant, and
 - (b) need to be done in order to give effect to it.
- (6) Copies may be taken of any material seized under a warrant.
- (7) Material seized under a warrant issued in relation to a civil recovery investigation may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued. 25
- (8) But if the Scottish Ministers have reasonable grounds for believing that –
 - (a) the material may need to be produced for the purposes of any legal proceedings, and
 - (b) it might otherwise be unavailable for those purposes, 30
 it may be retained until the proceedings are concluded.

Disclosure orders

378 Disclosure orders

- (1) The High Court of Justiciary, on an application made to it by the Lord Advocate in relation to confiscation investigations, or the Court of Session, on an application made to it by the Scottish Ministers in relation to civil recovery investigations, may make a disclosure order if it is satisfied that each of the requirements for the making of the order is fulfilled. 35
- (2) No application for a disclosure order may be made in relation to a money laundering investigation. 40

- (3) An application for a disclosure order need not be intimated to the person specified in the application.
- (4) The application for a disclosure order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation, or 5
 - (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (5) A disclosure order is an order authorising the Lord Advocate or the Scottish Ministers to give to any person the Lord Advocate considers or the Scottish Ministers consider has relevant information, notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following— 10
 - (a) answer questions, either at a time specified in the notice or at once, at a place so specified; 15
 - (b) provide information specified in the notice, by a time and in a manner so specified;
 - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified. 20
- (6) Relevant information is information (whether or not contained in a document) which the Lord Advocate considers or the Scottish Ministers consider to be relevant to the investigation.
- (7) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him. 25

379 Requirements for making of disclosure order

- (1) These are the requirements for the making of a disclosure order.
- (2) There must be reasonable grounds for suspecting that— 30
 - (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.
- (3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought. 35

380 Offences

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order. 40
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
 - (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or 45

-
- (c) both.
 - (3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he –
 - (a) makes a statement which he knows to be false or misleading in a material particular, or 5
 - (b) recklessly makes a statement which is false or misleading in a material particular.
 - (4) A person guilty of an offence under subsection (3) is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

381 Statements

- (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings. 15
- (2) But subsection (1) does not apply –
 - (a) in the case of proceedings under Part 3,
 - (b) on a prosecution for an offence under section 380(1) or (3),
 - (c) on a prosecution for perjury, or 20
 - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless – 25
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
 by him or on his behalf in the proceedings arising out of the prosecution.

382 Further provisions

- (1) A disclosure order does not confer the right to require a person to answer any question, provide any information or produce any document which he would be entitled to refuse to answer, provide or produce on grounds of legal privilege. 30
- (2) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed). 35
- (3) The Lord Advocate and the Scottish Ministers may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.
- (4) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made. 40
- (5) But if the Lord Advocate has, or the Scottish Ministers have, reasonable grounds for believing that –

- (a) the documents may need to be produced for the purposes of any legal proceedings, and
- (b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.

383 Supplementary 5

- (1) An application for a disclosure order may be made ex parte to –
 - (a) in the case of an order made in a confiscation investigation or money laundering investigation, a judge of the High Court of Justiciary;
 - (b) in the case of an order made in a civil recovery investigation, a judge of the Court of Session, 10
in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of disclosure orders.
- (3) Rules of court under subsection (2) relating to disclosure orders –
 - (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46) be made by act of adjournal; 15
 - (b) made in a civil recovery investigation shall, without prejudice to section 5 of the Court of Session Act 1988 (c. 36), be made by act of sederunt. 20
- (4) An application to discharge or vary a disclosure order may be made to the sheriff by –
 - (a) the Lord Advocate or the Scottish Ministers;
 - (b) any person affected by the order.
- (5) The sheriff may – 25
 - (a) discharge the order;
 - (b) vary the order.

Customer information orders

384 Customer information orders

- (1) The sheriff may, on an application made to him by the appropriate person, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled. 30
- (2) In making a customer information order in relation to property subject to a civil recovery investigation the sheriff shall act in the exercise of his civil jurisdiction. 35
- (3) An application for a customer information order need not be intimated to the person specified in the application.
- (4) The application for a customer information order must state that –
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or 40

- (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
- (5) The application must also state that—
 - (a) the order is sought for the purposes of the investigation; 5
 - (b) the order is sought against the financial institution or financial institutions specified in the application.
- (6) An application for a customer information order may specify —
 - (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or 10
 - (c) a particular financial institution or particular financial institutions.
- (7) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by the appropriate person, provide any such customer information as it has relating to the person specified in the application. 15
- (8) A financial institution which is required to provide information under a customer information order must provide the information to a proper person in such manner, and at or by such time, as that person requires.
- (9) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it. 20

385 Meaning of customer information

- (1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to — 25
 - (a) the matters specified in subsection (2) if the person is an individual;
 - (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom. 30
- (2) The matters referred to in subsection (1)(a) are —
 - (a) the account number or numbers;
 - (b) the person’s full name; 35
 - (c) his date of birth;
 - (d) his most recent address and any previous addresses;
 - (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so; 40
 - (f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
 - (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him; 45

- (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.
 - (3) The matters referred to in subsection (1)(b) are –
 - (a) the account number or numbers; 5
 - (b) the person’s full name;
 - (c) a description of any business which the person carries on;
 - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) or corresponding legislation of any country or territory outside the United Kingdom; 10
 - (e) any number assigned to it for the purposes of value added tax in the United Kingdom;
 - (f) its registered office, and any previous registered offices, under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) or anything similar under corresponding legislation of any country or territory outside the United Kingdom; 15
 - (g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000 (c. 12) or anything similar under corresponding legislation of any country or territory outside Great Britain; 20
 - (h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so; 25
 - (i) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
 - (j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts. 30
 - (4) The Scottish Ministers may by order provide for information of a description specified in the order –
 - (a) to be customer information, or
 - (b) no longer to be customer information. 35
 - (5) Money laundering is an act which –
 - (a) constitutes an offence under section 321, 322 or 323 of this Act or section 18 of the Terrorism Act 2000 (c. 11), or
 - (b) would constitute an offence specified in paragraph (a) if done in the United Kingdom. 40

386 Requirements for making of customer information order

- (1) These are the requirements for the making of a customer information order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct. 45
- (3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that –

- (a) the property specified in the application for the order is recoverable property or associated property;
 - (b) the person specified in the application holds all or some of the property.
- (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence. 5
- (5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought. 10

387 Offences

- (1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 15
- (3) A financial institution commits an offence if, in purported compliance with a customer information order, it—
 - (a) makes a statement which it knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular. 20
- (4) A financial institution guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine. 25

388 Statements

- (1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings. 30
- (2) But subsection (1) does not apply—
 - (a) in the case of proceedings under Part 3,
 - (b) on a prosecution for an offence under section 387(1) or (3), or
 - (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1). 35
- (3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked, 40
 by or on behalf of the financial institution in the proceedings arising out of the prosecution.

389 Further provisions

- (1) A customer information order does not require a financial institution to provide any information which it would be entitled to refuse to provide on grounds of legal privilege.
- (2) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed). 5

390 Supplementary

- (1) An application for a customer information order may be made ex parte to a sheriff in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of customer information orders. 10
- (3) Rules of court under subsection (2) relating to customer information orders –
 - (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by act of adjournal; 15
 - (b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58), be made by act of sederunt.
- (4) An application to discharge or vary a customer information order may be made to the sheriff by – 20
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (5) The sheriff may –
 - (a) discharge the order;
 - (b) vary the order. 25

Account monitoring orders

391 Account monitoring orders

- (1) The sheriff may, on an application made to him by the appropriate person, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled. 30
- (2) In making an account monitoring order in relation to property subject to a civil recovery investigation, the sheriff shall act in the exercise of his civil jurisdiction.
- (3) An application for an account monitoring order need not be intimated to the person specified in the application. 35
- (4) The application for an account monitoring order must state that –
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property. 40

-
- (5) The application must also state that—
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified. 5
 - (6) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
 - (7) The application for an account monitoring order may specify information relating to— 10
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held. 15
 - (8) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the application to the proper person in the manner, and at or by the time or times, stated in the order.
 - (9) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made. 20

392 Requirements for making of account monitoring order

- (1) These are the requirements for the making of an account monitoring order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct. 25
- (3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that—
 - (a) the property specified in the application for the order is recoverable property or associated property;
 - (b) the person specified in the application holds all or some of the property. 30
- (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought. 35

393 Statements

- (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings. 40
- (2) But subsection (1) does not apply —

- (a) in the case of proceedings under Part 3;
 - (b) in the case of proceedings for contempt of court, or
 - (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1). 5
- (3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless –
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked, 10
 by or on behalf of the financial institution in the proceedings arising out of the prosecution.

394 Further provisions

- (1) An account monitoring order does not require a financial institution to provide any information which it would be entitled to refuse to provide on grounds of legal privilege. 15
- (2) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

395 Supplementary

- (1) An application for an account monitoring order may be made ex parte to a sheriff in chambers. 20
- (2) Provision may be made by rules of court as to the discharge and variation of account monitoring orders.
- (3) Rules of court under subsection (2) relating to account monitoring orders –
 - (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by act of adjournal; 25
 - (b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58), be made by act of sederunt.
- (4) An application to discharge or vary an account monitoring order may be made to the sheriff by – 30
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (5) The sheriff may – 35
 - (a) discharge the order;
 - (b) vary the order.

General

396 Jurisdiction of sheriff

- (1) A sheriff may grant a production order, search warrant, customer information order or account monitoring order under this Act in relation to property 40

situated in any area of Scotland notwithstanding that it is outside the area of that sheriff.

- (2) Any such order or warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it. 5
- (3) This section is without prejudice to any existing rule of law.

397 Interpretation

In this Part, unless the context otherwise requires –

“appropriate person” means –

- (a) the procurator fiscal, in relation to a confiscation investigation or a money laundering investigation, 10
- (b) the Scottish Ministers, in relation to a civil recovery investigation;

references to a “constable” include references to a customs and excise officer; 15

“items subject to legal privilege” means –

- (a) communications between a professional legal adviser and his client, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings, 20
being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications; and “legal privilege” shall be construed accordingly;

“premises” include any place and, in particular, include – 25

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971 (c. 61) and any tent or movable structure;

“proper person” means – 30

- (a) a constable, in relation to a confiscation investigation or a money laundering investigation;
- (b) the Scottish Ministers or a person named by them, in relation to a civil recovery investigation.

CHAPTER 4 35

INTERPRETATION

398 Criminal conduct

- (1) Criminal conduct is conduct which –
 - (a) constitutes an offence in any part of the United Kingdom, or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there. 40
- (2) A person benefits from conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct.

- (3) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
- (4) If a person benefits from conduct his benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct. 5
- (5) It is immaterial –
 - (a) whether conduct occurred before or after the passing of this Act, and
 - (b) whether property or a pecuniary advantage constituting a benefit from conduct was obtained before or after the passing of this Act.

399 Property 10

- (1) 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.
- (2) “Recoverable property” and “associated property” have the same meanings as in Part 5. 15
- (3) The following rules apply in relation to property –
 - (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power; 20
 - (d) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease; 25
 - (e) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

400 Money laundering offences

- (1) An offence under section 321, 322 or 323 is a money laundering offence.
- (2) Each of the following is a money laundering offence – 30
 - (a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);
 - (b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).

401 Other interpretative provisions 35

- (1) These expressions are to be construed in accordance with these provisions of this Part –
 - civil recovery investigation: section 330(2) and (3)
 - confiscation investigation: section 330(1)
 - money laundering investigation: section 330(4) 40

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- (2) In the application of this Part to England and Wales and Northern Ireland, these expressions are to be construed in accordance with these provisions of this Part—
- account information: section 359(4)
 - account monitoring order: section 359(6) 5
 - appropriate officer: section 365
 - customer information: section 353
 - customer information order: section 352(5)
 - disclosure order: section 346(4)
 - document: section 366 10
 - order to grant entry: section 336(3)
 - production order: section 334(4)
 - search and seizure warrant: section 341(4)
 - senior appropriate officer: section 365.
- (3) In the application of this Part to Scotland, these expressions are to be construed in accordance with these provisions of this Part— 15
- account information: section 391(6)
 - account monitoring order: section 391(8)
 - customer information: section 385
 - customer information order: section 384(7) 20
 - disclosure order: section 378(5)
 - production order: section 367(5)
 - proper person: section 397
 - search warrant: section 374(5).
- (4) “Financial institution” means a person carrying on a business in the regulated sector. 25
- (5) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 6 or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under—
- (a) a customer information order, or 30
 - (b) an account monitoring order,
- to provide information which relates to a time when the person was a financial institution.
- (6) References to a business in the regulated sector must be construed in accordance with Schedule 6. 35
- (7) “Recovery order” and “interim receiving order” have the same meanings as in Part 5.
- (8) References to notice in writing include references to notice given by electronic means.
- (9) This section and sections 398 to 400 apply for the purposes of this Part. 40

PART 9

INSOLVENCY ETC.

Bankruptcy in England and Wales

402 Modifications of the 1986 Act

- (1) This section applies if a person is adjudged bankrupt in England and Wales. 5
- (2) The following property is excluded from his estate for the purposes of Part 9 of the 1986 Act—
 - (a) property for the time being subject to a restraint order which was made under section 42, 122 or 193 before the order adjudging him bankrupt;
 - (b) any property in respect of which a receiver has been appointed under section 48, 50 or 52; 10
 - (c) any proceeds of property realised under section 51 or 53 if the proceeds are for the time being in the hands of a receiver appointed under section 50 or 52;
 - (d) any proceeds of property realised by virtue of section 127(1) or 129(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 127 or 129(3); 15
 - (e) any property in respect of which a receiver has been appointed under section 199, 201 or 203;
 - (f) any proceeds of property realised under section 202 or 204 if the proceeds are for the time being in the hands of a receiver appointed under section 201 or 203. 20
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging the person bankrupt. 25
- (4) If in the case of a debtor an interim receiver stands at any time appointed under section 286 of the 1986 Act and any property of the debtor is then subject to a restraint order made under section 42, 122 or 193 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order. 30

403 Restriction of powers

- (1) If a person is adjudged bankrupt in England and Wales the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).
- (2) These are the powers— 35
 - (a) the powers conferred on a court by sections 42 to 67 and the powers of a receiver appointed under section 48, 50 or 52;
 - (b) the powers conferred on a court by sections 122 to 136 and Schedule 2 and the powers of an administrator appointed under section 127 or 129(3); 40
 - (c) the powers conferred on a court by sections 193 to 218 and the powers of a receiver appointed under section 199, 201 or 203.
- (3) This is the property—

- (a) property which is for the time being comprised in the bankrupt's estate for the purposes of Part 9 of the 1986 Act;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the 1986 Act (after-acquired property, tools, tenancies etc); 5
 - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the 1986 Act.
- (4) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2). 10
- (5) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with these modifications –
 - (a) for the reference in subsection (3)(a) to the bankrupt's estate for the purposes of Part 9 of that Act substitute a reference to the property of the bankrupt for the purposes of the 1914 Act; 15
 - (b) omit subsection (3)(b);
 - (c) for the reference in subsection (3)(c) to section 280(2)(c) of the 1986 Act substitute a reference to section 26(2) of the 1914 Act;
 - (d) for the reference in subsection (4) to the 1986 Act substitute a reference to the 1914 Act. 20

404 Tainted gifts

- (1) This section applies if a person who is adjudged bankrupt in England and Wales has made a tainted gift (whether directly or indirectly).
- (2) No order may be made under section 339 or 423 of the 1986 Act (avoidance of certain transactions) in respect of the making of the gift at any time when –
 - (a) proceedings for an offence have been started against the person in any part of the United Kingdom and have not been concluded,
 - (b) an application has been made in respect of him under any of the sections listed in subsection (4) and has not been concluded, or 30
 - (c) any property of the recipient of the tainted gift is subject to a restraint order under section 42, 122 or 193.
- (3) Any order made under section 339 or 423 of the 1986 Act after the conclusion of the proceedings or application mentioned in subsection (2) must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift. 35
- (4) These are the sections –
 - (a) sections 20 to 23, 28 and 29;
 - (b) sections 107 to 110, 113 and 114;
 - (c) sections 172 to 175, 180 and 181. 40
- (5) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.
- (6) For the purposes of this section –
 - (a) whether proceedings are started is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are alleged to be started); 45

- (b) the time when applications or proceedings are concluded is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are started).
- (7) But—
 - (a) in applying section 85 or 86 by virtue of subsection (6) above, section 87(1) has effect as if at the end there were added “or when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order”; 5
 - (b) in applying section 236 or 237 by virtue of subsection (6) above, section 238(1) has effect as if at the end there were added “or when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order”. 10
- (8) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with the substitution for a reference to section 339 or 423 of the 1986 Act of a reference to section 27 or 42 of the 1914 Act. 15

Sequestration in Scotland 20

405 Modifications of the 1985 Act

- (1) This section applies if an award of sequestration is made in Scotland.
- (2) The following property is excluded from the debtor’s estate for the purposes of the 1985 Act—
 - (a) property for the time being subject to a restraint order which was made under section 42, 122 or 193 before the award of sequestration; 25
 - (b) any property in respect of which a receiver has been appointed under section 48, 50 or 52;
 - (c) any proceeds of property realised under section 51 or 53 if the proceeds are for the time being in the hands of a receiver appointed under section 50 or 52; 30
 - (d) any proceeds of property realised by virtue of section 127(1) or 129(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 127 or 129(3);
 - (e) any property in respect of which a receiver has been appointed under section 199, 201 or 203; 35
 - (f) any proceeds of property realised under section 202 or 204 if the proceeds are for the time being in the hands of a receiver appointed under section 201 or 203.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the award of sequestration. 40
- (4) It shall not be competent to submit a claim in relation to a confiscation order to the permanent trustee in accordance with section 48 of the 1985 Act; and the reference here to a confiscation order is to any confiscation order that has been or may be made against the debtor under Part 2, 3 or 4 of this Act. 45

- (5) If at any time in the period before the award of sequestration is made an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is at that time subject to a restraint order made under section 42, 122 or 193, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order. 5

406 Restriction of powers

- (1) If an award of sequestration is made in Scotland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3). 10
- (2) These are the powers – 10
- (a) the powers conferred on a court by sections 42 to 67 and the powers of a receiver appointed under section 48, 50 or 52;
 - (b) the powers conferred on a court by sections 122 to 136 and Schedule 2 and the powers of an administrator appointed under section 127 or 129(3); 15
 - (c) the powers conferred on a court by sections 193 to 218 and the powers of a receiver appointed under section 199, 201 or 203.
- (3) This is the property – 20
- (a) property which is for the time being comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act;
 - (b) any income of the debtor which has been ordered under section 32(2) of that Act to be paid to the permanent trustee;
 - (c) any estate which under section 31(10) or 32(6) of that Act vests in the permanent trustee.
- (4) But nothing in the 1985 Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2). 25
- (5) In a case where (despite the coming into force of the 1985 Act) the 1913 Act applies to a sequestration, subsection (3) above has effect as if for paragraphs (a) to (c) there were substituted – 30
- “(a) property which is for the time being comprised in the whole property of the debtor which vests in the trustee under section 97 of the 1913 Act;
 - (b) any income of the bankrupt which has been ordered under section 98(2) of that Act to be paid to the trustee;
 - (c) any estate which under section 98(1) of that Act vests in the trustee.” 35
- (6) In a case where subsection (5) applies, subsection (4) has effect as if for the reference to the 1985 Act there were substituted a reference to the 1913 Act.

407 Tainted gifts

- (1) This section applies if a person whose estate is sequestrated in Scotland has made a tainted gift (whether directly or indirectly). 40
- (2) No decree may be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when –

- (a) proceedings for an offence have been started against the person in any part of the United Kingdom and have not been concluded,
 - (b) an application has been made in respect of him under any of the sections listed in subsection (4) and has not been concluded, or
 - (c) any property of the recipient of the tainted gift is subject to a restraint order under section 42, 122 or 193. 5
- (3) Any decree made under section 34 or 36 of the 1985 Act after the conclusion of the proceedings or application mentioned in subsection (2) must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift. 10
- (4) These are the sections –
 - (a) sections 20 to 23, 28 and 29;
 - (b) sections 107 to 110, 113 and 114;
 - (c) sections 172 to 175, 180 and 181.
- (5) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4. 15
- (6) For the purposes of this section –
 - (a) whether proceedings are started is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are alleged to be started); 20
 - (b) the time when applications or proceedings are concluded is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are started).
- (7) But –
 - (a) in applying section 85 or 86 by virtue of subsection (6) above, section 87(1) has effect as if at the end there were added “or when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order”; 25
 - (b) in applying section 236 or 237 by virtue of subsection (6) above, section 238(1) has effect as if at the end there were added “or when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order”. 30

Bankruptcy in Northern Ireland 35

408 Modifications of the 1989 Order

- (1) This section applies if a person is adjudged bankrupt in Northern Ireland.
- (2) The following property is excluded from his estate for the purposes of Part 9 of the 1989 Order –
 - (a) property for the time being subject to a restraint order which was made under section 42, 122 or 193 before the order adjudging him bankrupt; 40
 - (b) any property in respect of which a receiver has been appointed under section 48, 50 or 52;

(c)	any proceeds of property realised under section 51 or 53 if the proceeds are for the time being in the hands of a receiver appointed under section 50 or 52;	
(d)	any proceeds of property realised by virtue of section 127(1) or 129(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 127 or 129(3);	5
(e)	any property in respect of which a receiver has been appointed under section 199, 201 or 203;	
(f)	any proceeds of property realised under section 202 or 204 if the proceeds are for the time being in the hands of a receiver appointed under section 201 or 203.	10
(3)	Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging the person bankrupt.	
(4)	If in the case of a debtor an interim receiver stands at any time appointed under Article 259 of the 1989 Order and any property of the debtor is then subject to a restraint order made under section 42, 122 or 193, the powers conferred on the receiver by virtue of that Order do not apply to property then subject to the restraint order.	15
409	Restriction of powers	20
(1)	If a person is adjudged bankrupt in Northern Ireland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).	
(2)	These are the powers –	
(a)	the powers conferred on a court by sections 42 to 67 and the powers of a receiver appointed under section 48, 50 or 52;	25
(b)	the powers conferred on a court by sections 122 to 136 and Schedule 2 and the powers of an administrator appointed under section 127 or 129(3);	
(c)	the powers conferred on a court by sections 193 to 218 and the powers of a receiver appointed under section 199, 201 or 203.	30
(3)	This is the property –	
(a)	property which is for the time being comprised in the bankrupt's estate for the purposes of Part 9 of the 1989 Order;	
(b)	property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under Article 280 or 281 of the 1989 Order (after-acquired property etc);	35
(c)	property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of the 1989 Order.	40
(4)	But nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (2).	
(5)	In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1 October 1991 (when the 1989 Order came into force) this section has effect with these modifications –	45
(a)	for the reference in subsection (3)(a) to the bankrupt's estate for the purposes of Part 9 of that Order substitute a reference to the property	

	of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;	
	(b) omit subsection (3)(b);	
	(c) for the reference in subsection (3)(c) to Article 254(2)(c) of the 1989 Order substitute a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (S.I. 1980/561 (N.I. 4));	5
	(d) for the reference in subsection (4) to the 1989 Order substitute a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980.	
410	Tainted gifts	10
(1)	This section applies if a person who is adjudged bankrupt in Northern Ireland has made a tainted gift (whether directly or indirectly).	
(2)	No order may be made under Article 312 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when –	
	(a) proceedings for an offence have been started against the person in any part of the United Kingdom and have not been concluded,	15
	(b) an application has been made in respect of him under any of the sections listed in subsection (4) and has not been concluded, or	
	(c) any property of the recipient of the tainted gift is subject to a restraint order under section 42, 122 or 193.	20
(3)	Any order made under Article 312 or 367 of the 1989 Order after the conclusion of the proceedings or application mentioned in subsection (2) must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.	
(4)	These are the sections –	25
	(a) sections 20 to 23, 28 and 29;	
	(b) sections 107 to 110, 113 and 114;	
	(c) sections 172 to 175, 180 and 181.	
(5)	A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.	30
(6)	For the purposes of this section –	
	(a) whether proceedings are started is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are alleged to be started);	
	(b) the time when applications or proceedings are concluded is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are started).	35
(7)	But –	
	(a) in applying section 85 or 86 by virtue of subsection (6) above, section 87(1) has effect as if at the end there were added “or when the defendant against whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order”;	40
	(b) in applying section 236 or 237 by virtue of subsection (6) above, section 238(1) has effect as if at the end there were added “or when the defendant against whom it was made has served a term of	45

imprisonment or detention in default of payment of the amount due under the order”.

- (8) In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1 October 1991 (when the 1989 Order came into force) this section has effect with these modifications – 5
- (a) for a reference to Article 312 of the 1989 Order substitute a reference to section 12 of the Bankruptcy Amendment Act (Northern Ireland) 1929 (c.1 (N.I.));
 - (b) for a reference to Article 367 of the 1989 Order substitute a reference to section 10 of the Conveyancing Act (Ireland) 1634 (c.3). 10

Winding up in England and Wales and Scotland

411 Winding up under the 1986 Act

- (1) In this section “company” means any company which may be wound up under the 1986 Act.
- (2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property – 15
 - (a) property for the time being subject to a restraint order which was made under section 42, 122 or 193 before the relevant time;
 - (b) any property in respect of which a receiver has been appointed under section 48, 50 or 52; 20
 - (c) any proceeds of property realised under section 51 or 53 if the proceeds are for the time being in the hands of a receiver appointed under section 50 or 52;
 - (d) any proceeds of property realised by virtue of section 127(1) or 129(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 127 or 129(3); 25
 - (e) any property in respect of which a receiver has been appointed under section 199, 201 or 203;
 - (f) any proceeds of property realised under section 202 or 204 if the proceeds are for the time being in the hands of a receiver appointed under section 201 or 203. 30
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time. 35
- (4) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property –
 - (a) which is held by the company, and 40
 - (b) in relation to which the functions of the liquidator are exercisable.
- (5) These are the powers –
 - (a) the powers conferred on a court by sections 42 to 67 and the powers of a receiver appointed under section 48, 50 or 52;

- (b) the powers conferred on a court by sections 122 to 136 and Schedule 2 and the powers of an administrator appointed under section 127 or 129(3);
 - (c) the powers conferred on a court by sections 193 to 218 and the powers of a receiver appointed under section 199, 201 or 203. 5
- (6) The powers must not be exercised –
 - (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company’s creditors;
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property. 10
- (7) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).
- (8) For the purposes of the application of Parts 4 and 5 of the 1986 Act (winding up) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order made under section 6, 94 or 158. 15
- (9) The relevant time is –
 - (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up; 20
 - (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;
 - (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order. 25
- (10) In a case where a winding up of a company commenced or is treated as having commenced before 29 December 1986, this section has effect with the following modifications –
 - (a) in subsections (1) and (7) for “the 1986 Act” substitute “the Companies Act 1985”; 30
 - (b) in subsection (8) for “Parts 4 and 5 of the 1986 Act” substitute “Parts 20 and 21 of the Companies Act 1985”.

412 Tainted gifts

- (1) In this section “company” means any company which may be wound up under the 1986 Act. 35
- (2) This section applies if –
 - (a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, and
 - (b) it has made a tainted gift (whether directly or indirectly). 40
- (3) No order may be made under section 238 or 423 of the 1986 Act (avoidance of certain transactions) and no decree may be granted under section 242 of that Act (gratuitous alienations) in respect of the making of the gift at any time when –
 - (a) proceedings for an offence have been started against the company in any part of the United Kingdom and have not been concluded, 45

- (b) an application has been made in respect of the company under any of the sections listed in subsection (5) and has not been concluded, or
 - (c) any property of the recipient of the tainted gift is subject to a restraint order under section 42, 122 or 193.
- (4) Any order made under section 238 or 423 of the 1986 Act or decree granted under section 242 of that Act after the conclusion of the proceedings or application mentioned in subsection (3) must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift. 5
- (5) These are the sections – 10
 - (a) sections 20 to 23;
 - (b) sections 107 to 110;
 - (c) sections 172 to 175.
- (6) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4. 15
- (7) For the purposes of this section –
 - (a) whether proceedings are started is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are alleged to be started);
 - (b) the time when applications or proceedings are concluded is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are started). 20
- (8) In a case where the winding up of a company commenced or is treated as having commenced before 29 December 1986 this section has effect with the substitution for references to section 242 of the 1986 Act of references to section 615A of the Companies Act 1985 (c. 6). 25

Winding up in Northern Ireland

413 Winding up under the 1989 Order

- (1) In this section “company” means any company which may be wound up under the 1989 Order. 30
- (2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property –
 - (a) property for the time being subject to a restraint order which was made under section 42, 122 or 193 before the relevant time; 35
 - (b) any property in respect of which a receiver has been appointed under section 48, 50 or 52;
 - (c) any proceeds of property realised under section 51 or 53 if the proceeds are for the time being in the hands of a receiver appointed under section 50 or 52; 40
 - (d) any proceeds of property realised by virtue of section 127(1) or 129(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 127 or 129(3);
 - (e) any property in respect of which a receiver has been appointed under section 199, 201 or 203; 45

- (f) any proceeds of property realised under section 202 or 204 if the proceeds are for the time being in the hands of a receiver appointed under section 201 or 203.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time. 5
- (4) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property – 10
 - (a) which is held by the company, and
 - (b) in relation to which the functions of the liquidator are exercisable.
- (5) These are the powers –
 - (a) the powers conferred on a court by sections 42 to 67 and the powers of a receiver appointed under section 48, 50 or 52; 15
 - (b) the powers conferred on a court by sections 122 to 136 and Schedule 2 and the powers of an administrator appointed under section 127 or 129(3);
 - (c) the powers conferred on a court by sections 193 to 218 and the powers of a receiver appointed under section 199, 201 or 203. 20
- (6) The powers must not be exercised –
 - (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company’s creditors;
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property. 25
- (7) But nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).
- (8) The relevant time is –
 - (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up; 30
 - (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution; 35
 - (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.
- (9) In a case where a winding up of a company commenced or is treated as having commenced before 1 October 1991, this section has effect with the substitution for references to the 1989 Order of references to the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)). 40

414 Tainted gifts

- (1) In this section “company” means any company which may be wound up under the 1989 Order.
- (2) This section applies if – 45

- (a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, and
 - (b) it has made a tainted gift (whether directly or indirectly).
- (3) No order may be made under Article 202 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when – 5
 - (a) proceedings for an offence have been started against the company in any part of the United Kingdom and have not been concluded,
 - (b) an application has been made in respect of the company under any of the sections listed in subsection (5) and has not been concluded, or
 - (c) any property of the recipient of the tainted gift is subject to a restraint order under section 42, 122 or 193. 10
- (4) Any order made under Article 202 or 367 of the 1989 Order after the conclusion of the proceedings or application mentioned in subsection (3) must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift. 15
- (5) These are the sections –
 - (a) sections 20 to 23;
 - (b) sections 107 to 110;
 - (c) sections 172 to 175.
- (6) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4. 20
- (7) For the purposes of this section –
 - (a) whether proceedings are started is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are alleged to be started); 25
 - (b) the time when applications or proceedings are concluded is to be decided in accordance with Part 2, 3 or 4 (depending on the part of the United Kingdom in which they are started).

Floating charges

- 415 Floating charges** 30
- (1) In this section “company” means a company which may be wound up under
 - (a) the 1986 Act, or
 - (b) the 1989 Order.
 - (2) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to the following property – 35
 - (a) property for the time being subject to a restraint order which was made under section 42, 122 or 193 before the appointment of the receiver;
 - (b) any property in respect of which a receiver has been appointed under section 48, 50 or 52; 40
 - (c) any proceeds of property realised under section 51 or 53 if the proceeds are for the time being in the hands of a receiver appointed under section 50 or 52;

- (d) any proceeds of property realised by virtue of section 127(1) or 129(5)(b) or (9) if the proceeds are for the time being in the hands of an administrator appointed under section 127 or 129(3);
 - (e) any property in respect of which a receiver has been appointed under section 199, 201 or 203; 5
 - (f) any proceeds of property realised under section 202 or 204 if the proceeds are for the time being in the hands of a receiver appointed under section 201 or 203.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the appointment of the receiver. 10
- (4) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property – 15
 - (a) which is held by the company, and
 - (b) in relation to which the functions of the receiver are exercisable.
- (5) These are the powers –
 - (a) the powers conferred on a court by sections 42 to 67 and the powers of a receiver appointed under section 48, 50 or 52; 20
 - (b) the powers conferred on a court by sections 122 to 136 and Schedule 2 and the powers of an administrator appointed under section 127 or 129(3);
 - (c) the powers conferred on a court by sections 193 to 218 and the powers of a receiver appointed under section 199, 201 or 203. 25
- (6) The powers must not be exercised –
 - (a) so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company’s creditors;
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property. 30
- (7) But nothing in the 1986 Act or the 1989 Order must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).
- (8) In this section “floating charge” includes a floating charge within the meaning of section 462 of the Companies Act 1985 (c. 6). 35

Limited liability partnerships

416 Limited liability partnerships

- (1) In section 411, 412 and 415 “company” includes a limited liability partnership which may be wound up under the 1986 Act.
- (2) A reference in those sections to a company passing a resolution for its voluntary winding up is to be construed in relation to a limited liability partnership as a reference to the partnership making a determination for its voluntary winding up. 40

Insolvency practitioners

417 Insolvency practitioners

- (1) Subsections (2) and (3) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because – 5
 - (a) it is for the time being subject to a restraint order made under section 42, 122 or 193, or
 - (b) it is for the time being subject to an interim receiving order made under section 251 or an interim administration order made under section 259, and at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property. 10
- (2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence. 15
- (3) He has a lien on the property or the proceeds of its sale –
 - (a) for such of his expenses as were incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal, and
 - (b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings. 20
- (4) Subsection (2) does not prejudice the generality of any provision of the 1985 Act, the 1986 Act, the 1989 Order or any other Act or Order which confers protection from liability on him.
- (5) Subsection (7) applies if – 25
 - (a) property is subject to a restraint order made under section 42, 122 or 193,
 - (b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the restraint order, and
 - (c) he does not know (and has no reasonable grounds to believe) that the property is subject to the restraint order. 30
- (6) Subsection (7) also applies if –
 - (a) property is subject to a restraint order made under section 42, 122 or 193,
 - (b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the restraint order, and
 - (c) the expenses are ones which (but for the effect of the restraint order) might have been met by taking possession of and realising property subject to it. 35
- (7) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under – 40
 - (a) section 54(2), 55(3), 56(2) or 57(3) if the restraint order was made under section 42;
 - (b) section 132(3) or 133(3) if the restraint order was made under section 122; 45
 - (c) section 205(2), 206(3), 207(2) or 208(3) if the restraint order was made under section 193.

- (8) Subsection (10) applies if –
 - (a) property is subject to an interim receiving order made under section 251 or an interim administration order made under section 259,
 - (b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the order, and 5
 - (c) he does not know (and has no reasonable grounds to believe) that the property is subject to the order.
- (9) Subsection (10) also applies if –
 - (a) property is subject to an interim receiving order made under section 251 or an interim administration order made under section 259, 10
 - (b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the order, and
 - (c) the expenses are ones which (but for the effect of the order) might have been met by taking possession of and realising property subject to it.
- (10) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under section 279. 15

418 Meaning of insolvency practitioner

- (1) This section applies for the purposes of section 417.
- (2) A person acts as an insolvency practitioner if he so acts within the meaning given by section 388 of the 1986 Act or Article 3 of the 1989 Order; but this is subject to subsections (3) to (5). 20
- (3) The expression “person acting as an insolvency practitioner” includes the official receiver acting as receiver or manager of the property concerned.
- (4) In applying section 388 of the 1986 Act under subsection (2) above –
 - (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration; 25
 - (b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver) must be ignored.
- (5) In applying Article 3 of the 1989 Order under subsection (2) above, paragraph (5) (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored. 30

Interpretation

419 Interpretation

- (1) The following paragraphs apply to references to Acts or Orders – 35
 - (a) the 1913 Act is the Bankruptcy (Scotland) Act 1913 (c. 20);
 - (b) the 1914 Act is the Bankruptcy Act 1914 (c. 59);
 - (c) the 1985 Act is the Bankruptcy (Scotland) Act 1985 (c. 66);
 - (d) the 1986 Act is the Insolvency Act 1986 (c. 45);
 - (e) the 1989 Order is the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)). 40

- (2) An award of sequestration is made on the date of sequestration within the meaning of section 12(4) of the 1985 Act.
- (3) This section applies for the purposes of this Part.

PART 10

INFORMATION

5

England and Wales and Northern Ireland

420 Use of information by Director

Information obtained by or on behalf of the Director in connection with the exercise of any of his functions may be used by him in connection with his exercise of any of his other functions.

10

421 Disclosure of information to Director

- (1) Information which is held by or on behalf of a permitted person (whether it was obtained before or after the coming into force of this section) may be disclosed to the Director for the purpose of the exercise by the Director of his functions. 15
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure –
 - (a) which contravenes the Data Protection Act 1998 (c. 29);
 - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23). 20
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) These are permitted persons –
 - (a) a constable; 25
 - (b) the Director General of the National Criminal Intelligence Service;
 - (c) the Director General of the National Crime Squad;
 - (d) the Director of the Serious Fraud Office;
 - (e) the Commissioners of Inland Revenue;
 - (f) the Commissioners of Customs and Excise; 30
 - (g) the Director of Public Prosecutions;
 - (h) the Director of Public Prosecutions for Northern Ireland.
- (6) The Secretary of State may by order designate as permitted persons other persons who exercise functions which he believes are of a public nature.
- (7) But an order under subsection (6) must specify the functions in respect of which the designation is made. 35
- (8) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure. 40

- (9) The power to authorise a disclosure under subsection (8) may be delegated (either generally or for a specified purpose) –
 - (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;
 - (b) in the case of the Commissioners of Customs and Excise, to a customs officer. 5

422 Further disclosure

- (1) Subsection (2) applies to information obtained under section 421 from the Commissioners of Inland Revenue or from the Commissioners of Customs and Excise or from a person acting on behalf of either of them. 10
- (2) Such information must not be further disclosed except –
 - (a) for a purpose connected with the exercise of the Director’s functions, and
 - (b) with the consent of the Commissioners concerned.
- (3) Consent under subsection (2) may be given – 15
 - (a) in relation to a particular disclosure;
 - (b) in relation to disclosures made in circumstances specified or described in the consent.
- (4) The power to consent to further disclosure under subsection (2)(b) may be delegated (either generally or for a specified purpose) – 20
 - (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue;
 - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (5) Subsection (6) applies to information obtained under section 421 from a permitted person other than the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or a person acting on behalf of either of them. 25
- (6) A permitted person who discloses such information to the Director may make the disclosure subject to such conditions as to further disclosure by the Director as the permitted person thinks appropriate; and the information must not be further disclosed in contravention of the conditions. 30

423 Disclosure of information by Director

- (1) Information obtained by or on behalf of the Director in connection with the exercise of any of his functions may be disclosed by him if the disclosure is for the purposes of any of the following – 35
 - (a) any criminal investigation which is being or may be carried out, whether in the United Kingdom or elsewhere;
 - (b) any criminal proceedings which have been or may be started, whether in the United Kingdom or elsewhere; 40
 - (c) the exercise of the Director’s functions;
 - (d) the exercise by the prosecutor of functions under Parts 2, 3 and 4;
 - (e) the exercise by the Scottish Ministers of their functions under Part 5;
 - (f) the exercise by a customs officer or a constable of his functions under Chapter 3 of Part 5; 45

- (g) safeguarding national security;
 - (h) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 432;
 - (i) the exercise of a designated function. 5
- (2) Subsection (1) does not apply to information obtained by the Director or on his behalf in connection with the exercise of his functions under Part 6.
- (3) But such information may be disclosed by the Director –
- (a) to the Commissioners of Inland Revenue;
 - (b) to the Lord Advocate for the purpose of the exercise by the Lord Advocate of his functions under Part 3. 10
- (4) Information disclosed to the Lord Advocate under subsection (3)(b) may be further disclosed by him only to the Scottish Ministers for the purpose of the exercise by them of their functions under Part 5.
- (5) If the Director makes a disclosure of information for a purpose specified in subsection (1) he may make any further disclosure of the information by the person to whom he discloses it subject to such conditions as he thinks fit. 15
- (6) Such a person must not further disclose the information in contravention of the conditions.
- (7) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed). 20
- (8) But nothing in this section authorises the making of a disclosure –
- (a) which contravenes the Data Protection Act 1998 (c. 29);
 - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23). 25
- (9) A designated function is a function which the Secretary of State thinks is a function of a public nature and which he designates by order.

Scotland

424 Exchange of information by Scottish Ministers and Lord Advocate

- (1) Information obtained by or on behalf of the Lord Advocate in connection with the exercise of any of his functions under Part 3 or under Chapter 3 of Part 5 may be disclosed to the Scottish Ministers in connection with the exercise of any of their functions under Part 5 30
- (2) Information obtained by or on behalf of the Scottish Ministers in connection with the exercise of any of their functions under Part 5 may be disclosed to the Lord Advocate in connection with the exercise of any of his functions under Part 3. 35

425 Disclosure of information to Scottish Ministers and to Lord Advocate

- (1) Information which is held by or on behalf of a permitted person (whether it was obtained before or after the coming into force of this section) may be disclosed to the Scottish Ministers in connection with the exercise of any of 40

- their functions under Part 5 or to the Lord Advocate in connection with the exercise of any of his functions under Part 3.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure – 5
 (a) which contravenes the Data Protection Act 1998 (c. 29);
 (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) This section does not affect a power to disclose which exists apart from this section. 10
- (5) These are permitted persons –
 (a) a constable;
 (b) the Director General of the National Criminal Intelligence Service;
 (c) the Director General of the National Crime Squad;
 (d) the Director of the Serious Fraud Office; 15
 (e) the Commissioners of Inland Revenue;
 (f) the Commissioners of Customs and Excise;
 (g) the Director of Public Prosecutions for Northern Ireland.
- (6) The Scottish Ministers may by order designate as permitted persons other persons who exercise functions which they believe are of a public nature. 20
- (7) But an order under subsection (6) must specify the functions in respect of which the designation is made.
- (8) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure. 25
- (9) The power to authorise a disclosure under subsection (8) may be delegated (either generally or for a specified purpose) –
 (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue; 30
 (b) in the case of the Commissioners of Customs and Excise, to a customs officer.

426 Further disclosure

- (1) Subsection (2) applies to information obtained under section 425 from the Commissioners of Inland Revenue or from the Commissioners of Customs and Excise or from a person acting on behalf of either of them. 35
- (2) Such information must not be further disclosed except –
 (a) for a purpose connected with the exercise of the functions of the Scottish Ministers under Part 5 and of the Lord Advocate under Part 3, and
 (b) with the consent of the Commissioners concerned. 40
- (3) Consent under subsection (2) may be given –
 (a) in relation to a particular disclosure;

- (b) in relation to disclosures made in circumstances specified or described in the consent.
- (4) The power to consent to further disclosure under subsection (2)(b) may be delegated (either generally or for a specified purpose) –
 - (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue; 5
 - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (5) Subsection (6) applies to information obtained under section 425 from a permitted person other than the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or a person acting on behalf of either of them. 10
- (6) A permitted person who discloses such information to the Scottish Ministers or to the Lord Advocate may make the disclosure subject to such conditions as to further disclosure by the Scottish Ministers or by the Lord Advocate as the permitted person thinks appropriate; and the information must not be further disclosed in contravention of the conditions. 15

427 Disclosure of information by Scottish Ministers and by Lord Advocate

- (1) Information obtained by or on behalf of the Scottish Ministers in connection with the exercise of any of their functions under Part 5 or by or on behalf of the Lord Advocate in connection with the exercise of any of his functions under Part 3 may be disclosed by them or by him if the disclosure is for the purposes of any of the following –
 - (a) any criminal investigation which is being or may be carried out whether in the United Kingdom or elsewhere; 25
 - (b) any criminal proceedings which have been or may be started, whether in the United Kingdom or elsewhere;
 - (c) the exercise of the functions of the Scottish Ministers under Part 5 or of the Lord Advocate under Part 3;
 - (d) the exercise by the prosecutor of functions under Parts 2, 3 and 4; 30
 - (e) the exercise of the Director’s functions;
 - (f) safeguarding national security;
 - (g) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 432. 35
- (2) If the Scottish Ministers make a disclosure of information for a purpose specified in subsection (1) they may make any further disclosure of the information by the person to whom they disclose it subject to such conditions as they think fit.
- (3) If the Lord Advocate makes a disclosure of information for a purpose specified in subsection (1) he may make any further disclosure of the information by the person to whom he discloses it subject to such conditions as he thinks fit. 40
- (4) A person mentioned in subsection (2) or (3) must not further disclose the information in contravention of the conditions.
- (5) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed). 45

- (6) But nothing in this section authorises the making of a disclosure –
 - (a) which contravenes the Data Protection Act 1998 (c. 29);
 - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (7) This section does not affect a power to disclose which exists apart from this section. 5

PART 11

CO-OPERATION

428 Enforcement in different parts of the United Kingdom

- (1) Her Majesty may by Order in Council make provision – 10
 - (a) for an order made by a court under Part 2 to be enforced in Scotland or Northern Ireland;
 - (b) for an order made by a court under Part 3 to be enforced in England and Wales or Northern Ireland;
 - (c) for an order made by a court under Part 4 to be enforced in England and Wales or Scotland; 15
 - (d) for an order made under Part 8 in one part of the United Kingdom to be enforced in another part;
 - (e) for a warrant issued under Part 8 in one part of the United Kingdom to be executed in another part. 20
- (2) Her Majesty may by Order in Council make provision –
 - (a) for a function of a receiver appointed in pursuance of Part 2 to be exercisable in Scotland or Northern Ireland;
 - (b) for a function of an administrator appointed in pursuance of Part 3 to be exercisable in England and Wales or Northern Ireland; 25
 - (c) for a function of a receiver appointed in pursuance of Part 4 to be exercisable in England and Wales or Scotland.
- (3) An Order under this section may include –
 - (a) provision conferring and imposing functions on the prosecutor and the Director; 30
 - (b) provision about the registration of orders and warrants;
 - (c) provision allowing directions to be given in one part of the United Kingdom about the enforcement there of an order made or warrant issued in another part;
 - (d) provision about the authentication in one part of the United Kingdom of an order made or warrant issued in another part. 35
- (4) An Order under this section may –
 - (a) amend an enactment;
 - (b) apply an enactment (with or without modifications).

429 External requests and orders 40

- (1) Her Majesty may by Order in Council –
 - (a) make provision for a prohibition on dealing with property which is the subject of an external request;

- (b) make provision for the realisation of property for the purpose of giving effect to an external order.
- (2) An Order under this section may include provision which (subject to any specified modifications) corresponds to any provision of Part 2, 3 or 4 or Part 5 except Chapter 3. 5
- (3) An Order under this section may include –
 - (a) provision about the functions of the Secretary of State, the Lord Advocate, the Scottish Ministers and the Director in relation to external requests and orders;
 - (b) provision about the registration of external orders; 10
 - (c) provision about the authentication of any judgment or order of an overseas court, and of any other document connected with such a judgment or order or any proceedings relating to it;
 - (d) provision about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in an overseas court); 15
 - (e) provision to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in the part of the United Kingdom where the request is being implemented or the order is being enforced. 20

430 External investigations

- (1) Her Majesty may by Order in Council make –
 - (a) provision to enable orders equivalent to those under Part 8 to be made, and warrants equivalent to those under Part 8 to be issued, for the purposes of an external investigation; 25
 - (b) provision creating offences in relation to external investigations.
- (2) An Order under this section may include –
 - (a) provision corresponding to any provision of Part 8 (subject to any specified modifications); 30
 - (b) provision about the functions of the Secretary of State, the Lord Advocate, the Scottish Ministers, the Director, the Director General of the National Criminal Intelligence Service, the Director of the Serious Fraud Office, constables and customs officers;
 - (c) provision about evidence (including evidence required to establish whether an investigation is being carried out in a country or territory outside the United Kingdom). 35
- (3) But an Order under this section must not provide for a disclosure order to be made for the purposes of an external investigation into whether a money laundering offence has been committed. 40

431 Rules of court

Rules of court may make such provision as is necessary or expedient to give effect to an Order in Council made under this Part (including provision about the exercise of functions of a judge conferred or imposed by the Order).

432 Interpretation

- (1) An external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request.
- (2) An external order is an order which –
 - (a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and 5
 - (b) is for the recovery of specified property or a specified sum of money.
- (3) An external investigation is an investigation by an overseas authority into –
 - (a) whether property has been obtained as a result of or in connection with criminal conduct, or 10
 - (b) whether a money laundering offence has been committed.
- (4) Property is all property wherever situated and includes –
 - (a) money;
 - (b) all forms of property, real or personal, heritable or moveable; 15
 - (c) things in action and other intangible or incorporeal property.
- (5) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.
- (6) Criminal conduct is conduct which – 20
 - (a) constitutes an offence in any part of the United Kingdom, or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (7) A money laundering offence is conduct carried out in a country or territory outside the United Kingdom and which if carried out in the United Kingdom would constitute any of the following offences – 25
 - (a) an offence under section 321, 322 or 323;
 - (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
 - (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a). 30
- (8) An overseas court is a court of a country or territory outside the United Kingdom.
- (9) An overseas authority is an authority which has responsibility in a country or territory outside the United Kingdom – 35
 - (a) for making a request to an authority in another country or territory (including the United Kingdom) to prohibit dealing with relevant property,
 - (b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct, or 40
 - (c) for carrying out an investigation into whether a money laundering offence has been committed.
- (10) This section applies for the purposes of this Part.

PART 12

MISCELLANEOUS AND GENERAL

Miscellaneous

433 Tax

Schedule 7 contains provisions about tax. 5

434 Customs and Excise prosecutions

- (1) Proceedings for a specified offence may be started by order of the Commissioners of Customs and Excise (the Commissioners).
- (2) Such proceedings must be brought in the name of a customs officer.
- (3) If the customs officer in whose name the proceedings are brought— 10
 - (a) dies,
 - (b) is removed or discharged, or
 - (c) is absent,

the proceedings may be continued by a different customs officer.
- (4) If the Commissioners investigate, or propose to investigate, any matter to help them to decide— 15
 - (a) whether there are grounds for believing that a specified offence has been committed, or
 - (b) whether a person is to be prosecuted for such an offence,

the matter must be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979 (c. 2). 20
- (5) This section — 25
 - (a) does not prevent any person (including a customs officer) who has power to arrest, detain or prosecute a person for a specified offence from doing so;
 - (b) does not prevent a court from dealing with a person brought before it following his arrest by a customs officer for a specified offence, even if the proceedings were not started by an order under subsection (1).
- (6) The following are specified offences — 30
 - (a) an offence under Part 7;
 - (b) an offence under section 331;
 - (c) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b);
 - (d) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b). 35
- (7) This section does not apply to proceedings on indictment in Scotland.

435 Crown servants and regulators

- (1) The Secretary of State may by regulations provide that any of the following provisions apply to persons in the public service of the Crown.

(2)	The provisions are –	
(a)	the provisions of Part 7;	
(b)	section 331.	
(3)	The Secretary of State may by regulations provide that section 324 does not to apply to persons who exercise functions –	5
(a)	as or on behalf of supervisory authorities;	
(b)	as investigators.	
(4)	The reference to supervisory authorities must be construed in accordance with Schedule 6.	
436	References to financial investigators	10
(1)	The Secretary of State may by order provide that a specified reference in this Act to an accredited financial investigator is a reference to such an investigator who falls within a specified description.	
(2)	A description may be framed by reference to a grade designated by a specified person.	15
437	Customs officers	
	For the purposes of this Act a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).	
	<i>General</i>	20
438	Amendments	
	Schedule 8 contains miscellaneous and consequential amendments.	
439	Repeals and revocations	
	Schedule 9 contains repeals and revocations.	
440	Commencement	25
(1)	The preceding provisions of this Act (except the provisions specified in subsection (3)) come into force in accordance with provision made by the Secretary of State by order.	
(2)	But no order may be made which includes provision for the commencement of Part 5, 8 or 10 unless the Secretary of State has consulted the Scottish Ministers.	30
(3)	The following provisions come into force in accordance with provision made by the Scottish Ministers by order after consultation with the Secretary of State –	
(a)	Part 3;	
(b)	this Part, to the extent that it relates to Part 3.	35

441 Orders and regulations

- (1) References in this section to subordinate legislation are to –
 - (a) any Order in Council under this Act;
 - (b) any order under this Act (other than one falling to be made by a court);
 - (c) any regulations under this Act. 5
- (2) Subordinate legislation –
 - (a) may make different provision for different purposes;
 - (b) may include supplementary, incidental, saving or transitional provisions.
- (3) Any power to make subordinate legislation is exercisable by statutory instrument. 10
- (4) A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if it contains subordinate legislation other than –
 - (a) an order under section 281, 291(4), 421(6), 423(9) or 440;
 - (b) subordinate legislation made by the Scottish Ministers;
 - (c) an Order in Council made under section 428 which makes provision only in relation to Scotland. 15
- (5) A statutory instrument is subject to annulment in pursuance of a resolution of the Scottish Parliament if it contains –
 - (a) subordinate legislation made by the Scottish Ministers other than an order under section 425(6) or 440;
 - (b) an Order in Council made under section 428 which makes provision only in relation to Scotland. 20
- (6) No order may be made –
 - (a) by the Secretary of State under section 281, 291(4), 421(6) or 423(9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House; 25
 - (b) by the Scottish Ministers under section 425(6) unless a draft of the order has been laid before and approved by a resolution of the Scottish Parliament. 30
- (7) The Scottish Ministers must lay before the Scottish Parliament a copy of every statutory instrument containing an Order in Council made under section 429 or 430.

442 Finance

- (1) *The following are to be paid out of money provided by Parliament –* 35
 - (a) *any expenditure incurred by any Minister of the Crown under this Act;*
 - (b) *any increase attributable to this Act in the sums payable out of money so provided under any other enactment.*
- (2) *Any sums received by the Secretary of State in consequence of this Act are to be paid into the Consolidated Fund.* 40

443 Extent

- (1) Part 2 extends to England and Wales only.

- (2) In Part 8, Chapter 2 extends to England and Wales and Northern Ireland only.
- (3) These provisions extend to Scotland only –
 - (a) Part 3;
 - (b) in Part 8, Chapter 3.
- (4) Part 4 extends to Northern Ireland only. 5
- (5) The amendments in Schedule 8 have the same extent as the provisions amended.
- (6) The repeals and revocations in Schedule 9 have the same extent as the provisions repealed or revoked.

444 Short title

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This Act may be cited as the Proceeds of Crime Act 2001.

SCHEDULES

SCHEDULE 1

Section 1.

ASSETS RECOVERY AGENCY

Director's terms of appointment

- | | | |
|-----|--|----|
| 1 | (1) The Director holds office for the period determined by the Secretary of State on his appointment (or re-appointment) to the office. | 5 |
| (2) | But— | |
| (a) | the Director may at any time resign by giving notice to the Secretary of State; | |
| (b) | the Secretary of State may at any time remove the Director from office if satisfied that he is unable or unfit to exercise his functions. | 10 |
| 2 | Subject to that, the Director holds office on the terms determined by the Secretary of State. | |
| 3 | In Schedule 1 to the Superannuation Act 1972 (c. 11) (offices etc. to which section 1 of that Act applies) in the list of “Offices” insert (at the appropriate place in alphabetical order)— | 15 |
| | “Director of the Assets Recovery Agency.” | |

Staff

- | | | |
|-----|--|----|
| 4 | The members of staff of the Agency must include— | |
| (a) | a deputy to the Director who is to act as Director during any vacancy in that office or if the Director is absent, subject to suspension or unable to act, and | 20 |
| (b) | a senior official with responsibilities in relation to the exercise of the Director's functions in Northern Ireland. | |
| 5 | The members of staff of the Agency hold office on the terms determined by the Director. | 25 |

Finances

- | | | |
|---|--|----|
| 6 | (1) <i>The Secretary of State must meet the expenses of the Director.</i> | |
| | (2) <i>The Secretary of State must pay to the Minister for the Civil Service, at the times directed by that Minister, any sums determined by that Minister in respect of any increase attributable to paragraph 3 in the sums payable out of money provided by Parliament under the Superannuation Act 1972.</i> | 30 |
| | (3) <i>Subject to anything in this Act the Director must pay any sums received by him to the Secretary of State.</i> | |

- 7 (1) The Director must—
 - (a) keep proper accounts and proper accounting records, and
 - (b) prepare in respect of each financial year a statement of accounts.
- (2) The statement of accounts must—
 - (a) contain the information, and 5
 - (b) be in the form,

which the Secretary of State directs.
- (3) The Director must send copies of the statement of accounts relating to a financial year to the Comptroller and Auditor General before—
 - (a) the next 1 September, or 10
 - (b) such earlier date as the Secretary of State may direct.
- (4) The Comptroller and Auditor General must—
 - (a) examine, certify and report on each statement of accounts sent to him by the Director,
 - (b) send a copy of each such statement and of his report on it to the Secretary of State, and 15
 - (c) lay a copy of each such statement and of his report on it before each House of Parliament.

Annual plan

- 8 (1) The Director must, before the beginning of each financial year apart from the first, prepare a plan setting out how he intends to exercise his functions during the financial year (an annual plan). 20
- (2) The annual plan must, in particular, set out how the Director intends to exercise his functions in Northern Ireland.
- (3) The annual plan must also include a statement of— 25
 - (a) the Director’s objectives for the financial year;
 - (b) any performance targets which he has for the financial year (whether or not relating to his objectives);
 - (c) his priorities for the financial year;
 - (d) the financial resources expected to be available to him for the financial year; 30
 - (e) his proposed allocation of those resources.
- (4) Once the annual plan has been prepared the Director must send a copy to the Secretary of State for his approval.
- (5) If the Secretary of State does not approve the annual plan— 35
 - (a) he must give the Director his reasons for not approving it, and
 - (b) he may require the Director to revise it in the manner specified by the Secretary of State.
- (6) The Director must revise the annual plan, but if sub-paragraph (5)(b) applies he must do so in the manner specified by the Secretary of State. 40
- (7) The Director must send a copy of the revised annual plan to the Secretary of State for his approval.

Annual report

- | | | | |
|---|-----|--|----|
| 9 | (1) | The Director must, as soon as possible after the end of each financial year, prepare a report on how he has exercised his functions during the financial year. | |
| | (2) | The report for any financial year apart from the first must include – | 5 |
| | (a) | the Director’s annual plan for the financial year, and | |
| | (b) | an assessment of the extent to which it has been carried out. | |
| | (3) | The Director must send a copy of each report to the Secretary of State who must – | |
| | (a) | lay a copy of it before each House of Parliament, and | 10 |
| | (b) | arrange for it to be published. | |

Parliamentary disqualification

- | | | | |
|----|--|--|----|
| 10 | | In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices) insert (at the appropriate place in alphabetical order) – | 15 |
| | | “Director of the Assets Recovery Agency.” | |
| 11 | | In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices) insert (at the appropriate place in alphabetical order) – | |
| | | “Director of the Assets Recovery Agency.” | 20 |

Meaning of “financial year”

- | | | | |
|----|-----|--|----|
| 12 | | In this Schedule “financial year” means – | |
| | (a) | the period beginning with the day on which section 1 comes into force and ending with the next 31 March (which is the first financial year), and | 25 |
| | (b) | each subsequent period of twelve months beginning with 1 April. | |

SCHEDULE 2

Section 137.

ADMINISTRATORS: FURTHER PROVISION

General

- | | | | |
|---|-----|--|----|
| 1 | | In this Schedule, unless otherwise expressly provided – | 30 |
| | (a) | references to an administrator are to an administrator appointed under section 127 or 129(3); | |
| | (b) | references to realisable property are to the realisable property in respect of which the administrator is appointed. | |

Appointment etc

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- | | | | |
|---|-----|--|--|
| 2 | (1) | If the office of administrator is vacant, for whatever reason, the court must appoint a new administrator. | |
|---|-----|--|--|

- (2) Any property vested in the previous administrator by virtue of paragraph 5(4) vests in the new administrator.
- (3) Any order under section 127 or 129(6) in relation to the previous administrator applies in relation to the new administrator when he gives written notice of his appointment to the person subject to the order. 5
- (4) The administration of property by an administrator must be treated as continuous despite any temporary vacancy in that office.
- (5) The appointment of an administrator is subject to such conditions as to caution as the accountant of court may impose.
- (6) The premium of any bond of caution or other security required by such conditions must be treated as part of the administrator's expenses in the exercise of his functions. 10

Functions

- 3 (1) An administrator –
 - (a) may, if appointed under section 127, and 15
 - (b) must, if appointed under section 129(3),
as soon as practicable take possession of the realisable property and of the documents mentioned in sub-paragraph (2).
- (2) Those documents are any document which –
 - (a) is in the possession or control of the person (“A”) in whom the property is vested (or would be vested but for an order made under paragraph 5(4)), and 20
 - (b) relates to the property or to A's assets, business or financial affairs.
- (3) An administrator is entitled to have access to, and to copy, any document relating to the property or to A's assets, business or financial affairs and not falling within sub-paragraph (2)(a). 25
- (4) An administrator may bring, defend or continue any legal proceedings relating to the property.
- (5) An administrator may borrow money so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property. 30
- (6) An administrator may, if he considers that it would be beneficial for the management or realisation of the property –
 - (a) carry on any business of A;
 - (b) exercise any right of A as holder of securities in a company; 35
 - (c) grant a lease of the property or take on lease any other property;
 - (d) enter into any contract, or execute any deed, as regards the property or as regards A's business.
- (7) An administrator may, where any right, option or other power forms part of A's estate, make payments or incur liabilities with a view to – 40
 - (a) obtaining property which is the subject of, or
 - (b) maintaining,
the right, option or power.
- (8) An administrator may effect or maintain insurance policies as regards the property on A's business. 45

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- (9) An administrator may, if appointed under section 129(3), complete any uncompleted title which A has to any heritable estate; but completion of title in A's name does not validate by accretion any unperfected right in favour of any person other than the administrator.
- (10) An administrator may sell, purchase or exchange property or discharge any security for an obligation due to A; but it is incompetent for the administrator or an associate of his (within the meaning of section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66)) to purchase any of A's property in pursuance of this sub-paragraph. 5
- (11) An administrator may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor. 10
- (12) An administrator may discharge any of his functions through agents or employees, but is personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator on a determination by the accountant of court. 15
- (13) An administrator may take such professional advice as he considers necessary in connection with the exercise of his functions.
- (14) An administrator may at any time apply to the court for directions as regards the exercise of his functions. 20
- (15) An administrator may exercise any power specifically conferred on him by the court, whether conferred on his appointment or subsequently.
- (16) An administrator may do anything incidental to the powers and duties listed in the previous provisions of this paragraph.
- Consent of accountant of court* 25
- 4 An administrator proposing to exercise any power conferred by paragraph 3(4) to (16) must first obtain the consent of the accountant of court.
- Dealings in good faith with administrator*
- 5 (1) A person dealing with an administrator in good faith and for value is not concerned to enquire whether the administrator is acting within the powers mentioned in paragraph 3. 30
- (2) Sub-paragraph (1) does not apply where the administrator or an associate purchases property in contravention of paragraph 3(10).
- (3) The validity of any title is not challengeable by reason only of the administrator having acted outwith the powers mentioned in paragraph 3. 35
- (4) The exercise of a power mentioned in paragraph 3(4) to (11) must be in A's name except where and in so far as an order made by the court under this sub-paragraph vests the property in the administrator (or in a previous administrator).
- (5) The court may make an order under sub-paragraph (4) on the application of the administrator or on its own motion. 40
- Money received by administrator*
- 6 (1) All money received by an administrator in the exercise of his functions must be deposited by him, in the name (unless vested in the administrator by

virtue of paragraph 5(4)) of the holder of the property realised, in an appropriate bank or institution.

- (2) But the administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Scottish Ministers by regulations.
- (3) In sub-paragraph (1), “appropriate bank or institution” means a bank or institution mentioned in section 3(1) of the Banking Act 1987 (c. 22) or for the time being specified in Schedule 2 to that Act.

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Effect of appointment of administrator on diligence

- 7 (1) An arrestment or poinding of realisable property executed on or after the appointment of an administrator does not create a preference for the arrester or poidner.
- (2) Any realisable property so arrested or poinded, or (if the property has been sold) the proceeds of sale, must be handed over to the administrator.
- (3) A poinding of the ground in respect of realisable property on or after such appointment is ineffectual in a question with the administrator except for the interest mentioned in sub-paragraph (4).
- (4) That interest is –
 - (a) interest on the debt of a secured creditor for the current half-yearly term, and
 - (b) arrears of interest on that debt for one year immediately before the commencement of that term.
- (5) On and after such appointment no other person may raise or insist in an adjudication against realisable property or be confirmed as executor-creditor on that property.
- (6) An inhibition on realisable property which takes effect on or after such appointment does not create a preference for the inhibitor in a question with the administrator.
- (7) This paragraph is without prejudice to sections 125 and 126.

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Supervision

- 8 (1) If the accountant of court reports to the court that an administrator has failed to perform any duty imposed on him, the court may, after giving the administrator an opportunity to be heard as regards the matter –
 - (a) remove him from office,
 - (b) censure him, or
 - (c) make such other order as it thinks fit.
- (2) Section 6 of the Judicial Factors (Scotland) Act 1889 (c. 39) (supervision of judicial factors) does not apply in relation to an administrator.

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Accounts and remuneration

- 9 (1) Not later than two weeks after the issuing of any determination by the accountant of court as to the remuneration and expenses payable to the administrator, the administrator or the Lord Advocate may appeal against it to the court.

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- (2) The amount of remuneration payable to the administrator must be determined on the basis of the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.
- (3) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator. 5

Discharge of administrator

- 10 (1) After an administrator has lodged his final accounts under paragraph 9(1), he may apply to the accountant of court to be discharged from office.
- (2) A discharge, if granted, frees the administrator from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising his functions as administrator. 10

SCHEDULE 3

Sections 252 and 260.

POWERS OF INTERIM RECEIVER OR ADMINISTRATOR

Seizure

- 1 Power to seize property to which the order applies. 15

Information

- 2 (1) Power to obtain information or to require a person to answer any question.
- (2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).
- (3) An answer given by a person in pursuance of such a requirement may be used in evidence against him only – 20
 - (a) in proceedings under Chapter 2 of Part 5,
 - (b) on a prosecution for an offence under section 5 of the Perjury Act 1911, section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 or Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements), or 25
 - (c) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.
- (4) But an answer may not be used by virtue of sub-paragraph (3)(c) against a person unless – 30
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
 by him or on his behalf in the proceedings arising out of the prosecution.

Entry, search, etc.

- 3 (1) Power to – 35
 - (a) enter any premises in the United Kingdom, and
 - (b) take any of the following steps.
- (2) Those steps are –

- (a) to carry out a search for or inspection of anything described in the order,
 - (b) to make or obtain a copy, photograph or other record of anything so described,
 - (c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Chapter 2 of Part 5. 5
- (3) The order may describe anything generally, whether by reference to a class or otherwise.

Obligation to assist interim receiver or administrator 10

- 4 The order may require any person –
- (a) to give the interim receiver or administrator access to any premises which he may enter in pursuance of paragraph 3,
 - (b) to give the interim receiver or administrator any assistance he may require for taking the steps mentioned in that paragraph. 15

Management

- 5 (1) Power to manage any property to which the order applies.
- (2) Managing property includes –
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes, 20
 - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,
 - (c) incurring capital expenditure in respect of the property.

SCHEDULE 4

Section 268. 25

POWERS OF TRUSTEE FOR CIVIL RECOVERY

Sale

- 1 Power to sell the property or any part of it or interest in it.

Expenditure

- 2 Power to incur expenditure for the purpose of – 30
- (a) acquiring any part of the property, or any interest in it, which is not vested in him,
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management 35

- 3 (1) Power to manage property.

- (2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 3.

Legal proceedings

- 4 Power to start, carry on or defend any legal proceedings in respect of the property. 5

Compromise

- 5 Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary

- 6 (1) For the purposes of, or in connection with, the exercise of any of his powers— 10
- (a) power by his official name to do any of the things mentioned in subparagraph (2),
- (b) power to do any other act which is necessary or expedient.
- (2) Those things are— 15
- (a) holding property,
- (b) entering into contracts,
- (c) suing and being sued,
- (d) employing agents,
- (e) executing a power of attorney, deed or other instrument. 20

SCHEDULE 5

Section 319

FORMS OF DECLARATIONS

The Director

“I, A.B., do solemnly declare that I will not disclose any information received by me in carrying out my functions under Part 6 of the Proceeds of Crime Act 2001 except for the purposes of those functions or for the purposes of any prosecution for an offence relating to inland revenue, or in such other cases as may be required or permitted by law.” 25

Members of the staff of the Agency

“I, A.B., do solemnly declare that I will not disclose any information received by me in carrying out the functions under Part 6 of the Proceeds of Crime Act 2001 which I may from time to time be authorised by the Director of the Assets Recovery Agency to carry out except for the purposes of those functions, or to the Director or in accordance with his instructions, or for the purposes of any prosecution for an offence relating to inland revenue, or in such other cases as may be required or permitted by law.” 30

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SCHEDULE 6

Section 324.

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

PART 1

REGULATED SECTOR

<i>Business in the regulated sector</i>	5
1 A business is in the regulated sector to the extent that it engages in any of the following activities –	
(a) deposit-taking business carried on by a person who is for the time being authorised under the Banking Act 1987 (c. 22);	
(b) acceptance by a building society of deposits made by any person (including raising money from members of the society by the issue of shares);	10
(c) the business of the National Savings Bank;	
(d) business carried on by a credit union;	
(e) any home-regulated activity carried on by a European institution in respect of which the requirements of paragraph 1 of Schedule 2 to the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) have been complied with;	15
(f) investment business within the meaning of the Financial Services Act 1986 (c. 60);	20
(g) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968 (c. 13) under the auspices of the Director of Savings;	
(h) any of the activities in points 1 to 12 or 14 of the Annex to the Second Banking Co-ordination Directive, ignoring an activity described in any of sub-paragraphs (a) to (g) above;	25
(i) insurance business carried on by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive.	
2 For the purposes of paragraph 1 –	
(a) “deposit-taking business” has the meaning given by the Banking Act 1987;	30
(b) “building society” has the meaning given by the Building Societies Act 1986 (c. 53);	
(c) “credit union” has the meaning given by the Credit Unions Act 1979 (c. 34) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));	35
(d) “home-regulated activity” and “European institution” have the meanings given by the Banking Co-ordination (Second Council Directive) Regulations 1992;	
(e) the Second Banking Co-ordination Directive is the Second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. 89/646/EEC);	40
(f) the First Life Directive is the First Council Directive on the co-ordination of laws, regulations and administrative provisions	45

relating to the taking up and pursuit of the business of direct life assurance (No. 79/267/EEC).

Excluded activities

- | | | |
|---|--|----|
| 3 | A business is not in the regulated sector to the extent that it engages in any of the following activities – | 5 |
| | (a) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act 1965 (c. 12) by a society registered under that Act; | |
| | (b) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society; | 10 |
| | (c) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)) by a society registered under that Act; | |
| | (d) activities carried on by the Bank of England; | |
| | (e) any activity specified in section 45 of the Financial Services Act 1986 (c. 60) in relation to a person who is an exempted person for the purposes of that section. | 15 |

PART 2

SUPERVISORY AUTHORITIES

- | | | |
|---|---|----|
| 4 | (1) Each of the following is a supervisory authority – | 20 |
| | (a) the Bank of England; | |
| | (b) the Financial Services Authority; | |
| | (c) the Building Societies Commission; | |
| | (d) a designated agency; | |
| | (e) a recognised self-regulating organisation; | 25 |
| | (f) a recognised professional body; | |
| | (g) a transferee body; | |
| | (h) a recognised self-regulating organisation for friendly societies; | |
| | (i) the Secretary of State (subject to sub-paragraph (3)); | |
| | (j) the Treasury; | 30 |
| | (k) the Council of Lloyd's; | |
| | (l) the Director General of Fair Trading; | |
| | (m) the Friendly Societies Commission; | |
| | (n) the Chief Registrar of Friendly Societies; | |
| | (o) the Central Office of the Registry of Friendly Societies; | 35 |
| | (p) the Registrar of Friendly Societies for Northern Ireland; | |
| | (q) the Assistant Registrar of Friendly Societies for Scotland. | |
| | (2) Sub-paragraph (1)(d) to (h) must be construed in accordance with the Financial Services Act 1986. | |
| | (3) The Secretary of State is a supervisory authority in the exercise, in relation to a person carrying on business in the regulated sector, of his functions under the enactments relating to insurance companies, companies or insolvency or under the Financial Services Act 1986. | 40 |

PART 3

POWER TO AMEND

- 5 The Treasury may by order amend Part 1 or 2 of this Schedule.

SCHEDULE 7

Section 433

TAX

5

PART 1

GENERAL

- 1 Sections 75 and 77 of the Taxes Management Act 1970 (c. 9) (receivers: income tax and capital gains tax) shall not apply in relation to –
- (a) a receiver appointed under section 48, 50 or 52;
 - (b) an administrator appointed under section 127 or 129;
 - (c) a receiver appointed under section 199, 201 or 203.

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PART 2

PROVISIONS RELATING TO PART 5

Introductory 15

- 2 (1) The following provisions of this Schedule apply where –
- (a) property is vested in the trustee for civil recovery or any other person by a recovery order, or
 - (b) property consisting of notes or coins in any currency other than sterling is forfeited under section 297.
- The vesting or forfeiture of the property is referred to below as a Part 5 transfer.
- (2) Any amount paid by the trustee for civil recovery to the transferor under a recovery order in respect of property vested by the order is referred to below as a compensating payment.
- (3) If a recovery order provides, in respect of any property vested by the order, for creation of any interest in favour of the transferor, he is to be treated for the purposes of the following paragraphs as receiving (in addition to any payment referred to in sub-paragraph (2)) a compensating payment of an amount equal to the value of the interest.
- (4) Expressions used in this paragraph have the same meanings as in Part 5.

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Capital Gains Tax

- 3 (1) If a gain attributable to a Part 5 transfer accrues to the transferor, it is not a chargeable gain.
- (2) *But if a compensating payment is made –*
- (a) *sub-paragraph (1) does not apply, and*

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(b) *the consideration for the transfer is the amount of the compensating payment (and not the market value of the property transferred).*

(3) This paragraph has effect as if it were included in Chapter 1 of Part 2 of the Taxation of Chargeable Gains Act 1992.

Accrued income scheme 5

4 If a Part 5 transfer is a transfer of securities within the meaning of sections 711 to 728 of the Taxes Act (transfers with or without accrued interest), sections 713(2) and (3) and 716 of that Act do not apply to the transfer.

Discounted securities

5 (1) In the case of a Part 5 transfer of property consisting of a relevant discounted security (within the meaning of Schedule 13 to the Finance Act 1996), the Part 5 transfer is not to be treated as a transfer for the purposes of that Schedule. 10

(2) But sub-paragraph (1) does not apply if a compensating payment is made.

Rights to receive amounts stated in certificates of deposit etc. 15

6 (1) In the case of a Part 5 transfer of property consisting of a right to which section 56(2) of the Taxes Act applies, or a right mentioned in section 56A(1) of that Act, (rights stated in certificates of deposit etc.), the Part 5 transfer is not to be treated as a disposal of the right for the purposes of section 56(2) of that Act. 20

(2) But sub-paragraph (1) does not apply if a compensating payment is made.

Non-qualifying offshore funds

7 (1) In the case of a Part 5 transfer of property consisting of an asset mentioned in section 757(1)(a) or (b) of the Taxes Act (interests in non-qualifying offshore funds etc.), the Part 5 transfer is not to be treated as a disposal for the purposes of that section. 25

(2) But sub-paragraph (1) does not apply if a compensating payment is made.

Futures and options

8 (1) In the case of a Part 5 transfer of property consisting of futures or options (within the meaning of paragraph 4 of Schedule 5AA to the Taxes Act), the Part 5 transfer is not to be treated as a disposal of the futures or options for the purposes of that Schedule. 30

(2) But sub-paragraph (1) does not apply if a compensating payment is made.

Loan relationships

9 (1) Sub-paragraph (2) applies if, apart from this paragraph, a Part 5 transfer would be a related transaction for the purposes of section 84 of the Finance Act 1996 (debts and credits brought into account for the purpose of taxing loan relationships under Chapter 2 of Part 4 of that Act). 35

- (2) The Part 5 transfer is to be disregarded for the purposes of that Chapter, except for the purpose of identifying any person in whose case any debit or credit not relating to the transaction is to be brought into account.
- (3) But sub-paragraph (2) does not apply if a compensating payment is made.

Trading stock 5

- 10 (1) Sub-paragraph (2) applies, in the case of a Part 5 transfer of property consisting of the trading stock of a trade, for the purpose of computing any profits of the trade for tax purposes.
- (2) If, because of the transfer, the trading stock is to be treated for that purpose as if it had been sold in the course of the trade, the amount realised on the sale is to be treated for that purpose as equal to its acquisition cost. 10
- (3) Sub-paragraph (2) has effect in spite of anything in section 100 of the Taxes Act (valuation of trading stock at discontinuance).
- (4) In this paragraph, trading stock and trade have the same meaning as in that section. 15

SCHEDULE 8

Section 438

AMENDMENTS

Introduction

- 1 The amendments specified in this Schedule shall have effect.

Parliamentary Commissioner Act 1967 (c. 13) 20

- 2 (1) The Parliamentary Commissioner Act 1967 is amended as follows.
- (2) In Schedule 2 (Departments etc. subject to investigation) at the appropriate place insert—
“Director of the Assets Recovery Agency.”
- (3) In the Notes to that Schedule before paragraph 1 insert— 25
“A1 In the case of the Director of the Assets Recovery Agency an investigation under this Act may be conducted only in respect of the exercise of functions vested in him by virtue of a notice served on the Commissioners of Inland Revenue under section 311(2), 315(2) or 316(2) of the Proceeds of Crime Act 2001 (Inland Revenue functions).” 30

Criminal Appeal Act 1968 (c. 19)

- 3 (1) The Criminal Appeal Act 1968 is amended as follows.
- (2) In section 33 (appeal to House of Lords) after subsection (1) insert—
“(1A) In subsection (1) above the reference to the prosecutor includes a reference to the Director of the Assets Recovery Agency in a case where (and to the extent that) he is a party to the appeal to the Court of Appeal.” 35

- (3) In section 50(1) (meaning of sentence) after paragraph (c) insert –
- “(ca) a confiscation order under Part 2 of the Proceeds of Crime Act 2001;
 - (cb) an order which varies a confiscation order made under Part 2 of the Proceeds of Crime Act 2001 if the varying order is made under section 22, 23 or 30 of that Act (but not otherwise);”.

Misuse of Drugs Act 1971 (c. 38)

- 4 (1) Section 27 of the Misuse of Drugs Act 1971 (forfeiture) is amended as follows.
- (2) In subsection (1) for “a drug trafficking offence, as defined in section 1(3) of the Drug Trafficking Act 1994” substitute “an offence falling within subsection (3) below”.
- (3) After subsection (2) insert –
- “(3) An offence falls within this subsection if it is an offence which by virtue of section 88 or 239 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 2 or 4 of that Act.”

Rehabilitation of Offenders Act 1974 (c. 53)

- 5 In section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent convictions) after subsection (2A) insert –
- “(2B) In subsection (2)(a) above the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 2 of the Proceeds of Crime Act 2001.”

Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))

- 6 In Article 3 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (rehabilitated persons and spent convictions) after paragraph (2) insert –
- “(2A) In paragraph (2)(a) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 4 of the Proceeds of Crime Act 2001.”

Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

- 7 (1) The Criminal Appeal (Northern Ireland) Act 1980 is amended as follows.
- (2) In section 30(3) (meaning of sentence) omit “and” after paragraph (b) and after paragraph (c) insert –
- “(d) a confiscation order under Part 4 of the Proceeds of Crime Act 2001;
 - (e) an order which varies a confiscation order made under Part 4 of the Proceeds of Crime Act 2001 if the varying order is made under section 174, 175 or 182 of that Act (but not otherwise).”
- (3) In section 31 (appeal to House of Lords) after subsection (1) insert –

	“(1A) In subsection (1) above the reference to the prosecutor includes a reference to the Director of the Assets Recovery Agency in a case where (and to the extent that) he is a party to the appeal to the Court of Appeal.”	
	<i>Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))</i>	5
8	In Part I of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (proceedings for which legal aid may be given under Part II of the Order), in paragraph 3 after sub-paragraph (h) add—	
	“(i) proceedings for an order under section 294 of the Proceeds of Crime Act 2001 for extending the period for which cash may be detained or under section 297 of that Act for the forfeiture of cash.”	10
	<i>Civil Jurisdiction and Judgments Act 1982 (c. 27)</i>	15
9	In section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) in subsection (3) (exceptions) insert after paragraph (c) —	
	“(d) an order made under Part 2 or 4 of the Proceeds of Crime Act 2001 (confiscation).”	20
	<i>Criminal Justice Act 1982 (c. 48)</i>	
10	In Part 2 of Schedule 1 to the Criminal Justice Act 1982 (offences excluded from early release provisions) after the entry relating to the Drug Trafficking Act 1994 insert—	
	“PROCEEDS OF CRIME ACT 2001	25
	Section 321 (concealing criminal property etc).	
	Section 322 (arrangements relating to criminal property).	
	Section 323 (acquisition, use and possession of criminal property).”	
	<i>Police and Criminal Evidence Act 1984 (c. 60)</i>	30
11	(1) The Police and Criminal Evidence Act 1984 is amended as follows.	
	(2) In section 56 (right to have someone informed when arrested) for subsection (5A) substitute—	
	“(5A) An officer may also authorise delay where he has reasonable grounds for believing that—	35
	(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and	
	(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.	40

- (5B) For the purposes of subsection (5A) above the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2001.”
- (3) In section 58 (access to legal advice) for subsection (8A) substitute—
- “(8A) An officer may also authorise delay where he has reasonable grounds for believing that—
- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by subsection (1) above.
- (8B) For the purposes of subsection (8A) above the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2001.”
- (4) In section 116 (meaning of serious arrestable offence) in subsection (2) for paragraph (c) and the word “and” immediately preceding it substitute—
- “(c) any offence which by virtue of section 88(1), (2) or (3) of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 2 of that Act;
- (d) any offence under section 321, 322 or 323 of that Act (certain money laundering offences).”

Insolvency Act 1986 (c. 45)

- 12 In section 281 of the Insolvency Act 1986 (effect of discharge) after subsection (4) insert—
- “(4A) In subsection (4) the reference to a fine includes a reference to a confiscation order under Part 2 of the Proceeds of Crime Act 2001.”

Criminal Justice Act 1988 (c. 33)

- 13 (1) The Criminal Justice Act 1988 is amended as follows.
- (2) The following provisions shall cease to have effect—
- (a) sections 71 to 102;
- (b) Schedule 4.
- (3) In section 151(4) (Customs and Excise power of arrest) omit “and” after paragraph (a), and after paragraph (b) insert—
- “(c) a money laundering offence;”
- (4) In section 151(5) for the words after “means” substitute “any offence which by virtue of section 88 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 2 of that Act.”
- (5) In section 151 after subsection (5) insert—
- “(6) In this section “money laundering offence” means any offence which by virtue of section 89 of the Proceeds of Crime Act 2001 is a money laundering offence for the purposes of Part 2 of that Act.”
- (6) In section 152(4) (remands of suspected drugs offenders to customs detention) for the words after “means” substitute “any offence which by

virtue of section 239 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 4 of that Act.”

Extradition Act 1989 (c. 33)

- 14 (1) The Extradition Act 1989 is amended as follows.
- (2) In section 22 (extension of purposes of extradition for offences under Acts giving effect to international conventions) in subsection (4)(h) –
 - (a) for sub-paragraph (i) substitute –
 - “(i) any offence which by virtue of section 88 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 2 of that Act; 10
 - (ia) any offence which by virtue of section 89 of the Proceeds of Crime Act 2001 is a money laundering offence for the purposes of Part 2 of that Act;”;
 - (b) omit “and” after sub-paragraph (ii) and for sub-paragraph (iii) substitute –
 - “(iii) any offence which by virtue of section 239 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 4 of that Act; and 20
 - (iv) any offence which by virtue of section 240 of the Proceeds of Crime Act 2001 is a money laundering offence for the purposes of Part 4 of that Act;”. 25
- (3) In paragraph 15 of Schedule 1 (deemed extension of jurisdiction of foreign states) –
 - (a) for paragraph (j) substitute –
 - “(j) any offence which by virtue of section 88 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 2 of that Act; 30
 - (ja) any offence which by virtue of section 89 of the Proceeds of Crime Act 2001 is a money laundering offence for the purposes of Part 2 of that Act;”;
 - (b) for paragraph (m) substitute – 35
 - “(m) any offence which by virtue of section 239 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 4 of that Act;
 - (ma) any offence which by virtue of section 240 of the Proceeds of Crime Act 2001 is a money laundering offence for the purposes of Part 4 of that Act;”. 40

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

- 15 (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows.
- (2) In Article 57 (right to have someone informed when arrested) for paragraph (5A) substitute – 45

	“(5A) An officer may also authorise delay where he has reasonable grounds for believing that—	
	(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and	
	(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.	5
	(5B) For the purposes of paragraph (5A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2001.”	10
(3)	In Article 59 (access to legal advice) for paragraph (8A) substitute—	
	“(8A) An officer may also authorise delay where he has reasonable grounds for believing that—	
	(a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and	15
	(b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by paragraph (1).	
	(8B) For the purposes of paragraph (8A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2001.”	20
(4)	In Article 87 (meaning of serious arrestable offence) in paragraph (2) for subparagraph (aa) substitute—	
	“(aa) any offence which by virtue of section 239(1), (2) or (3) of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 4 of that Act;	25
	(ab) any offence under section 321, 322 or 323 of that Act (certain money laundering offences);”.	
<i>Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))</i>		
16	In Article 255 of the Insolvency (Northern Ireland) Order 1989 (effect of discharge) after paragraph (4) insert—	30
	“(4A) In paragraph (4) the reference to a fine includes a reference to a confiscation order under Part 4 of the Proceeds of Crime Act 2001.”	
<i>Criminal Justice (International Co-operation) Act 1990 (c. 5)</i>		
17	In section 13(6) of the Criminal Justice (International Co-operation) Act 1990 (information not to be disclosed except for certain purposes)—	35
	(a) omit “the Drug Trafficking Act 1994 or”;	
	(b) at the end insert “or of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2001”.	
<i>Drug Trafficking Act 1994 (c. 37)</i>		
18	(1) The Drug Trafficking Act 1994 is amended as follows.	40
	(2) The following provisions shall cease to have effect—	
	(a) sections 1 to 54;	

- (b) in sections 55(4)(a) (orders to make material available) and 56(3)(a) and (4)(a) (authority for search) the words “or has benefited from”;
- (c) in section 59 (disclosure of information held by government departments), subsections (1) to (10) and in subsection (11) the words “An order under subsection (1) above, and,”; 5
- (d) in section 60(6) (Customs and Excise prosecution powers), in the definition of “specified offence”, in paragraph (a) the words “Part III or” and paragraph (c) and the word “or” immediately preceding it;
- (e) in section 60(6) the words from “and references to the institution of proceedings” to the end; 10
- (f) in section 60, subsections (7) and (8);
- (g) in section 61 (extension of certain offences to the Crown), subsections (2) to (4);
- (h) sections 62, 63(1), (2) and (3)(a) and 64 (interpretation).
- (3) In section 59(12)(b) for the words “referred to in subsection (1) above” substitute “specified in an order under section 55(2)”. 15
- (4) After section 59 insert the following section –

“59A Construction of sections 55 to 59

- (1) This section has effect for the purposes of sections 55 to 59.
- (2) A reference to a constable includes a reference to a customs officer. 20
- (3) A customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).
- (4) Drug trafficking means doing or being concerned in any of the following (whether in England and Wales or elsewhere) – 25
 - (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;
 - (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law; 30
 - (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
 - (d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section or would be such an offence if it took place in England and Wales; 35
 - (e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act. 40
- (5) In this section “corresponding law” has the same meaning as in the Misuse of Drugs Act 1971.
- (5) In section 60 after subsection (6) insert – 45
 - “(6A) Proceedings for an offence are instituted –

- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 (issue of summons to, or warrant for arrest of, accused) in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant; 5
 - (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section (preferment by direction of the criminal division of the Court of Appeal or by direction, or with the consent, of a High Court judge). 10
- (6B) Where the application of subsection (6A) would result in there being more than one time for the institution of proceedings they must be taken to have been instituted at the earliest of those times." 15
- (6) In section 61(1) for "sections 49(2), 50 to 53 and 58" substitute "section 58".

Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15))

- 19 In Article 16 of the Criminal Justice (Northern Ireland) Order 1994 in paragraph (a) after "Proceeds of Crime (Northern Ireland) Order 1996" insert "or Part 4 of the Proceeds of Crime Act 2001". 20

Proceeds of Crime Act 1995 (c. 11)

- 20 Section 15(2) and (3) of the Proceeds of Crime Act 1995 (investigation into benefit to be treated as the investigation of an offence for the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984) shall cease to have effect. 25

Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9))

- 21 (1) The Proceeds of Crime (Northern Ireland) Order 1996 is amended as follows.
- (2) Parts II and III shall cease to have effect.
- (3) The following provisions shall also cease to have effect – 30
- (a) in Article 2 (interpretation) in paragraph (2) from the definition of "charging order" to the definitions of "external confiscation order" and from the definition of "modifications" to the definition of "restraint order" and paragraphs (3) to (10) and (12);
 - (b) Article 3 (definition of "property" etc.); 35
 - (c) in Article 49 (additional investigation powers), in paragraph (1) sub-paragraph (c) and the word "and" immediately preceding it, in paragraph (1A) sub-paragraph (c) and the word "and" immediately preceding it, paragraph (4) and in paragraph (5) the definitions of "customs officer" and "relevant property"; 40
 - (d) in Article 52 (supplementary provisions) in paragraph (2) sub-paragraph (b) and the word "and" immediately preceding it, and paragraph (3);

- (e) in Article 54 (disclosure of information held by government departments) paragraphs (1) to (10) and (13) and in paragraph (11) the words “An order under paragraph (1) and,”;
 - (f) in Article 55 (Customs and Excise prosecution powers), in paragraph (6) in the definition of “specified offence” in paragraph (a) the words “Part III or” and paragraph (c) and the word “or” immediately preceding it, and paragraph (7);
 - (g) Article 56(2) to (4) (extension of certain offences to the Crown);
 - (h) in Schedule 2 paragraph 3.
- (4) In Article 49(1) (additional investigation powers) – 10
 - (a) for “county court” substitute “Crown Court”;
 - (b) in sub-paragraph (a) for the words from “an investigation” to the end of head (ii) substitute “a confiscation investigation”;
 - (c) in sub-paragraph (b) after “and who is” insert “an accredited financial investigator”. 15
- (5) In Article 49(1A) –
 - (a) after “application made by” insert “the Director of the Assets Recovery Agency or”;
 - (b) for “county court” substitute “Crown Court”;
 - (c) in sub-paragraph (a) for the words from “an investigation” to the end of head (ii) substitute “a confiscation investigation”; 20
 - (d) in sub-paragraph (b) after “if” insert “the Director or”;
 - (e) after “authorise” insert “the Director or”;
 - (f) for “paragraphs 3 and 3A” where it twice occurs substitute “paragraph 3A”. 25
- (6) In Article 49(5) insert at the appropriate place in alphabetical order –
 - ““accredited financial investigator” has the meaning given by section 3(2) of the Proceeds of Crime Act 2001;
 - “confiscation investigation” has the same meaning as it has for the purposes of Part 8 of that Act by virtue of section 330(1);”. 30
- (7) In Article 50(1) (order to make material available) –
 - (a) for sub-paragraphs (a) and (b) substitute “drug trafficking”;
 - (b) for “county court” substitute “Crown Court”.
- (8) In Article 50(4)(a), for heads (i) to (iii) substitute “has carried on drug trafficking”. 35
- (9) In Article 50(8) for “county court” substitute “Crown Court”.
- (10) In Article 51(1) (authority for search) –
 - (a) for sub-paragraphs (a) and (b) substitute “drug trafficking”;
 - (b) for “county court” substitute “Crown Court”.
- (11) In Article 51(3)(a) for heads (i) to (iii) substitute “has carried on drug trafficking”. 40
- (12) In Article 51(4) –
 - (a) in sub-paragraph (a) for heads (i) to (iii) substitute “has carried on drug trafficking”;
 - (b) in sub-paragraph (b)(i) for the words from “the question” to the end substitute “drug trafficking”. 45

- (13) In Article 52(1)(a) (supplementary provisions), for heads (i) to (ii) substitute “drug trafficking”.
- (14) In Article 54 (disclosure of information held by government departments) in paragraph (12)(b) for “referred to in paragraph (1)” substitute “specified in an order under Article 50(2)”. 5
- (15) After Article 54 insert the following Article –

“54A Construction of Articles 49 to 54

- (1) This Article has effect for the purposes of Articles 49 to 54.
- (2) A reference to a constable includes a reference to a customs officer.
- (3) A customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979. 10
- (4) Drug trafficking means doing or being concerned in any of the following (whether in Northern Ireland or elsewhere) – 15
- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law; 20
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
- (d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section or would be such an offence if it took place in Northern Ireland; 25
- (e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act. 30
- (5) In this Article “corresponding law” has the same meaning as in the Misuse of Drugs Act 1971.”
- (16) In Article 55 after paragraph (6) insert –
- “(6A) Proceedings for an offence are instituted – 35
- (a) when a summons or warrant is issued under Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981 in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant; 40
- (c) when an indictment is preferred under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.
- (6B) Where the application of paragraph (6A) would result in there being more than one time for the institution of proceedings they must be taken to have been instituted at the earliest of those times.” 45

- (17) In Article 56(1) (extension of certain offences to the Crown), for “Articles 44, 45, 46, 47(2), 48 and” substitute “Article”.
- (18) In Schedule 2 (financial investigations) in paragraph 3A –
 - (a) in sub-paragraph (1) for “any conduct to which Article 49 applies” substitute “his criminal conduct”; 5
 - (b) after that paragraph insert –
 - “(1A) For the purposes of sub-paragraph (1) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2001.” 10

Crime (Sentences) Act 1997 (c. 43)

- 22 (1) The Crime (Sentences) Act 1997 is amended as follows.
- (2) In section 35 (fine defaulters) in subsection (1)(a) after “Drug Trafficking Act 1994” insert “or section 6 of the Proceeds of Crime Act 2001”.
- (3) In section 40 (fine defaulters) in subsection (1)(a) after “Drug Trafficking Act 1994” insert “or section 6 of the Proceeds of Crime Act 2001”. 15

Access to Justice Act 1999 (c. 22)

- 23 (1) In Schedule 2 to the Access to Justice Act 1999 (services excluded from the Community Legal Service), paragraph 2 (exclusion of advocacy: exceptions) is amended as follows. 20
- (2) In paragraph 2(2), after paragraph (c) insert “or
 - (d) which relate to an order under section 297 of the Proceeds of Crime Act 2001 for the forfeiture of cash”,
 and omit the “or” at the end of paragraph (b).
- (3) In paragraph 2(3), in paragraph (j), after “1998” insert “or 25
 - (k) for an order under section 294 of the Proceeds of Crime Act 2001 for extending the period for which cash may be detained or under section 297 of that Act for the forfeiture of cash”,
 and omit the “or” at the end of paragraph (i). 30

Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

- 24 (1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- (2) In section 110(5) (minimum sentence for third drug trafficking offence) in the definition of drug trafficking offence for the words “a drug trafficking offence within the meaning of the Drug Trafficking Act 1994,” substitute “an offence which by virtue of section 88 of the Proceeds of Crime Act 2001 is a drug trafficking offence for the purposes of Part 2 of that Act, or a drug trafficking offence within the meaning of”. 35
- (3) In section 133 (review of compensation orders) in subsection (3)(c) after “Criminal Justice Act 1988” insert “, or Part 2 of the Proceeds of Crime Act 2001,”. 40

Terrorism Act 2000 (c. 11)

- 25 (1) Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.
- (2) In paragraph 8 (authorisation of delay in exercise of detained person's rights) for sub-paragraph (5) substitute –
- “(5) An officer may also give an authorisation under sub-paragraph (1) if he has reasonable grounds for believing that –
- (a) the detained person has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by –
- (i) informing the named person of the detained person's detention (in the case of an authorisation under sub-paragraph (1)(a)), or
- (ii) the exercise of the right under paragraph 7 (in the case of an authorisation under sub-paragraph (1)(b)).
- (5A) For the purposes of sub-paragraph (5) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2001.”
- (3) In paragraph 17(3) (grounds for authorising delay or requiring presence of senior officer), in paragraph (d) for “Part VI of the Criminal Justice Act 1988” substitute “Part 2 of the Proceeds of Crime Act 2001”.
- (4) For paragraph 17(4) (further grounds for authorising delay in exercise of detained person's rights) substitute –
- “(4) This sub-paragraph applies where an officer mentioned in paragraph 16(4) or (7) has reasonable grounds for believing that –
- (a) the detained person has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by –
- (i) informing the named person of the detained person's detention (in the case of an authorisation under paragraph 16(4)), or
- (ii) the exercise of the entitlement under paragraph 16(6) (in the case of an authorisation under paragraph 16(7)).
- (4A) For the purposes of sub-paragraph (4) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2001.”
- (5) In paragraph 34 (authorisation for withholding information from detained person) for sub-paragraph (3) substitute –
- “(3) A judicial authority may also make an order under sub-paragraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that –
- (a) the detained person has benefited from his criminal conduct, and

- (b) the recovery of the value of the property constituting the benefit would be hindered if the information were disclosed.
- (3A) For the purposes of sub-paragraph (3) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2001.” 5

Criminal Justice and Police Act 2001 (c. 16)

- 26 (1) The Criminal Justice and Police Act 2001 is amended as follows.
- (2) In section 55 (obligation to return excluded and special procedure material) in subsection (5) (powers in relation to which section does not apply as regards special procedure material) omit “and” after paragraph (b), and after paragraph (c) insert—
 - “and
 - (d) section 341(4) of the Proceeds of Crime Act 2001,”. 10
- (3) In section 60 (cases where duty to secure seized property arises) in subsection (4) (powers in relation to which duty does not arise as regards special procedure material) omit “or” after paragraph (b), and after paragraph (c) insert—
 - “or
 - (d) section 341(4) of the Proceeds of Crime Act 2001,”. 15 20
- (4) In section 64 (meaning of appropriate judicial authority) in subsection (3) after paragraph (a) omit “and” and insert—
 - “(aa) the power of seizure conferred by section 341(4) of the Proceeds of Crime Act 2001, if the power is exercisable for the purposes of a civil recovery investigation (within the meaning of Part 8 of that Act);”. 25
- (5) In section 65 (meaning of “legal privilege”) after subsection (3) insert—
 - “(3A) In relation to property which has been seized in exercise, or purported exercise, of—
 - (a) the power of seizure conferred by section 341(4) of the Proceeds of Crime Act 2001, or
 - (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,
 - references in this Part to an item subject to legal privilege shall be read as references to privileged material within the meaning of section 343(2) and (3) of that Act.” 30 35
- (6) In Part 1 of Schedule 1 (powers of seizure to which section 50 applies) at the end add—
 - “Proceeds of Crime Act 2001 (c. 00)
 - 73A The power of seizure conferred by section 341(4) of the Proceeds of Crime Act 2001 (seizure of material likely to be of substantial value to certain investigations).” 40
- (7) In Part 3 of Schedule 1 (powers of seizure to which section 55 applies) at the end add—

“Proceeds of Crime Act 2001 (c. 00)

- 110 The power of seizure conferred by section 341(4) of the Proceeds of Crime Act 2001 (seizure of material likely to be of substantial value to certain investigations).”

SCHEDULE 9

Section 439

5

REPEALS AND REVOCATIONS

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Misuse of Drugs Act 1971 (c. 38)	In section 21 the words “or section 49 of the Drug Trafficking Act 1994”.	
	In section 23(3A) the words “or section 49 of the Drug Trafficking Act 1994”.	10
Criminal Appeal (Northern Ireland) Act 1980 (c. 47)	In section 30(3) the word “and” after paragraph (b).	
Police and Criminal Evidence Act 1984 (c. 60)	In section 65 – (a) the definitions of “drug trafficking” and “drug trafficking offence”; (b) the words from “references in this Part” to “in accordance with the Drug Trafficking Act 1994”.	15
Criminal Justice Act 1988 (c. 33)	Sections 71 to 102. In section 151(4) the word “and” after paragraph (a). In section 172 – (a) in subsection (2) the words from “section 76(3)” to “extending to Scotland”; (b) in subsection (4) the words from “sections 90” to “section 93E”. Schedule 4.	20
Housing Act 1988 (c. 50)	In Schedule 17, paragraphs 83 and 84.	
Extradition Act 1989 (c. 33)	In section 22(4)(h) the word “and” after sub-paragraph (ii).	30
Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))	In Article 53 – (a) the definitions of “drug trafficking” and “drug trafficking offence”; (b) the words from “References in this Part” to “Order 1996”.	35
Criminal Justice (International Co-operation) Act 1990 (c. 5)	In section 13(6) the words “the Drug Trafficking Act 1994 or”.	
Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17))	In Article 37 – (a) paragraph (2); (b) in paragraphs (3) and (4) sub-paragraph (b) and the word “and” before it; (c) paragraph (5).	40

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Criminal Justice Act 1993 (c. 36)	Section 21(3)(e) to (g). Sections 27 to 35. In Schedule 4, paragraph 3. In Schedule 5, paragraph 14.	5
Criminal Justice and Public Order Act 1994 (c. 33)	In Schedule 9, paragraph 36.	
Drug Trafficking Act 1994 (c. 37)	Sections 1 to 54. In sections 55(4)(a) and 56(3)(a) and (4)(a) the words “or has benefited from”. In section 59, subsections (1) to (10) and in subsection (11) the words “An order under subsection (1) above, and”. In section 60(6), in the definition of “specified offence”, in paragraph (a) the words “Part III or” and paragraph (c) and the word “or” immediately preceding it. In section 60(6), the words from “and references to the institution of proceedings” to the end. Section 60(7) and (8). Section 61(2) to (4). Sections 62, 63(1), (2) and (3)(a) and 64. In Schedule 1, paragraphs 3, 4(a), 8, 21 and 26.	10 15 20
Proceeds of Crime Act 1995 (c. 11)	Sections 1 to 13. Section 15(1) to (3). Section 16(2), (5) and (6). Schedule 1.	25
Private International Law (Miscellaneous Provisions) Act 1995 (c. 42)	Section 4(3).	30
Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9))	Parts II and III. In Article 2 in paragraph (2) from the definition of “charging order” to the definitions of “external confiscation order” and from the definition of “modifications” to the definition of “restraint order” and paragraphs (3) to (10) and (12). Article 3. In Article 49, in paragraph (1) sub-paragraph (c) and the word “and” immediately preceding it, in paragraph (1A) sub-paragraph (c) and the word “and” immediately preceding it, paragraph (4) and in paragraph (5) the definitions of “customs officer” and “relevant property”. In Article 52 in paragraph (2) sub-paragraph (b) and the word “and” immediately preceding it, and paragraph (3). In Article 54 paragraphs (1) to (10) and (13) and in paragraph (11) the words “An order under paragraph (1) and,”.	35 40 45 50

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) – <i>cont.</i>	In Article 55, in paragraph (6) in the definition of “specified offence” in paragraph (a) the words “Part III or” and paragraph (c) and the word “or” immediately preceding it, and paragraph (7). Article 56(2) to (4). In Schedule 2 –	5
	(a) in paragraph 1(3) “3 or”; (b) paragraph 3; (c) in paragraphs 4(2), 5(1) and 6(1) “3”. In Schedule 3, paragraphs 1 to 3.	10
Justices of the Peace Act 1997 (c. 25)	In Schedule 5, paragraphs 23 and 36.	
Crime and Disorder Act 1998 (c. 37)	Section 83. In Schedule 8, paragraph 114. In Schedule 9, paragraph 8.	15
Access to Justice Act 1999 (c. 22)	In Schedule 2 – (a) in paragraph 2(2) the word “or” at the end of paragraph (b); (b) in paragraph 2(3) the word “or” at the end of paragraph (i). In Schedule 13, paragraphs 139 and 172.	20
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraphs 105 to 113 and 163 to 173.	25
Terrorism Act 2000 (c. 11)	In Schedule 15, paragraphs 6 and 10.	
Criminal Justice and Police Act 2001 (c. 16)	In section 55(5) paragraph (a) and the word “and” after paragraph (b). In section 60(4) paragraph (a) and the word “or” after paragraph (b). In section 64(3) the word “and” after paragraph (a). In Schedule 1, paragraphs 47 and 105.	30
Financial Investigations (Northern Ireland) Order 2001 (S.I. 2001/1866 (N.I. 1))	Articles 3(2)(b) and 4(1)(a) and (c), (2), (3) and (5).	35