

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Courts and Justice

Schedule 18: Proceeds of crime: Civil recovery of the proceeds etc of unlawful conduct

587. **Part 1** of Schedule 18 amends section 18 of the CJJA, which provides for the enforcement of judgments made in one part of the United Kingdom in another part of the United Kingdom. It provides that the arrangements under the CJJA for the recognition of judgments apply in relation to interim orders made under Chapter 2 of Part 5 of the POCA. There are four types of civil interim orders provided for in connection with civil recovery under that Chapter. A property freezing order freezes property and an interim receiving order freezes property with the addition of a court appointed receiver to manage and investigate property. The equivalent orders in Scotland are a prohibitory property order and an interim administration order. These orders are all made before a civil recovery order.
588. **Part 2** of Schedule 18 amends Chapter 2 of Part 5 of the POCA by inserting new sections 282B to 282F. The new provisions facilitate the enforcement outside the United Kingdom of orders made under Chapter 2 of Part 5 of the POCA and the transmission of requests for evidence held outside the United Kingdom. The provisions are modelled on existing mutual legal assistance provisions in Chapter 2 of Part 1 of the Crime (International Co-operation) Act 2003 and section 74 of the POCA.
589. New section 282B of the POCA makes provision for an enforcement authority to transmit a request for certain assistance in relation to property to the Secretary of State with a view to it being forwarded to the government of the receiving country. Enforcement authorities are those who can take civil recovery proceedings in the High Court in England and Wales and the Court of Session in Scotland. In respect of England and Wales, the enforcement authorities are the Serious Organised Crime Agency (in future, the National Crime Agency), the Crown Prosecution Service and the Serious Fraud Office. In Scotland, the enforcement authority is the Scottish Ministers. An enforcement authority may send a request for assistance if the property freezing conditions are met, the property is not property to which a recovery order applies, and the enforcement authority believes that the property is in a country outside the United Kingdom (the “receiving country”). It is envisaged that the government of the receiving country would secure that any person is prohibited from dealing with the property and that assistance is given in the management of the property (which includes securing its detention, custody or preservation). The Secretary of State retains discretion to forward the request for assistance onto the government of the receiving country. Also it will be for government of the receiving country, in accordance with its own law, to decide whether or not to accede to a request, and how that request will be executed. The property freezing conditions for England and Wales are set out in section 245A(5) and (6) of the POCA and for Scotland in section 255A(5) and (6) of the POCA.

590. New section 282C of the POCA makes provision about enforcement abroad by a receiver, or in Scotland, an administrator before a civil recovery order is made. Assistance can only be requested if a property freezing order, interim receiving order or interim administration order has effect in relation to the property and the receiver or administrator believes that the property is in a country outside the United Kingdom (“receiving country”). The request would be for the government of the receiving country to secure that any person is prohibited from dealing with the property and to assist in connection with the management of the property (which includes securing its detention, custody or preservation). The request is sent to the Secretary of State, who must forward the request to the government of the receiving country. In contrast to the provisions in new section 282B, there is no discretion on the part of the Secretary of State to refuse to forward the request. This is considered appropriate because receivers and administrators have been appointed by a court.
591. New section 282D of the POCA makes provision about the obtaining of evidence located overseas by an interim receiver or, in Scotland, an interim administrator, or a person subject to an investigation by the interim receiver or the interim administrator. An interim receiver or an interim administrator can make a direct request for assistance if it is thought that there is relevant evidence in a country outside the United Kingdom. There must be an interim receiving order or an interim administration order in effect in relation to property and it must be an order which requires the interim receiver or interim administrator to take steps to establish whether the property is recoverable property or associated property or any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it. The High Court in England and Wales or the Court of Session in Scotland can make a request for assistance on an application by an interim receiver or interim administrator or a person subject to their investigation if the court thinks there is relevant evidence in a country outside the United Kingdom. A request for assistance may be sent to a court, tribunal, government or authority where the evidence is to be obtained. This mirrors the existing provisions for the obtaining of evidence for criminal investigations. Alternatively, a request may be sent to the Secretary of State, who must forward the request to the court, tribunal, government or authority. There is no discretion on the part of the Secretary of State to refuse to transmit the request. If the matter is urgent, a request may be sent to the International Criminal Police Organisation or any person competent to receive it under any provisions adopted under EU Treaties, for onward transmission. The term “International Criminal Police Organisation” refers to Interpol and Europol.
592. New section 282D(11) of the POCA provides that there is a power to make rules of court with regard to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge.
593. New section 282E of the POCA provides that evidence obtained by means of a request for assistance under section 282D cannot be used for any purpose other than for carrying out the functions of the interim receiver or interim administrator, or for the purposes of certain proceedings. However, the court, tribunal, government or authority that received the request and provided the evidence can consent to the use of the evidence for other purposes.
594. New section 282F of the POCA makes provision about how a civil recovery order made in England and Wales or Scotland may be enforced abroad by an enforcement authority or the trustee for civil recovery. If a civil recovery order has effect in relation to the property and the enforcement authority or trustee for civil recovery believes that the property is in a country outside the United Kingdom (“the receiving country”), a request for assistance may be sent to the Secretary of State with a view to this being forwarded to the receiving country. The request for assistance is a request to the receiving country for assistance in connection with the management and disposal of the property. The Secretary of State must forward the request made by the trustee for civil recovery to the receiving country, but has discretion as to whether to forward a request for assistance from an enforcement authority. This reflects the fact that a trustee for civil recovery

*These notes refer to the Crime and Courts Act 2013
(c.22) which received Royal Assent on 25 April 2013*

is court appointed. If the receiving country issues a certificate of realisation of the property, it is admissible as evidence of the facts it states, if it states the property has been realised in pursuance of a request made by an enforcement authority or the trustee for civil recovery, the date of the realisation and the proceeds of the realisation.