
STATUTORY INSTRUMENTS

1999 No. 675

The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999

Citation, commencement and extent

1.—(1) This Order may be cited as the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999 and shall come into force on 1st May 1999.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order—

“the Act” means the Proceeds of Crime (Scotland) Act 1995;

“the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990;

“appropriate authority of a designated country” means—

- (a) the authority specified opposite that country in Part I or, as the case may be, Part II of Schedule 1 to this Order;
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of section 9 of the 1990 Act and of the relevant provisions of the Act as applied by article 4 of this Order;

“a court of a designated country” includes a court of any state or territory of a designated country;

“designated country” means a country or territory designated under article 3 of this Order;

“drug trafficking offence” has the same meaning as in section 49(5) of the Act as applied by article 4 of this Order;

“external forfeiture order” means an order, including any decree, direction or judgment, or any part thereof, however described, made by a court in a designated country for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence to which this Order applies has been committed or which was used or intended for use in connection with the commission of such an offence;

“offence to which this Order applies” means a drug trafficking offence or any offence corresponding to or similar to an offence to which Part I of the Act applies or an offence in respect of which a suspended forfeiture order may be made under section 21 of the Act;

“property” has the same meaning as in section 49(1) of the Act.

(2) Proceedings are instituted in a designated country when—

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 2 to this Order has been taken there in respect of an alleged offence to which this Order applies; or

- (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) above, the accused has been notified in writing in accordance with the laws of the designated country that the appropriate authorities of that country have begun proceedings against him in respect of an offence; or
- (c) an application has been made to a court in a designated country for an external forfeiture order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;
- (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered or otherwise).

(4) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be raised or set aside.

Designation of countries and territories

3.—(1) There are hereby designated for the purposes of section 9 of the 1990 Act—

- (a) each of the countries and territories specified in Part I of Schedule 1 to this Order but only in relation to any case in which the external forfeiture order which has been or may be made is in respect of a drug trafficking offence;
- (b) each of the countries and territories specified in Part II of Schedule 1 to this Order but only in relation to any case in which the external forfeiture order which has been or may be made is in respect of any other offence to which this Order applies.

Application of the Act

4. In relation to a designated country, Parts II, III and V of the Act shall apply for the purposes of this Order subject to the modifications specified in Schedule 3 to this Order.

Registration of external forfeiture orders

5.—(1) An external forfeiture order shall be registered in accordance with this article before it is capable of being enforced under this Order and the provisions of the Act as applied by this Order.

(2) On an application made by or on behalf of the Government of a designated country, the Court of Session may register an external forfeiture order made there if—

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Scotland would not be contrary to the interests of justice.

(3) In paragraph (2) above “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or stay of execution.

(4) The Court of Session shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Proof of orders and judgment of court in a designated country

6.—(1) For the purposes of this Order and the provisions of the Act as applied by article 4 of this Order—

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purpose of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

7.—(1) For the purposes of this Order and the provisions of the Act as applied by article 4 of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) in a case to which article 2(2)(b) above applies, that the accused has been notified as specified in that article;
- (c) that an external forfeiture order is in force and is not subject to appeal;
- (d) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (f) that an order (however described) made by or to be made by a court of the designated country is for, or, as the case may be, will be for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence to which this Order applies has been committed or which was used or intended for use in connection with the commission of such an offence,

shall, in any proceedings in the Court of Session or the High Court, be sufficient evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be sufficient evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been

received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

Certificate of appropriate authority

8. Where in relation to any designated country no authority is specified in Schedule 1 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order and the provisions of the Act as applied by article 4 of this Order, shall be sufficient evidence of that fact.

Representation of government of a designated country

9. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Lord Advocate to act on its behalf in any proceedings in the Court of Session or the High Court under article 5 of this Order or any provision of the Act as applied by article 4 of this Order.

Satisfaction of forfeiture order or suspended forfeiture order in a designated country

10.—(1) Where—

- (a) a suspended forfeiture order has been made under section 21 of the Act or a forfeiture order has been made under any other enactment;
- (b) a request has been made by the Secretary of State to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property in respect of which the suspended forfeiture order has been made is recovered in that country,

the property shall be regarded as validly forfeited for the purposes of the order.

(2) For the purposes of this article, and without prejudice to the sufficiency of any evidence which may be sufficient apart from this paragraph, a certificate stating that property has been recovered in execution of a request by the Secretary of State stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in Scotland be sufficient evidence of the facts so stated.

Revocations

11. The following Orders are hereby revoked namely—

- (a) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1991⁽¹⁾;
- (b) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment Order 1992⁽²⁾;
- (c) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment Order 1993⁽³⁾;
- (d) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment (No. 2) Order 1993⁽⁴⁾;

(1) S.I. 1991/1468.

(2) S.I. 1992/1734.

(3) S.I. 1993/1807.

(4) S.I. 1993/3155.

- (e) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment Order 1994⁽⁵⁾.

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Clerk of the Privy Council