
STATUTORY INSTRUMENTS

2005 No. 3180

**The Criminal Justice (International Co-operation) Act 1990
(Enforcement of Overseas Forfeiture Orders) Order 2005**

PART 2

Requests for Restraint of Property

Action on receipt of request for restraint of property

3.—(1) Except where paragraph (2) applies, the Secretary of State may refer to the Director of Public Prosecutions or the Director of Revenue and Customs Prosecutions a request for the restraint of property made—

- (a) by or on behalf of an overseas authority in a designated country, and
- (b) for the purpose of facilitating the enforcement of any external forfeiture order which has yet to be made,

to process it.

(2) This paragraph applies where it appears to the Secretary of State that the request—

- (a) is made in connection with criminal investigations or proceedings which relate to an offence involving serious or complex fraud, and
- (b) concerns relevant property in England or Wales.

(3) Where paragraph (2) applies, the Secretary of State may refer the request to the Director of the Serious Fraud Office to process it.

(4) In this Order the “relevant Director” means the Director to whom a request is referred under paragraph (1) or (3).

(5) The relevant Director may ask the overseas authority which made the request for such further information as may be necessary to determine whether the request is likely to satisfy the conditions in article 4.

(6) A request under paragraph (5) may include a request for statements which may be used as evidence.

Conditions for Crown Court to give effect to request

4.—(1) On an application by a relevant Director, the Crown Court may exercise the powers conferred by article 5 if the following conditions are satisfied.

(2) The conditions are that—

- (a) relevant property in England and Wales is identified in the request;
- (b) a criminal investigation or proceedings for an offence have been started in the country from which the request was made, and

- (c) it appears to the court that there are reasonable grounds for believing that as a result of that investigation or those proceedings an external forfeiture order may be made against the person named in the request.

(3) If these conditions are satisfied by virtue of a criminal investigation having been started, references in this Order to the defendant are to the alleged offender.

Restraint orders

5.—(1) If the conditions set out in article 4 are satisfied, the Crown Court may make an order (“a restraint order”) prohibiting any specified person from dealing with relevant property which is identified in the request and specified in the order.

- (2) 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 in connection with the proceedings seeking the enforcement of the foreign order;
 - (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.

(3) Paragraph (4) applies if—

- (a) a court makes a restraint order, and
- (b) the applicant for the order applies to the court to proceed under paragraph (4) (whether as part of the application for the restraint order or at any time afterwards).

(4) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(5) A restraint order does not affect property for the time being subject to a charge under any of these provisions—

- (a) section 9 of the Drug Trafficking Offences Act 1986⁽¹⁾;
 - (b) section 78 of the Criminal Justice Act 1988⁽²⁾;
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990⁽³⁾;
 - (d) section 27 of the Drug Trafficking Act 1994⁽⁴⁾;
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996⁽⁵⁾.
- (6) Dealing with property includes removing it from England and Wales.

Application, discharge and variation of restraint orders

6.—(1) A restraint order—

- (a) may be made only on an application by the relevant Director;
- (b) may be made on an application to a judge in chambers without giving notice to the other party.

(2) An application to discharge or vary a restraint order or an order under article 5(4) may be made to the Crown Court by—

- (a) the relevant Director;

(1) 1986 c. 32.
(2) 1988 c. 33.
(3) S.I.1990/2588 (N.I. 17).
(4) 1994 c. 37.
(5) S.I. 1996/1299 (N.I. 9).

- (b) any person affected by the order.
- (3) Paragraphs (4) to (6) apply to an application under paragraph (2).
- (4) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) If the conditions in article 4 were satisfied by virtue of the fact that proceedings were started, the court must discharge the order if—
 - (a) at the conclusion of the proceedings, no external forfeiture order has been made, or
 - (b) within a reasonable time an external forfeiture order has not been registered under this Order.
- (6) If the conditions in article 4 were satisfied by virtue of the fact that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

Appeal to Court of Appeal about restraint orders

7.—(1) If on an application for a restraint order the Crown Court decides not to make one, the relevant Director may appeal to the Court of Appeal against the decision.

(2) If an application is made under article 6(2) in relation to a restraint order or an order under article 5(4), the following persons may appeal to the Court of Appeal in respect of the Crown Court's decision on the application—

- (a) the relevant Director;
- (b) any person affected by the order.
- (3) On an appeal under paragraph (1) or (2) the Court of Appeal may—
 - (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

Appeal to House of Lords about restraint orders

8.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 7.

(2) An appeal under this article 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 article the House of Lords may—
 - (a) confirm the decision of the Court of Appeal, or
 - (b) make such order as it believes is appropriate.

Seizure in pursuance of restraint order

9.—(1) If a restraint order is in force a constable or a relevant officer of Revenue and Customs may seize any property which is specified in it to prevent its removal from England and Wales.

(2) Property seized under paragraph (1) must be dealt with in accordance with the directions of the court which made the order.

Hearsay evidence in restraint proceedings

10.—(1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) Sections 2 to 4 of the Civil Evidence Act 1995⁽⁶⁾ apply in relation to restraint proceedings as those sections apply in relation to civil proceedings.

(3) Restraint proceedings are proceedings—

- (a) for a restraint order;
- (b) for the discharge or variation of a restraint order;
- (c) on an appeal under article 7 or 8.

(4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is rendered as evidence of the matters stated.

(5) Nothing in this article affects the admissibility of evidence which is admissible apart from this article.

Supplementary (restraint orders)

11.—(1) The registration Acts—

- (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.

(2) The registration Acts are—

- (a) the Land Charges Act 1972⁽⁷⁾;
- (b) the Land Registration Act 2002⁽⁸⁾.

(3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a restraint order.

Appointment of management receivers

12.—(1) Paragraph (2) applies if—

- (a) the Crown Court makes a restraint order, and
- (b) the relevant Director applies to the court to proceed under paragraph (2) (whether as part of the application for the restraint order or at any time afterwards).

(2) The Crown Court may by order appoint a receiver in respect of any property which is specified in the restraint order.

Powers of management receivers

13.—(1) If the court appoints a receiver under article 12 it may act under this article on the application of the relevant Director.

(2) The court may by order confer on the receiver the following powers in relation to any property which is specified in the restraint order—

- (a) power to take possession of the property;

⁽⁶⁾ 1995 c. 38.
⁽⁷⁾ 1972 c. 61.
⁽⁸⁾ 2002 c. 9.

- (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 realise 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;
 - (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 property which is specified in the restraint order to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in property which is specified in the restraint order 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) Paragraphs (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⁽⁹⁾;
 - (b) section 78 of the Criminal Justice Act 1988⁽¹⁰⁾;
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990⁽¹¹⁾;
 - (d) section 27 of the Drug Trafficking Act 1994⁽¹²⁾;
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996⁽¹³⁾.
- (8) The court must not—
- (a) confer the power mentioned in paragraph (2)(b) or (d) in respect of property, or
 - (b) exercise the power conferred on it by paragraph (6) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

⁽⁹⁾ 1986 c. 32.

⁽¹⁰⁾ 1988 c. 33.

⁽¹¹⁾ S.I. 1990/2588 (N.I. 17).

⁽¹²⁾ 1994 c. 37.

⁽¹³⁾ S.I. 1996/1299 (N.I. 9).

(9) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.

(10) 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.

Restrictions relating to restraint orders

14.—(1) Paragraphs (2) to (4) apply if a court makes a restraint order.

(2) No distress may be levied against any property which is specified in the order except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(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 paragraph (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 paragraph 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.

(6) Before exercising any power conferred by paragraph (5), the court must give an opportunity to be heard to—

- (a) the relevant Director, and
- (b) any receiver appointed in respect of the property under article 12 or 22.