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STATUTORY INSTRUMENTS

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**2005 No. 3180**

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

**PART 5**

**INTERPRETATION**

**General interpretation**

**35.** In this Order—

“designated country” means a country or territory designated under Schedule 2 to this Order;

“overseas authority” means an authority which has responsibility in a country or territory outside the United Kingdom for making a request to an authority in another country or territory (including the United Kingdom) to prohibit dealing with relevant property; “overseas court” means a court of a country or territory outside the United Kingdom;

“relevant Director” has the meaning—

(a) in the context of a request for restraint of property, set out in article 3(4);

(b) in the context of an external forfeiture order, set out in article 15(4);

“a relevant officer of Revenue and Customs” means such an officer exercising functions by virtue of section 6 of the Commissioners for Revenue and Customs Act 2005<sup>(1)</sup>.

**External forfeiture orders**

**36.—**(1) An order made—

(a) by a court in a designated country,

(b) for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which a relevant offence has been committed or which was used or intended for use in connection with the commission of such an offence,

is referred to in this Order as an “external forfeiture order”.

(2) In paragraph (1)—

(a) a “relevant offence” means any offence that corresponds to or is similar to an offence under the law of England and Wales;

(b) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

### **Designated countries**

37. The countries or territories set out in Schedule 2 to this Order are hereby designated for the purposes of section 9 of the Criminal Justice (International Co-operation) Act 1990.

### **Property**

38.—(1) In this Order—

- (a) a reference to property is a reference to all property wherever situated and includes—
  - (i) money;
  - (ii) all forms of property, real or personal, heritable or moveable;
  - (iii) things in action and other intangible or incorporeal property;
- (b) property is held by a person if he holds an interest in it;
- (c) property is obtained by a person if he obtains an interest in it;
- (d) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
- (e) references to property held by a person include references to property vested in his trustee in bankruptcy;
- (f) references to property 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;
- (g) references to an interest, in relation to land in England and Wales, are to any legal estate or equitable interest or power.

(2) References to an interest, in relation to property other than land, include references to a right (including a right to possession).

(3) Property is “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy an external forfeiture order which has been made or which may be made.

### **Tainted gifts**

39.—(1) In this Order, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external forfeiture order or request relates was committed, or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before or after the coming into force of this Order.

### **Gifts and their recipients**

40.—(1) In this Order, a defendant is to be treated as making a gift if he transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer.

(2) If paragraph (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 paragraph (1), and

(b) whose denominator is the value of the property at the time of the transfer.

(3) In this Order references to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

#### **Value: the basic rule**

**41.**—(1) Subject to article 42, this article applies where it is necessary under this Order to decide 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 paragraph (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in paragraph (4).

(4) Those provisions are—

- (a) section 9 of the Drug Trafficking Offences Act 1986<sup>(2)</sup>;
- (b) section 78 of the Criminal Justice Act 1988<sup>(3)</sup>;
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(4)</sup>;
- (d) section 27 of the Drug Trafficking Act 1994<sup>(5)</sup>;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(6)</sup>.

#### **Value of tainted gifts**

**42.**—(1) The value at any time (the material time) of a tainted gift is the greater of the following—

- (a) the value (at 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 paragraph (2).

(2) The property found under this paragraph is as follows—

- (a) if the recipient holds the property given, the property found under this paragraph is that property;
- (b) if the recipient holds no part of the property given, the property found under this paragraph 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 paragraph is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in paragraph (1)(a) and (b) to the value are to the value found in accordance with article 41.

#### **Meaning of “defendant”**

**43.** In this Order “defendant”—

- (a) in relation to a restraint order means—
  - (i) in a case in which the conditions in article 4 are satisfied by virtue of the fact that a criminal investigation has been started, the alleged offender;

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

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- (ii) in a case in which the conditions in article 4 are satisfied by virtue of the fact that proceedings for an offence have been started, the person against whom those proceedings have been started (whether or not he has been convicted);
- (b) in relation to an external forfeiture order, the person convicted of criminal conduct.