

2005 No. 3180

CRIMINAL LAW, ENGLAND AND WALES

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

<i>Made</i> - - - -	<i>15th November 2005</i>
<i>Laid before Parliament</i>	<i>25th November 2005</i>
<i>Coming into force</i> - -	<i>31st December 2005</i>

At the Court at Buckingham Palace, the 15th day of November 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 9 of the Criminal Justice (International Co-operation) Act 1990(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART 1

General Provisions

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) Order 2005, and shall come into force on 31st December 2005.

(2) This Order extends to England and Wales only.

Revocation

2.—(1) The Orders listed in Schedule 1 to this Order are hereby revoked.

(2) Nothing in paragraph (1) applies in relation to a restraint order made or an external forfeiture order registered under the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991(b) before the coming into force of this Order.

(a) 1990 c. 5; section 9 was amended by section 21 of the Criminal Justice Act 1993 (c. 36), by section 14 of the Proceeds of Crime Act 1995 (c. 11) and by section 9 of the Serious Organised Crime and Police Act 2005 (c. 15).
(b) S.I. 1991/1463, as amended by S.I. 1992/1721, 1993/1791, 1993/3148, 1994/1640, 1996/2878, 1997/1317, 1997/2977, 2001/957, 2002/255 and 2002/2845.

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(a);
 - (b) section 78 of the Criminal Justice Act 1988(b);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(c);
 - (d) section 27 of the Drug Trafficking Act 1994(d);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(e).
- (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;
 - (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.

(a) 1986 c.32.
 (b) 1988 c.33.
 (c) S.I. 1990/2588 (N.I. 17).
 (d) 1994 c.37.
 (e) S.I. 1996/1299 (N.I. 9).

(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^(a) 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.

^(a) 1995 c.38.

- (2) The registration Acts are—
- (a) the Land Charges Act 1972^(a);
 - (b) the Land Registration Act 2002^(b).

(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;
- (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;

^(a) 1972 c.61.
^(b) 2002 c.9.

(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^(a);
- (b) section 78 of the Criminal Justice Act 1988^(b);
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990^(c);
- (d) section 27 of the Drug Trafficking Act 1994^(d);
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996^(e).

(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) 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.

(a) 1986 c.32.
(b) 1988 c.33.
(c) S.I. 1990/2588 (N.I. 17).
(d) 1994 c.37.
(e) S.I. 1996/1299 (N.I. 9).

PART 3

External Forfeiture Orders

Action on receipt of external forfeiture order in connection with criminal convictions

15.—(1) Except where paragraph (2) applies, the Secretary of State may refer an external forfeiture order concerning relevant property in England or Wales to—

- (a) the Director of Public Prosecutions;
- (b) the Director of Revenue and Customs Prosecutions,

to process it.

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

- (a) the order concerns relevant property in England or Wales, and
- (b) property specified in the order was found, or was believed, to have been obtained as a result of, or in connection with, criminal conduct involving serious or complex fraud.

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

(4) In this Part “the relevant Director” means the Director to whom an external forfeiture order is referred under paragraph (1) or (3).

Authentication by the overseas court

16.—(1) Paragraph (2) applies where an overseas court has authenticated its involvement in—

- (a) any judgment,
- (b) any order,
- (c) any other document concerned with such a judgment or order or proceedings relating to it.

(2) Where this paragraph applies, any statement in the judgment, order or document is admissible in evidence in proceedings under this Part.

Applications to give effect to external forfeiture orders

17.—(1) An application may be made by the relevant Director to the Crown Court to give effect to an external forfeiture order.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1) —

- (a) shall include a request to appoint the relevant Director as the enforcement authority for the order;
- (b) may be made on an application to a judge in chambers without giving notice to the other party.

Conditions for Crown Court to give effect to external forfeiture orders

18.—(1) The Crown Court must decide to give effect to an external forfeiture order if it is satisfied that all of the following conditions are met.

(2) The first condition is that the external forfeiture order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external forfeiture order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external forfeiture order would not be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998(a)) of any person affected by it.

(5) The fourth condition is that the property whose confiscation is specified in the external forfeiture order must not be subject to a charge under any of the following provisions—

- (a) section 9 of the Drug Trafficking Offences Act 1986(b);
- (b) section 78 of the Criminal Justice Act 1988(c);
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(d);
- (d) section 27 of the Drug Trafficking Act 1994(e);
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(f).

(6) In paragraph (3) “appeal” includes—

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

Registration of external forfeiture orders

19.—(1) Where the Crown Court decides to give effect to an external forfeiture order, it must

- (a) register the order in that court;
- (b) provide for notice of the registration to be given to any person affected by it; and
- (c) appoint the relevant Director as the enforcement authority for the order.

(2) Only an external forfeiture order registered by the Crown Court may be implemented under this Order.

(3) The Crown Court may cancel the registration of the external forfeiture order, or vary the property to which it applies, on an application by the relevant Director or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in article 18 is not satisfied.

(4) The Crown Court must cancel the registration of the external forfeiture order, on an application by the relevant Director or any person affected by it, if it appears to the court that the order has been satisfied—

- (a) in the case of an order for the recovery of specified property, by the surrender of the property, or
- (b) by any other means.

(5) Where the registration of an external forfeiture order is cancelled or varied under paragraph (3) or (4), the Crown Court must provide for notice of this to be given to the relevant Director and any person affected by it.

Appeal to Court of Appeal about external forfeiture orders

20.—(1) If on an application for the Crown Court to give effect to an external forfeiture order by registering it, the court decides not to do so, the relevant Director may appeal to the Court of Appeal against the decision.

(2) If an application is made under article 19(3) or (4) in relation to the registration of an external forfeiture order, the following persons may appeal to the Court of Appeal in respect of the Crown Court’s decision on the application—

(a) 1998 c.42.
(b) 1986 c.32.
(c) 1988 c.33.
(d) S.I. 1990/2588 (N.I. 17).
(e) 1994 c.37.
(f) S.I. 1996/1299 (N.I. 9).

- (a) the relevant Director;
 - (b) any person affected by the registration.
- (3) On an appeal under paragraph (1) or (2) the Court of Appeal may—
- (a) confirm or set aside the decision to register; or
 - (b) direct the Crown Court to register the external forfeiture order (or so much of it as relates to property other than to which article 18(5) applies).

Appeal to House of Lords about external forfeiture orders

21.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 20.

(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 or set aside the decision of the Court of Appeal, or
 - (b) direct the Crown Court to register the external forfeiture order (or so much of it as relates to property other than property to which article 18(5) applies).

Appointment of enforcement receivers

22.—(1) This article applies if—

- (a) an external forfeiture order is registered, and
- (b) it is not satisfied.

(2) On the application of the relevant Director, the Crown Court may by order appoint a receiver in respect of the property in respect of which the external forfeiture order specifies the recovery.

Powers of enforcement receivers in respect of external forfeiture orders for the recovery of specified property

23.—(1) If the court appoints a receiver under article 22, it may act under this article on the application of the relevant Director where the external forfeiture order is for the recovery of property specified in the order (“the specified property”).

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

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

(4) The court may by order authorise the receiver to do any of the following for the purposes 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 the specified property to give possession of it to the receiver.

(6) The court—

- (a) may order a person holding an interest in the specified 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;
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The court must not—

- (a) confer the power mentioned in paragraph (2)(b) or (c) 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.

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

(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.

Satisfaction of external forfeiture order

24. A registered external forfeiture order is satisfied when the property specified in it has been forfeited and disposed of in accordance with that order.

Restrictions relating to enforcement receivers

25.—(1) Paragraphs (2) to (4) apply if a court makes an order under article 22 appointing a receiver in respect of any specified property.

(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 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 an order under article 22 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.

(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) the receiver (if the order under article 22 has been made).

PART 4

RECEIVERS AND PROCEDURE

Protection of receiver appointed under articles 12 and 22

26.—(1) If a receiver appointed under article 12 or 22—

- (a) takes action in relation to property which is not the specified property,
- (b) would be entitled to take the action if it were the specified 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.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

Further applications by receivers

27.—(1) This article applies to a receiver appointed under article 12 or 22.

(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.

(4) On an application under this article the court may make such order as it believes is appropriate.

Discharge and variation of receiver orders

28.—(1) The following persons may apply to the Crown Court to vary or discharge an order made under article 12, 13, 22 or 23—

- (a) the receiver;
- (b) the relevant Director;
- (c) any person affected by the order.

(2) On an application under this article the court—

- (a) may discharge the order;
- (b) may vary the order.

(3) But in the case of an order under article 12 or 13—

- (a) if the conditions in article 4 were satisfied by virtue of the fact that proceedings had started, the court must discharge the order if at the conclusion of the proceedings no external forfeiture order has been made, or if within a reasonable time an external forfeiture order has not been registered under Part 3 of this Order;
- (b) if the conditions were satisfied by virtue of the fact that an investigation had started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

Management receivers: discharge

29.—(1) This article applies if—

- (a) a receiver stands appointed under article 12 in respect of property which is identified in the restraint order (the management receiver), and

(b) the court appoints a receiver under article 22.

(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 article 13.

(3) Paragraph (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under article 13(2)(d).

(4) If the management receiver complies with an order under paragraph (2) he is discharged—

(a) from his appointment under article 12;

(b) from any obligation under this Order arising from his appointment.

(5) If this article applies the court may make such a consequential or incidental order as it believes is appropriate.

Appeal to Court of Appeal about receivers

30.—(1) If on an application for an order under any of articles 12, 13, 22 or 23 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 the court makes an order under any of articles 12, 13, 22 or 23, 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;

(b) any person affected by the order.

(3) If on an application for an order under article 27 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 article 27 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;

(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 article 28—

(a) the person who applied for the order in respect of which the application was made;

(b) any person affected by the court's decision;

(c) the receiver.

(6) On an appeal under this article the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes is appropriate.

Appeal to the House of Lords about receivers

31.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 30.

(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 Appeal, or

(b) make such order as it believes is appropriate.

Powers of court and receiver

32.—(1) This article applies to—

- (a) the powers conferred on a court by this Order;
 - (b) the powers of a receiver appointed under article 12 or 22.
- (2) The powers—
- (a) must be exercised with a view to the value for the time being of specified property being made available (by the property’s realisation) for satisfying an external forfeiture order that has been or may be made against the defendant;
 - (b) must be exercised, in a case where an external forfeiture order has not been made, with a view to securing that there is no diminution in the value of the property identified in the request;
 - (c) must be exercised without taking account of any obligation of a defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any external forfeiture order against the defendant that has been or may be registered under article 19;
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Paragraph (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 specified 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;
 - (c) in a case where an external forfeiture order has not been made against the defendant, property must not be sold if the court so orders under paragraph (4).
- (4) If on an application by the defendant or 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 paragraph (4) may be revoked or varied.

Procedure on appeal to Court of Appeal under this Order

33.—(1) An appeal to the Court of Appeal under this Order lies only with the leave of that Court.

(2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981(a) (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 Order is to lie, and
- (b) which is to exercise that Court’s jurisdiction under this Order.

(3) In relation to appeals to the Court of Appeal under this Order, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968(b), subject to any specified modifications.

(4) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the criminal division of the Court of Appeal under article 7, 20 or 30 are in the discretion of the court.

(5) The court shall have full power to determine by whom and to what extent the costs are to be paid.

(6) In any proceedings mentioned in paragraph (4), the court may—

- (a) disallow, or
- (b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

(a) 1981 c.54.
(b) 1968 c.19.

- (7) In paragraph (6) “wasted costs” means any costs incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.
- (8) “Legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

Procedure on appeal to House of Lords under this Order

34.—(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 Order.

(2) In relation to appeals to the House of Lords under this Order, 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.

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(a).

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.

(a) 2005 c.11.

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**(a)**;
- (b) section 78 of the Criminal Justice Act 1988**(b)**;
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990**(c)**;
- (d) section 27 of the Drug Trafficking Act 1994**(d)**;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996**(e)**.

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;
 - (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.

(a) 1986 c.32.
(b) 1988 c.33.
(c) S.I. 1990/2588 (N.I. 17).
(d) 1994 c.37.
(e) S.I. 1996/1299 (N.I. 9).

SCHEDULE 1

Article 2

The following Orders are hereby revoked—

- (a) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991**(a)**;
- (b) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1992**(b)**;
- (c) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1993**(c)**;
- (d) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) (No. 2) Order 1993**(d)**;
- (e) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1994**(e)**;
- (f) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1996**(f)**;
- (g) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1997**(g)**;
- (h) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) (No. 2) Order 1997**(h)**;
- (i) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 2001**(i)**;
- (j) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 2002**(j)**;
- (k) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) (No. 2) Order 2002**(k)**.

SCHEDULE 2

Article 37

Designated Countries

Afghanistan

Albania

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- (a) S.I. 1991/1463.
 - (b) S.I. 1992/1721.
 - (c) S.I. 1993/1791.
 - (d) S.I. 1993/3148.
 - (e) S.I. 1994/1640.
 - (f) S.I. 1996/2878.
 - (g) S.I. 1997/1317.
 - (h) S.I. 1997/2977.
 - (i) S.I. 2001/957.
 - (j) S.I. 2002/255.
 - (k) S.I. 2002/2845.

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Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Venezuela
Vietnam

Yemen

Zambia

Zimbabwe

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in respect of the enforcement in England and Wales of orders made in designated countries for the forfeiture of anything in respect of which an offence has been committed or which was used in connection with the commission of such an offence.

Part 2 makes provisions for prohibitions (“restraint orders”) on dealing with property, situated in England and Wales, which is specified in a request by an overseas authority. In order to exercise the powers to make a restraint, the Crown Court must be satisfied that the conditions set out in article 4 are satisfied. The conditions include the requirement that a criminal investigation or proceedings have been started in the country from which the external request was made with regard to an offence. The persons responsible for applying to the Crown Court are those set out in article 3(1) and (3). Articles 6 to 11 make supplementary provision about the making of restraint orders, including provision for appeals. Articles 12 and 13 provide for the appointment and powers of receivers in respect of property subject to restraint orders.

Part 3 makes provision for the registration of external forfeiture orders, which arise from a criminal conviction in the country from which the order was sent and concern relevant property in England and Wales. An application for registration is to be made by the persons listed in article 15(1) and (3). The conditions set out in article 18 must be satisfied if the Crown Court is to give effect to the external forfeiture order by registering it. Where the conditions are satisfied, the Court must register the external forfeiture order (see article 18(1)). Articles 20 and 21 provide for appeals and article 24 sets out the circumstances when a registered external forfeiture order is to be taken as satisfied. Article 22 provides for the appointment of enforcement receivers by the Director of Public Prosecutions, Director of Revenue and Customs Prosecutions and Director of the Serious Fraud Office. The powers of receivers are in respect of the property specified in the registered external forfeiture order. Article 25 imposes restrictions on actions by persons other than receivers on property that is specified in a registered external forfeiture order.

Part 4 makes further provision about receivers. This includes provision protecting the receiver in respect of things done by him (article 26) and the discharge and variation of orders affecting receivers (articles 28 and 29). Articles 30 and 31 provide for the procedure on appeals about receivers to the Court of Appeal and the House of Lords.

Part 5 provides for interpretation.

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