
STATUTORY INSTRUMENTS

2005 No. 3181

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005

PART 1

GENERAL PROVISIONS

Title and commencement

1. This Order may be cited as the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 and shall come into force on 1st January 2006.

Interpretation

2. In this Order—

“the Act” means the Proceeds of Crime Act 2002;

“the Agency” means the Assets Recovery Agency;

“country” includes territory;

“external order” has the meaning set out in section 447(2) of the Act;

“external request” has the meaning set out in section 447(1) of the Act;

“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(1).

Insolvency practitioners

3. —

(1) Paragraphs (2) and (3) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because—

(a) it is for the time being subject to a restraint order made under article 8, 58 or 95; or

(b) it is for the time being subject to a property freezing order made under article 147, an interim receiving order made under article 151, a prohibitory property order made under article 161 or an interim administration order made under article 167,

and at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.

(2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.

(3) He has a lien on the property or the proceeds of its sale—

- (a) for such of his expenses as were incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal, and
 - (b) for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.
- (4) Paragraph (2) does not prejudice the generality of any provision of the 1985 Act, the 1986 Act, the 1989 Order or any Act or Order which confers a protection from liability on him.
- (5) Paragraph (7) applies if—
- (a) property is subject to a restraint order made under article 8, 58 or 95,
 - (b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the restraint order, and
 - (c) he does not know (and has no reasonable grounds to believe) that the property is subject to the restraint order.
- (6) Paragraph (7) also applies if—
- (a) property is subject to a restraint order made under article 8, 58 or 95,
 - (b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the restraint order, and
 - (c) the expenses are ones which (but for the effect of the restraint order) might have been met by taking possession of and realising property subject to it.
- (7) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under—
- (a) article 33(2), 34(3), 35(2) or 36(3) if the restraint order was made under article 7,
 - (b) article 77(2) or 78(3) if the restraint order was made under article 58,
 - (c) article 119(2), 120(3), 121(2) or 122(3) if the restraint order was made under article 95.
- (8) Paragraph (10) applies if—
- (a) property is subject to a property freezing order made under article 147, an interim receiving order made under article 151, a prohibitory property order made under article 161 or an interim administration order made under article 167,
 - (b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the order, and
 - (c) he does not know (and has no reasonable grounds to believe) that the property is subject to the order.
- (9) Paragraph (10) also applies if—
- (a) property is subject to a property freezing order made under article 147, an interim receiving order made under article 151, a prohibitory property order made under article 161 or an interim administration order made under article 167,
 - (b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the order, and
 - (c) the expenses are ones which (but for the effect of the order) might have been met by taking possession of and realising property subject to it.
- (10) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under article 191.

Insolvency practitioners: interpretation

4.—(1) This article applies for the purposes of article 3.

(2) A person acts as an insolvency practitioner if he so acts within the meaning given by section 388 of the 1986 Act or Article 3 of the 1989 Order; but this is subject to paragraphs (3) to (5).

(3) The expression “person acting as an insolvency practitioner” includes the official receiver acting as receiver or manager of the property concerned.

(4) In applying section 388 of the 1986 Act under paragraph (2) above—

(a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration;

(b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored.

(5) In applying Article 3 of the 1989 Order under paragraph (2) above, paragraph (5) (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored.

(6) The following sub-paragraphs apply to references to Acts or Orders—

(a) the 1913 Act is the Bankruptcy (Scotland) Act 1913(2);

(b) the 1914 Act is the Bankruptcy Act 1914(3);

(c) the 1985 Act is the Bankruptcy (Scotland) Act 1985(4);

(d) the 1986 Act is the Insolvency Act 1986(5);

(e) the 1989 Order is the Insolvency (Northern Ireland) Order 1989(6).

(7) An award of sequestration is made on the date of sequestration within the meaning of section 12(4) of the 1985 Act.

Orders and regulations

5.—(1) References in this article to subordinate legislation are to—

(a) any order under this Order (other than one falling to be made by a court);

(b) any regulations under this Order.

(2) Subordinate legislation—

(a) may make different provision for different purposes;

(b) may include supplementary, incidental, saving or transitional provisions.

(3) Any power to make subordinate legislation is exercisable by statutory instrument and, subject to paragraph (4), is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument containing regulations made under paragraph 6(2) of Schedule 1 is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(2) 1913 c. 20.
(3) 1914 c. 59.
(4) 1985 c. 66.
(5) 1986 c. 45.
(6) S.I. 1989/(N.I. 19).