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STATUTORY INSTRUMENTS

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**2005 No. 3181**

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

PART 4

GIVING EFFECT IN NORTHERN IRELAND TO EXTERNAL REQUESTS IN CONNECTION WITH CRIMINAL INVESTIGATIONS OR PROCEEDINGS AND TO EXTERNAL ORDERS ARISING FROM SUCH PROCEEDINGS

CHAPTER 5

EXTERNAL REQUESTS

**Action on receipt of external request in connection with criminal investigations or proceedings**

**93.**—(1) Except where paragraph (2) applies, the Secretary of State may refer an external request in connection with criminal investigations or proceedings in the country from which the request was made and concerning relevant property in Northern Ireland to—

- (a) the Director of the Agency;
- (b) the Director of Public Prosecutions for Northern Ireland;

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 Northern Ireland.

(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 Chapter “the relevant Director” means the Director to whom an external 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 either of the conditions in article 94.

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

(7) Where a request concerns relevant property which is in England, Wales or Scotland as well as Northern Ireland, so much of the request as concerns such property shall be dealt with under Part 2 or 3 respectively.

### Conditions for High Court to give effect to external request

**94.**—(1) The High Court may exercise the powers conferred by article 95 if either of the following conditions is satisfied.

- (2) The first condition is that—
- (a) relevant property in Northern Ireland is identified in the external request;
  - (b) a criminal investigation has been started in the country from which the external request was made with regard to an offence, and
  - (c) there is reasonable cause to believe that the alleged offender named in the request has benefited from his criminal conduct.
- (3) The second condition is that—
- (a) relevant property in Northern Ireland is identified in the external request;
  - (b) proceedings for an offence have been started in the country from which the external request was made and not concluded, and
  - (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct.

(4) In determining whether the conditions are satisfied and whether the request is an external request within the meaning of the Act, the court must have regard to the definitions in subsections (1), (4) to (8) and (11) of section 447 of the Act.

(5) If the first condition is satisfied, references in this Chapter to the defendant are to the alleged offender.

### Restraint orders

**95.**—(1) If either condition set out in article 94 is satisfied, the High Court may make an order (“a restraint order”) prohibiting any specified person from dealing with relevant property which is identified in the external 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 a restraint order or the registration of an external 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);

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(1) 1986 c. 32.

(2) 1988 c. 33.

- (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 Northern Ireland.

### **Application, discharge and variation of restraint orders**

- 96.**—(1) A restraint order—
- (a) may be made only on an application by the relevant Director;
  - (b) may be made on an ex parte application to a judge in chambers.
- (2) An application to discharge or vary a restraint order or an order under article 95(4) may be made to the High Court by—
- (a) the relevant Director;
  - (b) any person affected by the order.
- (3) Paragraphs (4) to (7) apply to an application under paragraph (2).
- (4) The court—
- (a) may discharge the order;
  - (b) may vary the order.
- (5) If the condition in article 94 which was satisfied was that proceedings were started, the court must discharge the order if, at the conclusion of the proceedings, no external order has been made.
- (6) If the condition in article 94 which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time an external order has not been registered under Chapter 2 of this Part.
- (7) If the condition in article 94 which was satisfied was 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**

- 97.**—(1) If on an application for a restraint order the High 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 96(2) in relation to a restraint order or an order under article 95(4), the following persons may appeal to the Court of Appeal in respect of the High 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**

- 98.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 97.

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(3) [S.I. 1990/2588 \(N.I. 17\)](#).  
(4) [1994 c. 37](#).  
(5) [S.I. 1996/1299 \(N.I. 9\)](#).

(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**

**99.**—(1) If a restraint order is in force a constable may seize any property which is specified in it to prevent its removal from Northern Ireland.

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

### **Supplementary (restraint orders)**

**100.**—(1) The person applying for a restraint order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970<sup>(6)</sup> (cautions) as a person interested in relation to any registered land to which—

- (a) the application relates, or
- (b) a restraint order made in pursuance of the application relates.

(2) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for a restraint order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under subsection (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(4) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order discharging the restraint order may require that the entry be vacated.

(5) In this article—

“Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970; and

“Registration Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954<sup>(7)</sup>.

### **Appointment of management receivers**

**101.**—(1) Paragraph (2) applies if—

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

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<sup>(6)</sup> 1970 c. 18 (N.I.).

<sup>(7)</sup> 1954 c. 33 (N.I.).

## **Powers of management receivers**

**102.**—(1) If the court appoints a receiver under article 101 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 Northern Ireland 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<sup>(8)</sup>;
- (b) section 78 of the Criminal Justice Act 1988<sup>(9)</sup>;
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(10)</sup>;
- (d) section 27 of the Drug Trafficking Act 1994<sup>(11)</sup>;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(12)</sup>.

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<sup>(8)</sup> 1986 c. 32.

<sup>(9)</sup> 1988 c. 33.

<sup>(10)</sup> S.I. 1990/2588 (N.I. 17).

<sup>(11)</sup> 1994 c. 37.

<sup>(12)</sup> S.I. 1996/1299 (N.I. 9).

- (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**

- 103.**—(1) Paragraphs (2) and (3) apply if a court makes a restraint order.
- (2) 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 (3) except with the leave of the High Court and subject to any terms the High Court may impose.
- (3) 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.
- (4) 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.
- (5) Before exercising any power conferred by paragraph (4), 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 101, 113 or 116.

## **CHAPTER 2**

### **EXTERNAL ORDERS**

#### **Action on receipt of external order in connection with criminal convictions**

- 104.**—(1) Except where paragraph (2) applies, the Secretary of State may refer an external order arising from a criminal conviction in the country from which the order was sent and concerning relevant property in Northern Ireland to—
- (a) the Director of the Agency;
  - (b) the Director of Public Prosecutions for Northern Ireland;
- to process it.
- (2) This paragraph applies where it appears to the Secretary of State that—
- (a) the property or sum of money 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, and
  - (b) the order concerns relevant property in Northern Ireland.

(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 Chapter “the relevant Director” means the Director to whom an external order is referred under paragraph (1) or (3).

(5) Where an order concerns relevant property which is in England, Wales or Scotland as well as Northern Ireland, so much of the request as concerns such property shall be dealt with under Part 2 or 3, respectively.

#### **Authentication by the overseas court**

**105.**—(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 Chapter.

#### **Applications to give effect to external orders**

**106.**—(1) An application may be made by the relevant Director to the Crown Court to give effect to an external 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 ex parte application to a judge in chambers.

#### **Conditions for Crown Court to give effect to external orders**

**107.**—(1) The Crown Court must decide to give effect to an external order by registering it where all of the following conditions are satisfied.

(2) The first condition is that the external 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 order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external order would not be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998(**13**)) of any person affected by it.

(5) The fourth condition applies only in respect of an external order which authorises the confiscation of property other than money that is specified in the order.

(6) That condition is that the specified property must not be subject to a charge under any of the following provisions—

- (a) section 9 of the Drug Trafficking Offences Act 1986(**14**);
- (b) section 78 of the Criminal Justice Act 1988(**15**);

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(13) 1998 c. 42.

(14) 1986 c. 32.

(15) 1988 c. 33.

- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(16)</sup>;
- (d) section 27 of the Drug Trafficking Act 1994<sup>(17)</sup>;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(18)</sup>.

(7) In determining whether the order is an external order within the meaning of the Act, the Court must have regard to the definitions in subsections (2), (4), (5), (6), (8) and (10) of section 447 of the Act.

(8) 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 orders**

**108.**—(1) Where the Crown Court decides to give effect to an external 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 order registered by the Crown Court may be implemented under this Chapter.

(3) The Crown Court may cancel the registration of the external 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 107 is not satisfied.

(4) The Crown Court must cancel the registration of the external 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 a sum of money specified in it, by payment of the amount due under it, or
- (b) in the case of an order for the recovery of specified property, by the surrender of the property, or
- (c) by any other means.

(5) Where the registration of an external 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 orders**

**109.**—(1) If on an application for the Crown Court to give effect to an external 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 108(3) in relation to the registration of an external order, 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 registration.

(3) On an appeal under paragraph (1) or (2) the Court of Appeal may—

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<sup>(16)</sup> S.I. 1990/2588 (N.I. 17).

<sup>(17)</sup> 1994 c. 37.

<sup>(18)</sup> S.I. 1996/1299 (N.I. 9).



- (a) confirm the decision or set aside the decision to register; or
- (b) direct the Crown Court to register the external order (or so much of it as relates to property other than that to which article 107(6) applies).

### **Appeal to House of Lords about external orders**

**110.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 109.

(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 order (or so much of it as relates to property other than that to which article 107(6) applies).

### **Sums in currency other than sterling**

**111.**—(1) This article applies where the external order which is registered under article 108 specifies a sum of money.

(2) If the sum of money which is specified is expressed in a currency other than sterling, the sum of money to be recovered is to be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the Crown Court registered the external order under article 108.

(3) The sterling equivalent must be calculated by the relevant Director.

(4) The notice referred to in article 108(1)(b) and (5) must set out the amount in sterling which is to be paid.

(5) In this article “working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) Christmas Day;
- (c) Good Friday;
- (d) any day that is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(19).

### **Time for payment**

**112.**—(1) This article applies where the external order is for the recovery of a specified sum of money.

(2) Subject to paragraphs (3) to (6), the amount ordered to be paid under—

- (a) an external order that has been registered under article 108, or
- (b) where article 111(2) applies, the notice under article 108(1)(b),

must be paid on the date on which the notice under article 108(1)(b) is delivered to the person affected by it.

(3) Where there is an appeal under article 109 or 110 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.

(4) If the person affected by an external order which has been registered shows that he needs time to pay the amount ordered to be paid, the Crown Court which registered the order may make an order allowing payment to be made in a specified period.

(5) The specified period—

- (a) must start with the day on which the notice under 108(1)(b) was delivered to the person affected by the order or the day referred to in paragraph (3), as the case may be, and
- (b) must not exceed six months.

(6) If within the specified period the person affected by an external order applies to the Crown Court which registered the order for the period to be extended and the court believes that there are exceptional circumstances, it may make an order extending the period.

(7) The extended period—

- (a) must start with the day on which the notice under article 108(1)(b) was delivered to the person affected by it or the day referred to in paragraph (3), as the case may be, and
- (b) must not exceed 12 months.

(8) An order under paragraph (6)—

- (a) may be made after the end of the specified period, but
- (b) must not be made after the end of the extended period.

(9) The court must not make an order under paragraph (4) or (6) unless it gives the relevant Director an opportunity to make representations.

#### **Appointment of enforcement receivers**

**113.**—(1) This article applies if—

- (a) an external order is registered,
- (b) it is not satisfied, and
- (c) in the case of an external order for the recovery of a specified sum of money, any period specified by order under article 112 has expired.

(2) On the application of the relevant Director, other than the Director of the Agency, the Crown Court may by order appoint a receiver in respect of—

- (a) where the external order is for the recovery of a specified sum of money, realisable property;
- (b) where the external order is for the recovery of specified property, that property.

#### **Powers of enforcement receivers in respect of monetary external orders**

**114.**—(1) If the court appoints a receiver under article 113, it may act under this article on the application of the relevant Director, other than the Director of the Agency, where the external order is for the recovery of a specified sum of money.

(2) The court may by order confer on the receiver the following powers in relation to any realisable 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 Northern Ireland 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 realisable property to give possession of it to the receiver.

(6) The court—

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

(8) 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.

(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.

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

**115.**—(1) If the court appoints a receiver under article 113, it may act under this article on the application of the relevant Director (other than the Director of the Agency) where the external 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 Northern Ireland 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.

#### **Appointment of Director of Agency's receivers**

**116.**—(1) This article applies if—

- (a) an external order is registered, and
- (b) the Director of the Agency is appointed as the enforcement authority for the order under article 108.

(2) If this article applies, the Crown Court must make an order for the appointment of a receiver in respect of—

- (a) where the external order is for the recovery of a specified sum of money, realisable property;
- (b) where the external order is for the recovery of specified property, that property.

(3) An order under paragraph (2)—

- (a) must confer power on the Director to nominate the person who is to be the receiver, and
- (b) takes effect when the Director nominates that person.

(4) The Director must not nominate a person under paragraph (3) unless at the time he does so—

- (a) the external order is not satisfied, and
- (b) in the case of an external order for the recovery of a specified sum of money, any period specified by order under article 112 has expired.

(5) A person nominated to be the receiver under paragraph (3) may be—

- (a) a member of the staff of the Agency;
- (b) a person providing services under arrangements made by the Director.

#### **Powers of Director of Agency's receivers in respect of monetary external orders**

**117.**—(1) If the court makes an order for the appointment of a receiver under article 116, it may act under this article on the application of the Director of the Agency where the external order is for the recovery of a specified sum of money.

(2) The court may by order confer on the receiver the following powers in relation to any realisable 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 Northern Ireland 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 realisable property to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in realisable 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) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under any of the following provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986;
  - (b) section 78 of the Criminal Justice Act 1988;
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;
  - (d) section 27 of the Drug Trafficking Act 1994;
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996.
- (8) 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.
- (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 include—
- (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.

### **Powers of Director of Agency’s receivers in respect of external orders for the recovery of specified property**

**118.**—(1) If the court makes an order for the appointment of a receiver under article 116, it may act under this article on the application of the Director of the Agency where the external 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 legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in Northern Ireland 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 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.

#### **Application of sums by enforcement receivers**

**119.**—(1) This article applies to sums which are in the hands of a receiver appointed under article 113 if they are—

- (a) the proceeds of the realisation of property under article 114 or 115;
- (b) where article 114 applies, sums (other than those mentioned in sub-paragraph (a)) in which the defendant holds an interest.

- (2) The sums must be applied as follows—
- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this paragraph by virtue of article 3;
  - (b) second, they must be applied in making any payments directed by the Crown Court;
  - (c) third, they must be applied on the defendant's behalf towards satisfaction of the external order.
- (3) If the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he must distribute them—
- (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs; and
  - (b) in such proportions as it directs.
- (4) Before making a direction under paragraph (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of paragraphs (3) and (4) the property concerned is—
- (a) the property represented by the proceeds mentioned in paragraph (1)(a);
  - (b) the sums mentioned in paragraph (1)(b).
- (6) The receiver applies sums as mentioned in paragraph (2)(c) by paying them to the appropriate chief clerk on account of the amount payable under the order.
- (7) The appropriate chief clerk is the chief clerk of the court at the place where the external order was registered.

### **Sums received by appropriate chief clerk**

- 120.**—(1) This article applies if the appropriate chief clerk receives sums on account of the amount payable under a registered external order or the value of the property specified in the order.
- (2) The appropriate chief clerk's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.
- (3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—
- (a) are payable under this paragraph by virtue of article 3, but
  - (b) are not already paid under article 119(2)(a).
- (4) He must next apply them—
- (a) first, in payment of the remuneration and expenses of a receiver appointed under article 101 to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under article 102(2)(d);
  - (b) second, in payment of the remuneration and expenses of the receiver appointed under article 113.
- (5) If any amount remains after the appropriate chief clerk makes any payments required by the preceding provisions of this article, the amount must be treated for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954(20) (application of fines) as if it were a fine.
- (6) Paragraph (4) does not apply if the receiver is a member of the staff of the Public Prosecution Service for Northern Ireland, or the Serious Fraud Office; and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere.



### **Application of sums by Director of Agency's receivers**

**121.**—(1) This article applies to sums which are in the hands of a receiver appointed under article 116 if they are —

- (a) the proceeds of the realisation of property under article 117 or 118;
- (b) where article 117 applies sums (other than those mentioned in sub-paragraph (a)) in which the defendant holds an interest.

(2) The sums must be applied as follows—

- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this paragraph by virtue of article 3;
- (b) second, they must be applied in making any payments directed by the Crown Court;
- (c) third, they must be applied on the defendant's behalf towards satisfaction of the external order by being paid to the Director on account of the amount payable under it.

(3) If the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he must distribute them—

- (a) among such persons who held (or hold) interests in the property concerned as the Crown Court directs, and
- (b) in such proportions as it directs.

(4) Before making a direction under paragraph (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of paragraphs (3) and (4) the property concerned is—

- (a) the property represented by the proceeds mentioned in paragraph (1)(a);
- (b) the sums mentioned in paragraph (1)(b).

### **Application of sums received by the Director of the Agency**

**122.**—(1) This article applies if the Director of the Agency receives sums on account of the amount payable under a registered external order or the value of the property specified in the order.

(2) The Director's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First, he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—

- (a) are payable under this paragraph by virtue of article 3, but
- (b) are not already paid under article 121(2)(a).

(4) He must next apply them—

- (a) first, in payment of the remuneration and expenses of a receiver appointed under article 101, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under article 102(2)(d);
- (b) second, in payment of the remuneration and expenses of the receiver appointed under article 116.

(5) Paragraph (4) does not apply if the receiver is a member of the staff of the Agency or a person providing services under arrangements made by the Director.

### **Satisfaction of external order**

**123.**—(1) A registered external order is satisfied when no amount is due under it.

(2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been sold.

#### **Restrictions relating to enforcement receivers**

**124.**—(1) Paragraphs (2) and (3) apply if a court makes an order under article 113 appointing a receiver in respect of any realisable property or specified property.

(2) 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 (3) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(3) 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.

(4) If a court in which proceedings are pending in respect of any property is satisfied that an order under article 113 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.

(5) Before exercising any power conferred by paragraph (4), the court must give an opportunity to be heard to—

- (a) the relevant Director (other than the Director of the Agency), and
- (b) the receiver (if the order under article 113 has been made).

#### **Restrictions relating to Director of the Agency's receivers**

**125.**—(1) Paragraphs (2) and (3) apply if—

- (a) the Crown Court has made an order under article 116 for the appointment of a receiver in respect of any realisable property or specified property, and
- (b) the order has taken effect.

(2) If the order is for the appointment of a receiver in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within paragraph (3) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(3) 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.

(4) If a court (whether the Crown Court or any other court) in which proceedings are pending in respect of any property is satisfied that an order under article 116 for the appointment of a receiver in respect of the property has taken effect, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(5) Before exercising any power conferred by paragraph (4), the court must give an opportunity to be heard to—

- (a) the Director of the Agency, and
- (b) the receiver.

### CHAPTER 3

#### RECEIVERS AND PROCEDURE

#### **Protection of receiver appointed under articles 101, 113 and 116**

**126.** If a receiver appointed under article 101, 113 or 116—

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

#### **Further applications by receivers**

**127.**—(1) This article applies to a receiver appointed under article 101, 113 or 116.

(2) The receiver may apply to—

- (a) the High Court if he is appointed under article 101;
- (b) the Crown Court if he is appointed under article 113 or 116,

for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the High Court if the receiver is appointed under article 101 or to the Crown Court if the receiver is appointed under article 113 or 116—

- (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**

**128.**—(1) The following persons may apply to the High Court to vary or discharge an order made under article 101 or 102 or to the Crown Court to vary or discharge an order made under any of articles 113 to 118—

- (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 101 or 102—

- (a) if the condition in article 94 which was satisfied was that proceedings were started, the court must discharge the order if at the conclusion of the proceedings no external order has been made;
- (b) if the condition which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time an external order has not been registered under Chapter 2 of this Part;
- (c) if the condition which was satisfied was that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

#### **Management receivers: discharge**

**129.**—(1) This article applies if—

- (a) a receiver stands appointed under article 101 in respect of property which is identified in the restraint order (the management receiver), and
  - (b) the court appoints a receiver under article 113 or makes an order for the appointment of a receiver under article 116.
- (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 102.
- (3) But in a case where the court makes an order under article 116 its order under paragraph (2) does not take effect until the order under article 116 takes effect.
- (4) Paragraph (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under article 102(2)(d).
- (5) If the management receiver complies with an order under paragraph (2) he is discharged—
- (a) from his appointment under article 101;
  - (b) from any obligation under this Order arising from his appointment.
- (6) 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**

- 130.**—(1) If on an application for an order under any of articles 101, 102, 113 to 115, 117 or 118, the court decides not to make one, the person who applies for the order may appeal to the Court of Appeal against the decision.
- (2) If the court makes an order under any of articles 101, 102, 113 to 115, 117 or 118, 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 127 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 127 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 128—
- (a) the person who applied for the order in respect of which the application was made or (if the order was made under article 117 or 118) the Director of the Agency;
  - (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**

**131.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 130.

(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**

**132.**—(1) This article applies to—

- (a) the powers conferred on a court by this Part;
- (b) the powers of a receiver appointed under article 101, 113 or 116.

(2) The powers—

- (a) must be exercised with a view to the value for the time being of realisable property or specified property being made available (by the property's realisation) for satisfying an external order that has been or may be made against the defendant;
- (b) must be exercised, in a case where an external order has not been made, with a view to securing that there is no diminution in the value of the property identified in the external 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 order against the defendant that has been or may be registered under article 108;
- (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 realisable property or 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 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 Part 4**

**133.**—(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.

(2) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980(21), subject to any specified modifications.

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(21) 1980 c. 47.

(3) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Court of Appeal under article 97, 109 or 130 are in the discretion of the court.

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

(5) In any proceedings mentioned in paragraph (3), 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.

(6) In paragraph (5) “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.

(7) “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 Part 4**

**134.** In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980, subject to any specified modifications.

### CHAPTER 4

#### INTERPRETATION

#### **Property**

**135.**—(1) In this Part, “realisable property” means in a case where the external order specifies a sum of money, any free property held by the defendant or by the recipient of a tainted gift.

(2) “Free property” has the same meaning as in section 230 of the Act (free property)(**22**).

(3) The rules in paragraphs (a) and (c) to (g) of section 232(2) of the Act (property: general provisions) apply in relation to property under this Order (in addition to section 447(4) to (6) of the Act (interpretation)) as they apply in relation to property under Part 4 of the Act.

#### **Tainted gifts**

**136.**—(1) In this Part, 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 order or external 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.

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(22) Section 230(f) was amended by paragraph 7 of Schedule 6 to the Serious Organised Crime and Police Act 2005.

### Gifts and their recipients

**137.**—(1) In this Part, 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 Part references to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

### Value: the basic rule

**138.**—(1) Subject to article 139, this article applies where it is necessary under this Part 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>(23)</sup>;
- (b) section 78 of the Criminal Justice Act 1988<sup>(24)</sup>;
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(25)</sup>;
- (d) section 27 of the Drug Trafficking Act 1994<sup>(26)</sup>;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(27)</sup>.

### Value of tainted gifts

**139.**—(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.

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(23) 1986 c. 32.

(24) 1988 c. 33.

(25) S.I. 1990/2588 (N.I. 17).

(26) 1994 c. 37.

(27) S.I. 1996/1299 (N.I. 9).

(3) The references in paragraph (1)(a) and (b) to the value are to the value found in accordance with article 138.

### **Meaning of “defendant”**

**140.** In this Part “defendant”—

- (a) in relation to a restraint order means—
  - (i) in a case in which the first condition in article 94 is satisfied, the alleged offender;
  - (ii) in a case in which the second condition in article 94 is satisfied, the person against whom proceedings for an offence have been started in a country outside the United Kingdom (whether or not he has been convicted);
- (b) in relation to an external order, the person convicted of criminal conduct.

### **Other interpretation**

**141.** In this Part—

“relevant Director” has the meaning—

- (a) in the context of an external request, set out in article 93(4);
- (b) in the context of an external order, set out in article 104(4);

“relevant property” means property which satisfies the test in section 447(7) of the Act;

“specified property” means property specified in an external order (other than an order that specifies a sum of money).