

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND
ORDERS) ORDER 2005 (ENGLAND AND WALES) (APPEALS UNDER
PART 2) ORDER 2012

2012 No. 138

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument is necessary for the operation of The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (SI 2005 No. 3181) (the 2005 Order). The 2005 Order sets out the provisions for the United Kingdom to give effect to requests from other countries in connection with their criminal investigations or proceedings and to orders arising from such proceedings. In particular and relevant to this instrument, Part 2 of the 2005 Order gives effect in England and Wales to such requests and orders. This instrument makes provision in respect of appeals to the Court of Appeal and the Supreme Court under Part 2 of the 2005 Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred under articles 47(3) and 48(2) of the 2005 Order. The 2005 Order was made under sections 444 and 459(2) of the Proceeds of Crime Act 2002. This Order makes provisions corresponding to provisions (subject to specified modifications) in the Criminal Appeal Act 1968 (the 1968 Act). The 1968 Act sets out the procedure and provisions to be followed in respect of general domestic criminal appeals. This Order parallels, modifying as appropriate, provisions within the 1968 Act for appeals under Part 2 of the 2005 Order.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 2 of the Proceeds of Crime Act 2002 provides a regime for the restraint, confiscation and recovery of assets. The 2005 Order seeks to provide the same level of international co-operation as is available in domestic cases. Part 2 of the 2005 Order, therefore, seeks to give effect (e.g. restraint, appointing receivers) in England and Wales to requests from another country in connection with their criminal investigations or proceedings and to external orders arising from their criminal proceedings.

7.2 Part 2 of the Proceeds of Crime Act 2002 (England and Wales) provides in domestic cases that decisions concerning restraint orders, the appointment and powers of receivers and confiscation orders are subject to appeal; see sections 31, 33, 43, 44, 65 and 66. Restraint orders are court orders to preserve assets the value of which may become subject to confiscation. Receivers are court appointed officers with the role of either managing property subject to a restraint order or to enforce a confiscation order by, for example, selling assets. A confiscation order is a court order for a convicted defendant to pay an amount equal to their benefit from crime. The ability to appeal these matters is in keeping with the general position and policy of decisions relating to all criminal matters being subject to an appellate forum. To maintain this general policy, Part 2 of the 2005 Order provides in relation to England and Wales that the issues subject to appeal under the domestic legislation are similarly subject to appeal in relation to action taken as a result of requests from another country– see articles 10, 11, 23, 24, 44 and 45 of the 2005 Order.

7.3 Sections 89 and 90 of the Proceeds of Crime Act 2002 concern appeals to the Court of Appeal and the Supreme Court in domestic cases and establishes that the Secretary of State may make an order in relation to those appeals containing provision corresponding to any provision of the Criminal Appeal Act 1968 (subject to any modification). Part 2 of the 2005 Order provides appeals to the Court of Appeal and the Supreme Court following action taken as a result of a request from another country and enables the Secretary of State to make an order in relation to those appeals containing provision corresponding to any provision of the Criminal Appeal Act 1968 (subject to any modification). The order being made by the Secretary of State sets out the appeal procedures to the Court of Appeal and the Supreme Court.

8. Consultation outcome

8.1 The Order has been developed with the close assistance of the Registrar of the Supreme Court, the Court of Appeal Criminal Appeal Office, the Ministry of Justice, the Crown Prosecution Office and the Serious Fraud Office. They are content with the Order.

9. Guidance

9.1 Guidance is not necessary and will not be issued. The Supreme Court and the Court of Appeal Criminal Appeal Office have been consulted during

the development of the Order. The Order also makes provision corresponding to provisions in the Criminal Appeal Act 1968 and so judges and legal representatives will be familiar with the provisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument. The Order only provides for procedure and provisions in respect of appeals; the right of appeal already exists and so no additional impact or burden is being created.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 In development of this Order the Home Office has been in close contact with the Supreme Court and the Court of Appeal Criminal Appeal Office, government departments and prosecutors. Established lines of communication will be available to monitor and review the few cases that will be subject to this Order.

13. Contact

Stephen Goadby at the Home Office Tel: 020 7035 1559 or email: stephen.goadby@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.