
STATUTORY INSTRUMENTS

2005 No. 3181

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

PART 2

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

CHAPTER 1

EXTERNAL REQUESTS

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

6.—(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 England or Wales to—

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

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 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 7.

(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 Scotland or Northern Ireland as well as England or Wales, so much of the request as concerns such property shall be dealt with under Part 3 or 4, respectively.

Conditions for Crown Court to give effect to external request

7.—(1) The Crown Court may exercise the powers conferred by article 8 if either of the following conditions is satisfied.

- (2) The first condition is that—
- (a) relevant property in England and Wales 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 England and Wales 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

8.—(1) If either condition set out in article 7 is 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 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);

(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 England and Wales.

Application, discharge and variation of restraint orders

- 9.—(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 8(4) may be made to the Crown 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 7 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 7 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 7 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

- 10.—(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.
- (2) If an application is made under article 9(2) in relation to a restraint order or an order under article 8(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

- 11.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 10.

(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

12.—(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

13.—(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⁽⁶⁾ 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 10 or 11.

(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)

14.—(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.

(2) The registration Acts are—

- (a) the Land Charges Act 1972⁽⁷⁾;
- (b) the Land Registration Act 2002⁽⁸⁾.

(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

15.—(1) Paragraph (2) applies if—

⁽⁶⁾ 1995 c. 38.
⁽⁷⁾ 1972 c. 61.
⁽⁸⁾ 2002 c. 9.

- (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

16.—(1) If the court appoints a receiver under article 15 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;
- (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(9);

(9) 1986 c. 32.

- (b) section 78 of the Criminal Justice Act 1988⁽¹⁰⁾;
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990⁽¹¹⁾;
 - (d) section 27 of the Drug Trafficking Act 1994⁽¹²⁾;
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996⁽¹³⁾.
- (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

- 17.—(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 15, 27 or 30.

⁽¹⁰⁾ 1988 c. 33.

⁽¹¹⁾ S.I. 1990/2588 (N.I. 17).

⁽¹²⁾ 1994 c. 37.

⁽¹³⁾ S.I. 1996/1299 (N.I. 9).