
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 4

INTERPRETATION

Property

49.—(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 82 of the Act (free property)(**1**).

(3) The rules in paragraphs (a) and (c) to (g) of section 84(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 2 of the Act.

Tainted gifts

50.—(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.

Gifts and their recipients

51.—(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.

(1) Section 82(f) was amended by paragraph 5 of Schedule 6 to the Serious Organised Crime and Police Act 2005.

(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

52.—(1) Subject to article 53, 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(2);
- (b) section 78 of the Criminal Justice Act 1988(3);
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(4);
- (d) section 27 of the Drug Trafficking Act 1994(5);
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(6).

Value of tainted gifts

53.—(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 52.

Meaning of “defendant”

54. In this Part “defendant”—

- (a) in relation to a restraint order means—

(2) 1986 c. 32.
(3) 1988 c. 33.
(4) S.I. 1990/2588 (N.I. 17).
(5) 1994 c. 37.
(6) S.I. 1996/1299 (N.I. 9).

- (i) in a case in which the first condition in article 7 is satisfied, the alleged offender;
 - (ii) in a case in which the second condition in article 7 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

55. In this Part—

“relevant Director” has the meaning—

- (a) in the context of an external request, set out in article 6(4);
- (b) in the context of an external order, set out in article 18(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).