

---

STATUTORY INSTRUMENTS

---

**1991 No. 1468**

**The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1991**

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1991 and shall come into force on 1st July 1991.

(2) This Order extends to Scotland only.

**Interpretation**

2.—(1) In this Order—

“a court of a designated country” includes a court of any state or territory of a designated country;

“appropriate authority of a designated country” means—

- (a) the authority specified opposite that country in Schedule 2 to this Order; or
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order;

“designated country” means a country or territory designated under article 4 of this Order;

“drug trafficking offence” means any offence corresponding to or similar to—

- (a) an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971<sup>(1)</sup> (production, supply and possession for supply of controlled drugs);
- (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
- (c) an offence under—
  - (i) section 50(2) or (3) of the Customs and Excise Management Act 1979<sup>(2)</sup> (improper importation),
  - (ii) section 68(2) of that Act (exportation), or
  - (iii) section 170 of that Act (fraudulent evasion),in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;
- (d) an offence under section 43 of the Criminal Justice (Scotland) Act 1987<sup>(3)</sup>;
- (e) an offence under section 12, 14 or 19 of the 1990 Act;

---

<sup>(1)</sup> 1971 c. 38.

<sup>(2)</sup> 1979 c. 2.

<sup>(3)</sup> 1987 c. 41.

- (f) an offence of conspiring, inciting or attempting to commit any of these offences.  
“the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990.
- (2) This Order applies to property whether it is situated in Scotland or elsewhere.
- (3) The following provisions shall have effect for the interpretation of this Order:–
- (a) proceedings are instituted in a designated country when–
- (i) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 to this Order has been taken there in respect of an alleged drug trafficking offence; or
  - (ii) an application has been made to a court in a designated country for an external forfeiture order,
- and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;
- (b) proceedings are concluded–
- (i) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;
  - (ii) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered, or otherwise).
- (4) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

### **External forfeiture orders**

3.—(1) An order made by a court in a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence is referred to in this Order as an “external forfeiture order”.

(2) In paragraph (1) above the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

### **Designation of countries and territories**

4. Each of the countries and territories specified in Schedule 2 to this Order is hereby designated for the purposes of section 9 of the 1990 Act.

### **Cases in which a restraint order may be made**

- 5.—(1) Where–
- (a) proceedings which might result in an external forfeiture order being made have been instituted against a person in a designated country and–
    - (i) the proceedings have not been concluded; and
    - (ii) either an external forfeiture order has been made in the proceedings or it appears to the Court of Session that there are reasonable grounds for believing that such an order may be made in them; or
  - (b) it appears to the Court of Session that proceedings which might result in an external forfeiture order being made are to be instituted against a person in a designated country and that there are reasonable grounds for believing that an external forfeiture order may be made in them,

the Court of Session may, on the application of the Lord Advocate, make in respect of the person such order (in this Act referred to as a “restraint order”) as is described in article 6 of this Order. Any such application shall be heard in chambers.

- (2) Subject to paragraph (3) below, the Court of Session may, at the instance of—
- (a) the Lord Advocate, at any time vary or recall a restraint order in relation to any person or to any property;
  - (b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property.

(3) Rules of court may provide that any application under paragraph (2) above shall be made within such period of the applicant receiving notice of the restraint order as may be specified in the Rules; and in the period between such application and any decision of the court as regards recalling that order the powers of any administrator appointed as regards property of the applicant shall be subject to the restriction that the administrator shall not realise the property.

(4) Where, a restraint order having been made by virtue of paragraph (1)(a) above, the proceedings in relation to which the external forfeiture order was made or which might have resulted in an external forfeiture order being made, are concluded, the Lord Advocate shall apply to the Court of Session for recall of the restraint order and the Court shall grant the application.

(5) Where the Court of Session has made a restraint order under paragraph (1)(b) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the Court of Session considers reasonable.

### **Restraint orders**

6.—(1) A restraint order is an order interdicting the person in respect of whom it is made from dealing with any property liable to forfeiture that is to say any property in respect of which an external forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in article 5(1) of this Order, but the order may contain conditions and exceptions to which such interdict shall be subject.

(2) A restraint order may provide for the service on, or the provision of notice to, persons affected by the order in such manner as the Court of Session may direct.

### **Seizure of property affected by restraint order**

7.—(1) A constable or a person commissioned by the Commissioners of Customs and Excise may, for the purpose of preventing realisable property of a person subject to a restraint order from being removed from Scotland, seize the property.

(2) Property seized under subsection (1) above shall be dealt with in accordance with the directions of the Court of Session.

### **Arrestment of property affected by restraint order**

8.—(1) On the application of the Lord Advocate, the Court of Session may, in respect of property in Scotland affected by a restraint order (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor.

(2) Subject to the provisions of this Order, such warrant shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.

(3) That an arrestment has been executed under paragraph (2) above in respect of property shall not prejudice the exercise of an administrator’s powers under or for the purposes of this Order in respect of that property.

(4) No arrestment executed under paragraph (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply for the recall, or as the case may be restriction, of the arrestment accordingly.

### **Interdict of person not subject to restraint order**

9.—(1) The Court of Session may, where it has granted a restraint order, interdict a person not subject to that order from dealing with property affected by it while it is in force; and the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.

(2) Paragraph (2) of article 5 of this Order applies in relation to an interdict under paragraph (1) above as the said paragraph (2) applies in relation to a restraint order.

(3) An interdict under paragraph (1) above shall not be effective against a person unless and until he is served with a copy both of it and of the restraint order.

### **Administrators**

10.—(1) On the application of the Lord Advocate the Court of Session may as regards property—

- (a) affected by a restraint order, appoint a person to manage, or otherwise deal with, the property; or
- (b) where an external forfeiture order has been registered in the Court of Session under article 19 of this Order, appoint a person (or empower an appointee under sub-paragraph (a) above) to realise the property,

in accordance with the Court's directions and may (whether on making the appointment or from time to time) require any person having possession of the property to give possession of it to the appointee (any such appointee being in this Order referred to as an "administrator").

(2) A requirement under paragraph (1) above may relate to the property generally or to particular such property and may be subject to such exceptions and conditions as may be specified by the Court.

(3) On a requirement being imposed under paragraph (1) above—

- (a) the clerk of court shall forthwith so notify—
  - (i) the person in respect of whom the restraint order, or as the case may be the external forfeiture order, has been made; and
  - (ii) any other person named in the requirement as being subject to it; and
- (b) any dealing of or with such person in relation to the property shall be of no effect in a question with the administrator unless whoever dealt with the person had, at the time when the dealing occurred, no knowledge of the appointment.

(4) The Court of Session, at the instance of any person having an interest, may at any time—

- (a) vary or withdraw a requirement imposed under paragraph (1) above; or
- (b) without prejudice to the powers and duties of an administrator pending a decision under this sub-paragraph, on cause shown, remove the administrator from office.

(5) On the death or resignation of the administrator, or on his removal from office under paragraph (4)(b) above or article 12 of this Order, the Court of Session shall appoint a new administrator. Such of the property (if any) as was, by virtue of article 12(3) of this Order, vested in the administrator who has died, resigned or been removed shall forthwith vest in the new administrator; and any requirement imposed under paragraph (1) above shall, on the person subject to the requirement being notified in writing of the appointment by the appointee, apply in relation to the appointee instead of in relation to his predecessor.

(6) The administration of property by an administrator shall be deemed continuous notwithstanding any temporary vacancy in that office.

(7) Any appointment under this section shall be on such conditions as to caution as the accountant of court may think fit to impose; but the premium of any bond of caution or other security thereby required of the administrator shall be treated as part of his outlays in his actings as such.

(8) Without prejudice to article 12 of this Order section 6 of the Judicial Factors (Scotland) Act 1889(4) (supervision of judicial factors) shall not apply in relation to an appointment under this article.

### **Functions of administrators**

11.—(1) Subject to article 12 of this Order, an administrator—

- (a) shall be entitled to take possession of, and if appointed (or empowered) under paragraph (b) of article 10(1) of this Order shall as soon as practicable take possession of, the property as regards which he has been appointed and of any document which both—
  - (i) is in the possession or control of the person (in this article referred to as “A”) in whom the property is vested (or would be vested but for an order made under paragraph (3) of this article); and
  - (ii) relates to the property or to A’s assets, business or financial affairs;
- (b) shall be entitled to have access to, and to copy, any document relating to the property or to A’s assets, business or financial affairs and not in such possession or control as is mentioned in sub-paragraph (a) above;
- (c) may bring, defend or continue any legal proceedings relating to the property;
- (d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;
- (e) may, if the administrator considers that to do so would be beneficial for the management or realisation of the property—
  - (i) carry on any business of A;
  - (ii) exercise any right of A as holder of securities in a company;
  - (iii) enter into any contract, or execute any deed, as regards the property or as regards A’s business;
- (f) may, where any right, option or other power forms part of A’s estate, make payments or incur liabilities with a view to—
  - (i) obtaining property which is the subject of; or
  - (ii) maintaining,the right, option or power;
- (g) may effect or maintain insurance policies as regards the property or A’s business;
- (h) may sell, purchase or exchange property or discharge any security for an obligation due to A;

Provided that it shall be incompetent for the administrator or an associate of his to purchase any of A’s property in pursuance of this sub-paragraph;

- (i) may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor;

(ii) may discharge any of his functions through agents or employees:

Provided that the administrator shall be personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator by virtue of article 13(1) and (3) of this Order;

(k) may take such professional advice as he may consider requisite for the proper discharge of his functions;

(l) may at any time apply to the Court of Session for directions as regards the discharge of his functions;

(m) may exercise any power specifically conferred on him by the Court of Session, whether such conferral was at the time of his appointment or on his subsequent application to the Court in that regard; and

(n) may do anything incidental to the above powers and duties.

(2) Subject to the proviso to sub-paragraph (h) of paragraph (1) above—

(a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that paragraph; and

(b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.

(3) The exercise of a power mentioned in any of sub-paragraphs (c) to (i) above shall be in A's name except where and in so far as an order made by the Court of Session under this paragraph (either on its own motion or on the application of the administrator) has vested the property in the administrator (or in his predecessor in that office).

### **Supervision of administrators**

**12.—**(1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by this Order; and in particular an administrator proposing to exercise functions conferred by any of sub-paragraphs (c) to (n) of paragraph (1) of article 11 of this Order shall first obtain the consent of the accountant of court to such exercise.

(2) If it appears to the accountant of court that an administrator has, without reasonable cause, failed to perform a duty imposed on him by any provision of this Order, he shall report the matter to the Court of Session which, after giving the administrator an opportunity to be heard as regards the matter, may remove the administrator from office, censure him or make such other order as the circumstances of the case may appear to the Court to require.

### **Accounts and remuneration of administrator**

**13.—**(1) The administrator shall keep such accounts in relation to his intromissions with the property as regards which he is appointed as the Court of Session may require and shall lodge these accounts with the accountant of court at such times as may be fixed by the Court in that regard; and the accountant of court shall audit the accounts and issue a determination as to the amount of outlays and, on the basis mentioned in paragraph (3) below, remuneration payable to the administrator in respect of those intromissions.

(2) Not later than two weeks after the issuing of a determination under paragraph (1) above, the administrator or the Lord Advocate may appeal against it to the Court of Session.

(3) The basis for determining the amount of remuneration payable to the administrator shall be the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.

(4) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

#### **Further provision as to administrators**

14.—(1) where an administrator takes any action—

- (a) in relation to property which is not liable to recovery under an external forfeiture order, being action which he would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of an administrator so appointed shall, be paid by the Lord Advocate.

#### **Discharge of administrator**

15. After an administrator has lodged his final accounts under article 13 of this Order, he may apply to the accountant of court to be discharged from office; and such discharge, if granted, shall have the effect of freeing him from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising the functions conferred on him by this Order.

#### **Rules of court as regards accountant of court's supervision etc of administrators**

16. Without prejudice to section 5 of the Court of Session Act 1988(5) (power, in relation to certain statutory powers and duties, to regulate procedure etc. by Act of Sederunt), provision may be made by rules of court as regards (or as regards any matter incidental to) the accountant of court's powers and duties under this Order in relation to the functions of administrators.

#### **Disposal of forfeited property**

17.—(1) Where an external forfeiture order has been registered in the Court of Session under article 19 of this Order, the Court of Session may, on the application of the Lord Advocate, order the forfeiture of the property specified in the external forfeiture order.

(2) Property forfeited under paragraph (1) above shall be disposed of in accordance with the court's directions.

(3) The court shall not in respect of any property exercise the powers conferred by paragraph (1) and (2) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

#### **Exercise of powers by Court of Session or administrator**

18.—(1) This article applies to the powers conferred on the Court of Session by articles 5 and 17 above or on a administrator appointed under article 10 of this Order.

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an external forfeiture order registered in the Court of Session under article 19 of this Order or, as the case may be, with a view to recovering property which may become liable to be recovered under any external forfeiture order which may be made in the case of any person against

---

(5) 1988 c. 36; section 436 was substituted by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 71.

whom proceedings which may result in an external forfeiture order being made have been or are to be instituted in a designated country.

### **Registration of external enforcement orders**

**19.**—(1) On an application made by or on behalf of the Government of a designated country, the Court of Session may register an external forfeiture order made there if—

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Scotland would not be contrary to the interests of justice.

(2) In paragraph (1) above “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or suspension of or delay in execution of any penalty or sentence.

(3) The Court of Session shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

### **Proof of orders and judgment of court in a designated country**

**20.**—(1) For the purposes of this Order—

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purpose of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

### **Evidence in relation to proceedings and orders in a designated country**

**21.**—(1) For the purposes of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) that an external forfeiture order is in force and is not subject to appeal;
- (c) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or



- (e) that an order (however described) made by a court of the designated country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence,

shall, in any proceedings in the Court of Session, be sufficient evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be sufficient evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

#### **Certificate of appropriate authority**

**22.** Where in relation to any designated country no authority is specified in Schedule 2 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

#### **Representation of government of a designated country**

**23.** A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Lord Advocate to act on its behalf in any proceedings in the Court of Session under any provision of this Order.

*G.I. de Deney*  
Clerk of the Privy Council