
STATUTORY INSTRUMENTS

2005 No. 3179

The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Northern Ireland) Order 2005

PART 4

RECEIVERS AND PROCEDURE

Protection of receiver appointed under articles 11 and 21

25.—(1) If a receiver appointed under article 11 or 21—

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

Further applications by receivers

26.—(1) This article applies to a receiver appointed under article 11 or 21.

(2) The receiver may apply to the High Court if he is appointed under article 11 or to the Crown Court if he is appointed under article 21 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 11 or to the Crown Court if the receiver is appointed under article 21—

- (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

27.—(1) The following persons may apply to the High Court to vary or discharge an order made under article 11 or 12, or to the Crown Court to vary or discharge an order made under article 21 or 22—

- (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 11 or 12—
- (a) if the conditions in article 4 were satisfied by virtue of the fact that proceedings had started, the court must discharge the order if at the conclusion of the proceedings no external forfeiture order has been made, or if within a reasonable time an external forfeiture order has not been registered under Part 3 of this Order;
 - (b) if the conditions were satisfied by virtue of the fact that an investigation had started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

Management receivers: discharge

28.—(1) This article applies if—

- (a) a receiver stands appointed under article 11 in respect of property which is identified in the restraint order (the management receiver), and
- (b) the court appoints a receiver under article 21.

(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 12.

(3) Paragraph (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under article 12(2)(d).

(4) If the management receiver complies with an order under paragraph (2) he is discharged—

- (a) from his appointment under article 11;
- (b) from any obligation under this Order arising from his appointment.

(5) 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

29.—(1) If on an application for an order under any of articles 11, 12, 21 or 22 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the court makes an order under any of articles 11, 12, 21 or 22, 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 26 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 26 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 27—

- (a) the person who applied for the order in respect of which the application was made;

- (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

30.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 29.

(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

31.—(1) This article applies to—

- (a) the powers conferred on a court by this Order;
- (b) the powers of a receiver appointed under article 11 or 21.

(2) The powers—

- (a) must be exercised with a view to the value for the time being of specified property being made available (by the property's realisation) for satisfying an external forfeiture order that has been or may be made against the defendant;
- (b) must be exercised, in a case where an external forfeiture order has not been made, with a view to securing that there is no diminution in the value of the property identified in the 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 forfeiture order against the defendant that has been or may be registered under article 18;
- (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 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 forfeiture 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 this Order

32.—(1) An appeal to the Court of Appeal under this Order lies only with the leave of that Court.

(2) In relation to appeals to the Court of Appeal under this Order, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980(1), subject to any specified modifications.

(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 7, 19 or 29 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 this Order

33. In relation to appeals to the House of Lords under this Order, 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.

(1) 1980 c. 47.