

2008 No. 302

PROCEEDS OF CRIME

**The Proceeds of Crime Act 2002 (External Requests and Orders)
(Amendment) Order 2008**

Made - - - - - *12th February 2008*

Laid before Parliament *19th February 2008*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 12th day of February 2008

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 444 of the Proceeds of Crime Act 2002(a), is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 and, subject to paragraph 2, shall come into force on 1st April 2008.

(2) Article 3 shall come into force on 6th April 2008.

(3) In this Order “the 2005 Order” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(b).

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

2.—(1) The 2005 Order is amended as follows.

(2) In article 2 (interpretation), omit the definition of “the Agency”.

(3) In article 3(7) (payment of expenses to insolvency practitioners)—

(a) in paragraph (a), for “, 34(3), 35(2) or 36(3)” substitute “or 34(3)”; and

(b) in paragraph (c), for “, 120(3), 121(2) or 122(3)” substitute “or 120(3)”.

(4) Omit article 6(1)(a) (Secretary of State may refer external request to the Director of the Agency).

(a) 2002 c.29. Section 444 was amended by section 108(2) and (3) of the Serious and Organised Crime and Police Act 2005 (c.15) and by section 74(2)(f) of and paragraphs 121 and 138 of Part 6 of Schedule 8 to the Serious Crime Act 2007 (c. 27).
(b) S.I. 2005/3181.

(5) After article 16(8) (opportunity for persons to make representations before powers conferred on management receivers to manage or otherwise deal with property), insert—

“(8A) Paragraph (8), so far as relating to the power mentioned in paragraph (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”.

(6) In article 17(6)(b) (opportunity for a receiver to be heard before the court may stay or impose terms on proceedings in relation to property where a restraint order has been made or applied for), for “, 27 or 30” substitute “or 27”.

(7) Omit article 18(1)(a) (Secretary of State may refer an external order to the Director of the Agency).

(8) In articles 27(2) (appointment of enforcement receivers) and 28(1) (action of the court on the application of the relevant Director in relation to a monetary external order), omit “, other than the Director of the Agency,”.

(9) After article 28(8) (opportunity for persons to make representations before powers conferred on enforcement receivers to manage or otherwise deal with property), insert—

“(8A) Paragraph (8), so far as relating to the power mentioned in paragraph (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”.

(10) In article 29 (powers of enforcement receivers in respect of external orders for the recovery of specified property)—

(a) in paragraph (1), omit “(other than the Director of the Agency)”; and

(b) after paragraph (7), insert—

“(7A) Paragraph (7), so far as relating to the power mentioned in paragraph (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”.

(11) Omit articles 30 to 32 (appointment and powers of Director of Agency’s receivers).

(12) Omit articles 35 and 36 (application of sums by Director of Agency’s receivers and Director of Agency).

(13) In article 38(6)(a) (opportunity for the relevant Director to be heard before the court may stay or impose terms on proceedings in relation to property where an enforcement receiver has been appointed or applied for), omit “(other than the Director of the Agency)”.

(14) Omit article 39 (restrictions relating to Director of the Agency’s receivers).

(15) In articles 40 and 41(1) (protection of and further applications by receivers appointed under articles 15, 27 and 30), for “, 27 or 30” substitute “or 27”.

(16) In article 42(1) (persons who may apply for the variation and discharge of receiver orders), for “to 32” substitute “to 29”.

(17) In article 43 (management receivers: discharge)—

(a) in paragraph (1)(b), omit the words from “or” to “article 30”; and

(b) omit paragraph (3).

(18) In article 44 (appeal to Court of Appeal about receivers)—

(a) in paragraphs (1) and (2), for “, 27 to 29, 31 or 32” substitute “or 27 to 29”; and

(b) in paragraph (5)(a), omit the words from “or”, where it first appears, to “the Agency”.

(19) In article 46(1)(b) (application of this article to powers of a receiver appointed under article 15, 27 or 30), for “, 27 or 30” substitute “or 27”.

(20) Omit article 93(1)(a) (Secretary of State may refer an external request to the Director of Agency).

(21) After article 102(8) (opportunity for persons to make representations before powers conferred on management receivers to manage or otherwise deal with property), insert—

“(8A) Paragraph (8), so far as relating to the power mentioned in paragraph (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”.

(22) In article 103(5)(b) (opportunity for a receiver to be heard before the court may stay or impose terms on proceedings in relation to property where a restraint order has been made or applied for), for “, 113 or 116” substitute “or 113”.

(23) Omit article 104(1)(a) (Secretary of State may refer an external order to the Director of Agency).

(24) In articles 113(2) (appointment of enforcement receivers) and 114(1) (action of the court on the application of the relevant Director in relation to a monetary external order), omit “, other than the Director of the Agency,”.

(25) After article 114(8) (opportunity for persons to make representations before powers conferred on enforcement receivers to manage or otherwise deal with property) insert—

“(8A) Paragraph (8), so far as relating to the power mentioned in paragraph (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”.

(26) In article 115 (powers of enforcement receivers in respect of external orders for the recovery of specified property)—

(a) in paragraph (1) omit “(other than the Director of the Agency)”; and

(b) after paragraph (7) insert—

“(7A) Paragraph (7), so far as relating to the power mentioned in paragraph (2)(b), does not apply to property which—

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”.

(27) Omit articles 116 to 118 (appointment and powers of Director of Agency’s receivers).

(28) Omit articles 121 and 122 (application of sums by Director of Agency’s receivers and Director of Agency).

(29) In article 124(5)(a) (opportunity for the relevant Director to be heard before the court may stay or impose terms on proceedings in relation to property where an enforcement receiver has been appointed or applied for), omit “(other than the Director of the Agency)”.

(30) Omit article 125 (restrictions relating to Director of Agency’s receivers).

(31) In articles 126 and 127(1) (protection of and further applications by receivers appointed under articles 101, 113 and 116), for “, 113 or 116” substitute “or 113”.

(32) In article 127(2)(b) and (3) (applications to be made to the Crown Court if the receiver is appointed under article 113 or 116), omit “or 116”.

(33) In article 128(1) (persons who may apply for the variation and discharge of receiver orders), for “to 118” substitute “to 115”.

(34) In article 129 (management receivers: discharge)—

(a) in paragraph (1)(b), omit the words from “or” to “article 116”; and

(b) omit paragraph (3).

(35) In article 130 (appeal to Court of Appeal about receivers)—

(a) in paragraphs (1) and (2), for “, 113 to 115, 117 or 118” substitute “or 113 to 115”; and

(b) in paragraph (5)(a), omit the words from “or”, where it first appears, to “the Agency”.

(36) In article 132(1)(b) (application of this article to powers of a receiver appointed under article 101, 113 or 116), for “, 113 or 116” substitute “or 113”.

(37) In article 151(7) (enforcement authority to nominate a suitably qualified person for appointment as interim receiver under interim receiving order), for “Agency” substitute “enforcement authority”.

(38) After article 183(6) (amount of compensation to be paid under a recovery order in default of agreement in respect of associated and joint property), insert—

“(7) In subsection (5) the reference to the enforcement authority is, in the case of an enforcement authority in relation to England and Wales or Northern Ireland, a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned.”

(39) In article 191 (applying realised proceeds)—

(a) in paragraph (3)—

(i) for “Director” substitute “enforcement authority (unless it is the Scottish Ministers)”; and

(ii) for “him” substitute “it”; and

(b) in paragraph (4) for “Agency” substitute “enforcement authority concerned”.

(40) After article 194(9) (amount of compensation to be paid where court does not decide property is recoverable or associated property), insert—

“(10) In the case of an enforcement authority in relation to England and Wales or Northern Ireland—

(a) the reference in paragraph (5) to the enforcement authority is a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned, and

(b) the reference in paragraph (8) to the enforcement authority is a reference to the enforcement authority which obtained the recovery order concerned.”

(41) Omit article 210 (restriction on performance of Director’s functions by police).

(42) In article 213(1) (general interpretation)—

(a) omit the definition of “Director”; and

(b) in the definition of “enforcement authority”—

(i) for paragraph (a), substitute—

“(a) in relation to England and Wales, means SOCA, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office;” and

(ii) after paragraph (b), insert—

“(c) in relation to Northern Ireland, means SOCA, the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.”

(c) after paragraph (8), insert—

“(8A) In relation to an order in England and Wales or Northern Ireland which is a recovery order, a property freezing order, an interim receiving order or an order under article 187, references to the enforcement authority are, unless the context otherwise requires, references to the enforcement authority which is seeking, or (as the case may be) has obtained, the order.”

Civil recovery management receivers

3.—(1) After article 150 of the 2005 Order (property freezing orders: restrictions on proceedings and remedies), insert—

“Receivers in connection with property freezing orders

150A.—(1) Paragraph (2) applies if—

- (a) the High Court makes a property freezing order on an application by an enforcement authority, and
- (b) the authority applies to the court to proceed under paragraph (2) (whether as part of the application for the property freezing order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any property to which the property freezing order applies.

(3) An application for an order under this article may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this article, the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the enforcement authority.

(6) The enforcement authority may apply a sum received by it under article 191(2) in making payment of the remuneration and expenses of a receiver appointed under this article.

(7) Paragraph (6) does not apply in relation to the remuneration of the receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

Powers of receivers appointed under article 150A

150B.—(1) If the High Court appoints a receiver under article 150A on an application by an enforcement authority, the court may act under this article on the application of the authority.

(2) The court may by order authorise or require the receiver—

- (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 2 (management powers) in relation to any property in respect of which the receiver is appointed,
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed—

- (a) to bring the property to a place (in England and Wales, or as the case may be, Northern Ireland) specified by the receiver or to place it in the custody of the receiver (if, in either case, he is able to do so),
- (b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place them in the custody of the receiver.

(5) In paragraph (4), “document” means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this article.

(7) If—

- (a) the receiver deals with any property which is not property in respect of which he is appointed under article 150A, and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Supervision of article 150A receiver and variations

150C.—(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under article 150A—

- (a) the receiver,
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned,
- (c) any person affected by any action taken by the receiver,
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under paragraph (1), the court must give an opportunity to be heard to—

- (a) the receiver,
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned,
- (c) any person who may be interested in the application under paragraph (1).

(3) The court may at any time vary or set aside the appointment of a receiver under article 150A, any order under article 150B or any directions under this article.

(4) Before exercising any power under paragraph (3), the court must give an opportunity to be heard to—

- (a) the receiver,
- (b) the parties to the proceedings for the appointment of the receiver, for the order under article 150B or, as the case may be, for the directions under this article,
- (c) the parties to the proceedings for the property freezing order concerned,
- (d) any person who may be affected by the court’s decision.”.

(2) In articles 184(4)(b) and 188(7)(b) of the 2005 Order (recovery orders and consent orders: recovery of costs of pension scheme trustees or managers) after “enforcement authority,” insert “receiver appointed under article 150A.”.

Amendment to the Limitation Act 1980

4.—(1) Section 27B of the Limitation Act 1980(a) (actions for recovery of property for purposes of an external order) is amended as follows.

(2) In subsections (2) and (4), for “Director’s” substitute “relevant person’s”.

(3) After subsection (7), insert—

“(8) In this section “relevant person” means—

- (a) the Serious Organised Crime Agency,
- (b) the Director of Public Prosecutions,
- (c) the Director of Revenue and Customs Prosecutions, or

(a) 1980 c.58. Section 27B was inserted by article 201 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181).

(d) the Director of the Serious Fraud Office.”.

Amendment to the Limitation (Northern Ireland) Order 1989

5.—(1) Article 72B of the Limitation (Northern Ireland) Order 1989^(a) (actions for recovery of property for purposes of an external order) is amended as follows.

(2) In paragraphs (2) and (4), for “Director’s” substitute “relevant person’s”.

(3) After paragraph (7) insert—

“(8) In this Article “relevant person” means—

- (a) the Serious Organised Crime Agency,
- (b) the Director of the Serious Fraud Office, or
- (c) the Director of Public Prosecutions for Northern Ireland.”.

Judith Simpson
Clerk of the Privy Council

^(a) S.I. 1989/1339 (N.I. 11). Article 72B was inserted by article 201 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ('the 2005 Order') in line with the amendments made to the Proceeds of Crime Act 2002 ('the 2002 Act') by section 74(2) of and Schedule 8 to the Serious Crime Act 2007 ('the 2007 Act'). The 2005 Order makes provision for dealing, in different parts of the United Kingdom, with external requests (a request by an overseas authority to prohibit dealing with specified property) and external orders (an order made by an overseas court for the recovery of specified property or money where property is found or believed to have been obtained as a result of or in connection with criminal conduct.)

The amendments made to the 2002 Act by the 2007 Act abolish the confiscation functions of the Assets Recovery Agency ('ARA') and its Director, and transfer the civil recovery functions of the ARA and its Director to the enforcement authority (which has the meaning given to it by article 213 of the 2005 Order as amended by article 2(42)(b) and (c) of this Order). This Order amends the 2005 Order accordingly and makes other minor and consequential amendments corresponding to those made to the 2002 Act by the 2007 Act. These include amendments to the Limitation Act 1980 and the Limitation (Northern Ireland) Order 1989 to amend the references to the Director to the 'relevant person' (as defined in articles 4(3) and 5(3)) in the provisions extending the limitation period for proceedings under Part 5 of the 2005 Order for a recovery order to give effect to an external order.

This Order also inserts new articles 150A to 150C into the 2005 Order, relating to civil recovery management receivers, which correspond to sections 245E to 245G of the 2002 Act, inserted by section 83 of the 2007 Act.

£3.00

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E1946 2/2008 181946T 19585