

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND ORDERS)
ORDER 2005 (ENGLAND AND WALES) (APPEALS UNDER PART 2)
(AMENDMENT) ORDER 2015

2015 No. 1856

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (England and Wales)(Appeals Under Part 2) Order 2012 (SI 2012/138) (“the 2012 Appeals Order”). The amendments provide for appeals to the Court of Appeal and Supreme Court in relation to an order for securing compliance with an external order under POCA (“a compliance order”). The power to make a compliance order is in article 24A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (SI 2005/3181)(“the 2005 Order”). The new power provided by article 24A was inserted by article 12 of the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015 (SI 2015/1750)(“the 2015 Order”). This new power will commence on the same day as this Order, on 30 November 2015.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This Order is made in exercise of the powers conferred by articles 47(3) and 48(2) of the 2005 Order. The 2005 Order was made under sections 444 and 459(2) of the Proceeds of Crime Act 2002. This Order amends the 2012 Appeals Order, which provides procedure for appeals under Part 2 of the 2005 Order.
- 4.2 The 2012 Appeals Order makes provision corresponding to provisions (subject to specified modifications) in the Criminal Appeal Act 1968 (the 1968 Act). The 1968 Act sets out the procedure for general domestic criminal appeals.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Part 2 of the 2005 Order provides a regime to provide assistance to overseas authorities and courts for the restraint and confiscation of assets. This Order amends the 2012 Appeals Order which provides appeals procedure in relation to proceedings in England and Wales under the 2005 Order. The 2012 Appeals Order parallels the general provisions under the 1968 Act relating to criminal appeals procedure. This amending Order reflects amendments that have been made to the 2005 Order by the 2015 Order.
- 7.2 Article 12 of the 2015 Order inserts new articles 24A, 24B and 24C into the 2005 Order. Article 8(4) of the 2005 Order confers on the Crown Court, when making a restraint order, the power to make such order as it believes appropriate for the purposes of ensuring that a restraint order is effective. Article 24A confers a similar power on the Crown Court to make a “compliance order” when registering an external order or at any later time on the application of the relevant Director. An “external order” is an order made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct and is for the recovery of specified property or a specified sum of money (see section 447(2) of POCA).
- 7.3 The Court may impose any restrictions, prohibitions or requirements as part of a compliance order that the Court considers are appropriate for the purpose of ensuring that the external order is effective.
- 7.4 New article 24B provides for a right of appeal to the Court of Appeal and article 24C provides an appeal subsequently to the Supreme Court, by the relevant Director against a decision by the Crown Court not to make a compliance order, or by the relevant Director or person affected by a compliance order against the decision to make, vary or discharge a compliance order (including the terms of such an order as made or varied). This Order provides that the existing general appeal procedures provided by the 2012 Appeals Order will apply to appeals relating to compliance orders. This will ensure a consistent approach in dealing with such appeals and will ensure that such appeals are subject to the same procedures as other appeals relating to proceedings under Part 2 of the 2005 Order.

8. Consultation outcome

- 8.1 The Order is purely consequential on the amendment made to the 2005 Order by the 2015 Order and so there has been no consultation.

9. Guidance

- 9.1 Guidance is not necessary and will not be issued. The Order amends the 2012 Appeals Order which makes provision corresponding to provisions in the Criminal Appeal Act 1968 and so judges and legal representatives will be familiar with the provisions.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small business.

12. Monitoring & review

- 12.1 Compliance orders will be recorded on the Joint Asset Recovery Database which records all asset recovery cases. The Home Office will therefore be able to monitor their use and the appeals made against such orders.

13. Contact

- 13.1 Stephen Goadby at the Home Office. Telephone: 020 7035 1559 or email stephen.goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.