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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 581**

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

PART 3

EXTERNAL FORFEITURE ORDERS

**Applications to give effect to external forfeiture orders**

13.—(1) On receipt of an external forfeiture order concerning relevant property in Scotland, the Lord Advocate may make an ex parte application to the court to give effect to the order.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1) may be heard in chambers.

**Authentication by an overseas court**

14.—(1) Paragraph (2) applies where an overseas court has authenticated its involvement in—

(a) any judgement;

(b) any order;

(c) any other document concerned with such a judgement or order or proceedings relating to it.

(2) Where this paragraph applies, any statement in the judgement, order or document is admissible in evidence in proceedings under this Part.

**Conditions for the court to give effect to external forfeiture orders**

15.—(1) The court must decide to give effect to an external forfeiture order where all of the following conditions are satisfied.

(2) The first condition is that the external forfeiture order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external forfeiture order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external forfeiture order would not be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998(1)) of any person affected by it.

(5) The fourth condition is that the specified property must not be subject to a charge under—

(a) section 9 of the Drug Trafficking Offences Act 1986(2);

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(1) 1998 c. 42.

(2) 1986 c. 32.

- (b) section 78 of the Criminal Justice Act 1988<sup>(3)</sup>;
- (c) article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(4)</sup>;
- (d) section 27 of the Drug Trafficking Act 1994<sup>(5)</sup>;
- (e) article 32 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(6)</sup>.
- (6) In paragraph (3) “appeal” includes–
  - (a) any proceedings by way of discharging or setting aside the order; and
  - (b) an application for a new trial or suspension or delay in execution of any penalty or sentence.

### **Registration of external forfeiture orders**

- 16.**—(1) Where the court decides to give effect to an external forfeiture order, it must–
- (a) register the order; and
  - (b) provide for notice of the registration to be given to any person affected by it.
- (2) Only an external forfeiture order registered by the court may be implemented under this Order.
- (3) The court may cancel the registration of the external forfeiture order, or vary the property to which it applies, on an application by the Lord Advocate or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in article 15 is not satisfied.
- (4) Notice of an application under paragraph (3) must be given–
- (a) in the case of an application by the Lord Advocate, to any person affected by the registration of the external forfeiture order; and
  - (b) in any other case, to the Lord Advocate and any other person affected by the registration of the external forfeiture order.
- (5) The court shall not cancel the registration of the external forfeiture order or vary the property to which it applies under paragraph (3) unless it gives the Lord Advocate and any person affected by it the opportunity to make representations to it.
- (6) The court must cancel the registration of the external forfeiture order or an application by the Lord Advocate or any person affected by it, if it appears to the court that the order has been satisfied–
- (a) by the surrender of the specified property, or
  - (b) by any other means.
- (7) Where the registration of an external forfeiture order is cancelled or varied under paragraph (3) or (6), the court must provide for notice of this to be given to the Lord Advocate and any person affected by it.

### **Appeal about external forfeiture orders**

- 17.**—(1) If on an application for the court to give effect to an external forfeiture order by registering it, the court decides not to do so, the Lord Advocate may reclaim against the decision.
- (2) If an application is made under article 16(3) or (6) in relation to the registration of an external forfeiture order, the following persons may reclaim against the court’s decision on the application–
- (a) the Lord Advocate;
  - (b) any person affected by the registration.
- (3) On a reclaiming motion under paragraph (1) or (2) the court may–

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(3) 1988 c. 33.

(4) S.I.1990/2588 (N.I. 17).

(5) 1994 c. 37.

(6) S.I. 1996/1299 (N.I. 9).

- (a) confirm or set aside the decision to register; or
- (b) direct the court to register the external forfeiture order (or so much of it as relates to property other than that to which article 15(5) applies).

#### **Appointment of enforcement administrators**

**18.**—(1) This article applies if—

- (a) an external forfeiture order is registered; and
- (b) it is not satisfied within a reasonable time.

(2) On the application of the Lord Advocate the court may appoint an administrator in respect of the specified property.

#### **Powers of enforcement administrators in respect of external forfeiture orders for the recovery of specified property**

**19.**—(1) If the court appoints an administrator under article 18, it may act under this article on the application of the Lord Advocate.

(2) The court may confer on the administrator the following powers in relation to the specified property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property in such manner as the court may specify.

(3) The court may order any person who has possession of the specified property to give possession of it to the administrator.

(4) The clerk of court must notify the offender and any person subject to an order under paragraph (3) of the making of that order.

(5) Any dealing of the offender or any such person in relation to which the order applies is of no effect in a question with the administrator unless the person had no knowledge of the administrator's appointment.

(6) The court—

- (a) may order a person holding an interest in the specified property to make to the administrator such payment as the court specifies in respect of a beneficial interest held by the offender or the recipient of a tainted gift;
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The court must not—

- (a) confer the power mentioned in paragraph (2)(b) or (c) in respect of the property; or
- (b) exercise the power conferred on it by paragraph (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations about it.

(8) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.

(9) Managing or otherwise dealing with property includes—

- (a) selling the property or any part of it or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

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(c) incurring capital expenditure in respect of the property.

**Satisfaction of external forfeiture order**

**20.** A registered external forfeiture order is satisfied when the specified property has been disposed of in accordance with that order.