
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 581

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

PART 4

ADMINISTRATORS AND PROCEDURE

Protection of administrator appointed under article 10 or 18

21.—(1) If an administrator appointed under article 10 or 18—

- (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 that there are reasonable grounds for taking the action,

the administrator 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 that administrator's negligence.

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

Protection of persons affected

22.—(1) This paragraph applies where an administrator is appointed under article 10 or 18.

(2) The following persons may apply to the court—

- (a) any person affected by action taken by the administrator;
- (b) any person who may be affected by action the administrator proposes to take.

(3) On an application under this article the court may make such order as it thinks appropriate.

Recall and variation of order

23.—(1) The Lord Advocate, an administrator and any other person affected by an order made under article 10, 18 or 19 may apply to the court to vary or recall the order.

(2) On an application under this article the court—

- (a) may vary the order;
- (b) may recall the order.

(3) But in the case of an order under article 10—

- (a) if the conditions in article 4 were satisfied by virtue of the fact that proceedings were instituted, the court must recall 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 was instituted the court must recall the order if within a reasonable period proceedings for the offence are not instituted.

Management administrators: discharge

24.—(1) This article applies if—

- (a) an administrator stands appointed under article 10 in respect of property which is identified in the restraint order (the management administrator); and
- (b) the court appoints an administrator under article 18.

(2) The court must order the management administrator to transfer to the other administrator all property held by the management administrator by virtue of the powers conferred by article 10.

(3) If the management administrator complies with an order under paragraph (2) that administrator is discharged—

- (a) from appointment under article 10;
- (b) from any obligation under this Order arising from that appointment.

Appeals

25.—(1) If on an application for an order under article 10, 18 or 19 the court decides not to make one, the Lord Advocate may reclaim in respect of the decision.

(2) If the court makes an order under article 10, 18 or 19 the following persons may reclaim in respect of the court's decision—

- (a) the Lord Advocate;
- (b) any person affected by the Order.

(3) If on an application for an order under article 23 the court decides not to make one, the person who applied for the order may reclaim in respect of the decision.

(4) If the court makes an order under article 23, the following persons may reclaim in respect of the court's decision—

- (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 administrator.

(5) The following persons may reclaim in respect of a decision of the court on an application under article 24—

- (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 administrator.

(6) On a reclaiming motion under this article the court may—

- (a) confirm the decision;
- (b) make such order as it thinks appropriate.

Administrators: further provision

26. Schedule 1 which makes further provision about administrators appointed under articles 10 and 18 has effect.

Administrators: restrictions on proceedings and remedies

27.—(1) Where an administrator is appointed under article 18, the court may sist any action, execution or other legal process in respect of the property to which the order appointing the administrator relates.

(2) If a court (whether the Court of Session or any other court) in which proceedings are pending, in respect of the property is satisfied that an application has been made for the appointment of an administrator or that an administrator has been appointed in relation to that property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by paragraph (2) the court must give an opportunity to be heard to—

- (a) the Lord Advocate;
- (b) if appointed, the administrator.