

## **EXECUTIVE NOTE**

### **THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990 (ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) (SCOTLAND) ORDER 2005 SSI/2005/581**

#### **Introduction**

1. This Order enables assistance to be given to other countries or territories designated under the Order by enforcing a restraint request or a forfeiture order made by an overseas court in respect of anything used or intended for use in connection with the commission of an offence. Instrumentalities of crime (i.e. vehicles) do not come within the scope of powers in respect of the Proceeds of Crime Act 2002 and therefore require separate provision. It is intended that this order will come into force on 31 December 2005.

#### **Background**

2. The Order is made in exercise of the powers conferred by section 9 of the Criminal Justice (International Co-operation) Act 1990 ("the 1990 Act"). It is subject to negative resolution procedure.

3. Under section 9(1) of the 1990 Act, Her Majesty may by Order in Council provide for the enforcement of any order made by a court in a country or territory outside the United Kingdom designated for the purposes of section 9 and which is for the forfeiture and destruction (or other disposal) of anything in respect of which an offence to which section 9 applies has been committed.

4. Section 95 of the Serious Organised Crime and Police Act 2005 replaced section 9(6) of the 1990 Act so that section 9 now applies to any offence that corresponds to or is similar to an offence under the law of Scotland. The amendment was required in order to comply with new international obligations on the instrumentalities of crime, particularly in the United Nations Convention against Transnational Organised Crime and UN Convention against Corruption. These Conventions concern conduct wider than that provided for in the current section 9 order, which is largely limited to drug related offences. This Order in Council therefore replaces the current Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999 in so far as it was made under section 9 of the 1990 Act.

5. The Order brings the requirements for handling overseas requests for instrumentalities of crime into line with procedures for handling overseas requests for assets under the Proceeds of Crime Act 2002 and the Order made under section 444 of that Act. There are separate Orders made under section 9 of the 1990 Act in respect of other jurisdictions in the United Kingdom.

#### **Policy Objectives**

6. The United Kingdom is committed to ratifying the UN Convention against Transnational Organised Crime (UNTOC) and the UN Convention against Corruption (UNCAC) by the end of this year. These conventions lay down rules for international co-

operation in the fight against organised crime in order to strengthen co-operation and to facilitate the recovery and repatriation of stolen assets.

7. The objective of this Order in Council is to provide for the enforcement of foreign requests for the restraint of property while criminal investigations or proceedings are underway and the registration and enforcement of foreign orders for the forfeiture of any instrument used in the commission of an offence (e.g. vehicles).

8. The Order follows as closely as possible the procedure established for the enforcement of external requests for restraint and orders for forfeiture of the proceeds of crime under the Proceeds of Crime (External Requests and Orders) Order 2005 which is made at the same time as this Order. Applications for enforcement of external requests or the registration of external orders will be made on behalf of the Lord Advocate to the Court of Session.

9. If an external request is received for the restraint of property in Scotland, the Order will empower the court to make a restraint order if criminal proceedings have been instituted or a criminal investigation has been started in a designated country and it appears to the court that there are reasonable grounds for believing that, as a result, an external forfeiture order may be made.

10. The Order also provides for the enforcement of an external forfeiture order by the registration of the Order in the Court of Session. The court may also appoint an administrator in respect of the property specified in the external request or order.

### **Consultation**

11. The Scottish Executive Justice Department have kept in close contact with Crown Office and Home Office. Home Office have been working on a similar Order for the rest of the UK.

### **Financial Effects**

12. It is not anticipated that there will be many foreign orders requiring to be enforced in Scotland and the costs involved in enforcing such orders will be absorbed within current budgets. The arrangement is intended to be reciprocal and to enable action overseas on behalf of the Scottish Justice system.

### **Scottish Executive Justice Department**