



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 2

CONFISCATION: ENGLAND AND WALES

Restraint orders

41 Restraint orders

- (1) If any condition set out in section 40 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.
- (2) A restraint order may provide that it applies—
 - (a) to all realisable property held by the specified person whether or not the property is described in the order;
 - (b) to realisable property transferred to the specified person after the order is made.

[^{F1}(2A) A restraint order must be made subject to an exception enabling relevant legal aid payments to be made (a legal aid exception).

- (2B) A relevant legal aid payment is a payment that the specified person is obliged to make—
- (a) by regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and
 - (b) in connection with services provided in relation to an offence which falls within subsection (5),

whether the obligation to make the payment arises before or after the restraint order is made.]

- (3) A restraint order may be made subject to [^{F2} other] exceptions, and an exception may in particular—
 - (a) make provision for reasonable living expenses and reasonable legal expenses;

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- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
- ^{F3}(c)
- (4) [^{F4}But where an exception to a restraint order is made under subsection (3), it] must not make provision for any legal expenses which—
 - (a) relate to an offence which falls within subsection (5), and
 - (b) are incurred by the defendant or by a recipient of a tainted gift.
- (5) These offences fall within this subsection—
 - (a) the offence mentioned in section 40(2) or (3), if the first or second condition (as the case may be) is satisfied;
 - (b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.
- [^{F5}(5A) A legal aid exception—
 - (a) must be made subject to prescribed restrictions (if any) on—
 - (i) the circumstances in which payments may be made in reliance on the exception, or
 - (ii) the amount of the payments that may be made in reliance on the exception,
 - (b) must be made subject to other prescribed conditions (if any), and
 - (c) may be made subject to other conditions.
- (5B) Any other exception to a restraint order may be made subject to conditions.]
- (6) Subsection (7) applies if—
 - (a) a court makes a restraint order, and
 - (b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).
- (7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- [^{F6}(7A) Subsections (7B) and (7C) apply where the Crown Court makes a restraint order (by virtue of the first condition in section 40) as a result of a criminal investigation having been started in England and Wales with regard to an offence.
- (7B) The court—
 - (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
 - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 42(3)).
- (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—
 - (a) must give reasons for its decision, and

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- (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 42(3)).]

[^{F7}(7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.]

- (8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—
- (a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);
 - (b) section 78 of the Criminal Justice Act 1988 (c. 33);
 - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
 - (d) section 27 of the Drug Trafficking Act 1994 (c. 37);
 - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

- (9) Dealing with property includes removing it from England and Wales.

[^{F8}(10) In this section “prescribed” means prescribed by regulations made by the Secretary of State.]

Textual Amendments

- F1** S. 41(2A)(2B) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 46(2)**, 61(2); S.I. 2015/813, art. 3(b)
- F2** Word in s. 41(3) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 46(3)(a)**, 61(2); S.I. 2015/813, art. 3(b)
- F3** S. 41(3)(c) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 46(3)(b)**, 61(2); S.I. 2015/813, art. 3(b)
- F4** Words in s. 41(4) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 46(4)**, 61(2); S.I. 2015/813, art. 3(b)
- F5** S. 41(5A)(5B) inserted (20.3.2015 for specified purposes, 1.6.2015 in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 46(5)**, 61(2); S.I. 2015/813, arts. 2(a)(ii), 3(b)
- F6** S. 41(7A)-(7C) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 11(2)**, 88(1); S.I. 2015/820, reg. 3(h)
- F7** S. 41(7D) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 31**; S.I. 2015/820, reg. 3(q)(iii)
- F8** S. 41(10) inserted (20.3.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 46(6)**, 61(2); S.I. 2015/813, art. 2(a)(iii)

Modifications etc. (not altering text)

- C1** Pt. 2 applied by [Terrorism Act 2000 \(c. 11\)](#), Sch. 8 paras. 8(5A), 34(3A) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 39(2)(5)**; S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7); S.I. 2003/333, art. 2, Sch.)
- C2** Pt. 2 applied by [Police and Criminal Evidence Act 1984 \(c. 60\)](#), ss. 56(5B), 58(8B) (as substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 14(2)(3)**; S.I. 2003/333, art. 2, Sch.)
- C3** Pt. 2 applied (with modifications) (1.6.2015) by [The Restraint Orders \(Legal Aid Exception and Relevant Legal Aid Payments\) Regulations 2015 \(S.I. 2015/868\)](#), regs. 1, **5** (with reg. 4)

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Commencement Information

II S. 41 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#) (with [arts. 5, 10-13](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)