
STATUTORY INSTRUMENTS

1999 No. 673

The Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999

Citation and commencement

1. This Order may be cited as the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999 and shall come into force on 1st May 1999.

Interpretation

2.—(1) In this Order—

“the Act” means the Proceeds of Crime (Scotland) Act 1995;

“appropriate authority of a designated country” means—

- (a) the authority specified opposite that country in Part I or, as the case may be, Part II of Schedule 1 to this Order;
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for that country for the purposes of sections 40 and 41 of the Act, and of the other relevant provisions of the Act as applied by article 4 of this Order;

“a court of a designated country” includes a court of any state or territory of a designated country;

“designated country” means a country or territory designated under article 3 of this Order;

“drug trafficking” has the same meaning as in section 49(2) of the Act.

(2) Proceedings are instituted in a designated country when—

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 2 to this Order has been taken there in respect of an alleged offence, corresponding with or similar to an offence to which Part I of the Act applies or, as the case may be, alleged drug trafficking; or
- (b) where no steps have been specified in relation thereto as mentioned in sub-paragraph (a) above, the accused has been notified in writing in accordance with the laws of the designated country that the appropriate authorities of that country have begun proceedings against him in respect of an offence; or
- (c) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or otherwise).

(4) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be raised or set aside.

Designation of countries and territories

- 3.—(1) There are hereby designated for the purposes of section 40 and 41 of the Act—
- (a) each of the countries and territories specified in Part I of Schedule 1 to this Order, but only in relation to any case in which the external confiscation order which has been or may be made is for the purpose of recovering payments or other rewards or property or other economic advantage received in connection with an offence corresponding with or similar to an offence to which Part I of the Act applies or the value of such payments, property, reward or economic advantage;
 - (b) each of the countries and territories specified in Part II of Schedule 1 to this Order, but only in relation to any case in which the external confiscation order which has been or may be made is for the purpose of recovering payments or other rewards or property or other economic advantage received in connection with drug trafficking, or the value of such payments, property, reward or economic advantage.

Application of the Act

4. In relation to a designated country, Part I of the Act and Part III of the Act so far as it relates to realisable property shall apply, subject to the modifications specified in Schedule 3 to this Order, in relation to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there.

Proof of orders and judgment of court in a designated country

5.—(1) For the purposes of sections 40 and 41 of the Act, and of the other provisions of the Act as applied by article 4 of this Order—

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purpose of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

6.—(1) For the purposes of sections 40 and 41 of the Act, and of the other provisions of the Act as applied by article 4 of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) in a case to which article 2(2)(b) applies, that the accused has been notified as specified in that article;
- (c) that an external confiscation order is in force and is not subject to appeal;

- (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (f) that an order (however described) made by or to be made by a court of the designated country is for, or, as the case may be, will be for recovering payments or other rewards or property or other economic advantage received in connection with:–
 - (i) an offence corresponding with or similar to an offence to which Part I of the Act applies; or
 - (ii) drug trafficking,or the value of such payments, property, reward or economic advantage,

shall, in any proceedings in the Court of Session or the High Court, be sufficient evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be sufficient evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

Certificate of appropriate authority

7. Where in relation to any designated country no authority is specified in Schedule 1 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of sections 40 and 41 of the Act and of the other relevant provisions of the Act as applied by article 4 of this Order, shall be sufficient evidence of that fact.

Representation of government of a designated country

8. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Lord Advocate to act on its behalf in any proceedings in the Court of Session or the High Court under section 41 of the Act or any other provision of the Act as applied by article 4 of this Order.

Satisfaction of confiscation order in a designated country

9.—(1) Where—

- (a) a confiscation order has been made under section 1 of the Act; and
- (b) a request has been sent by the Secretary of State to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this article, and without prejudice to the sufficiency of any evidence which may be sufficient apart from this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Secretary of State, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in Scotland, be sufficient evidence of the facts so stated.

Currency conversion

10.—(1) Where the value of property recovered as described in article 9(1) of this Order is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Court of Session under section 41 of the Act is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Act as applied under article 4 of this Order the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this article a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in the United Kingdom and stating the exchange rate prevailing on a specified date shall be sufficient evidence of the facts so stated.

Revocations

11. The following Orders are hereby revoked namely:—

- (a) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Order 1991**(1)**;
- (b) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment Order 1992**(2)**;
- (c) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment Order 1993**(3)**;
- (d) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment (No.2) Order 1993**(4)**; and
- (e) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment Order 1994**(5)**.

A. K. Galloway
Clerk of the Privy Council

(1) [S.I. 1991/1467](#).
(2) [S.I. 1992/1733](#).
(3) [S.I. 1993/1806](#).
(4) [S.I. 1993/3156](#).
(5) [S.I. 1994/1644](#).