
STATUTORY INSTRUMENTS

2001 No. 953

CRIMINAL LAW, ENGLAND AND WALES

The Proceeds of Crime (Scotland) Act 1995 (Enforcement of Scottish Confiscation Orders in England and Wales) Order 2001

<i>Made</i>	- - - -	<i>14th March 2001</i>
<i>Laid before Parliament</i>		<i>26th March 2001</i>
<i>Coming into force</i>	- -	<i>17th April 2001</i>

At the Court at Buckingham Palace, the 14th day of March 2001

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 42 of the Proceeds of Crime (Scotland) Act 1995(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1. This Order may be cited as the Proceeds of Crime (Scotland) Act 1995 (Enforcement of Scottish Confiscation Orders in England and Wales) Order 2001 and shall come into force on 17th April 2001.

Interpretation

2. In this Order—

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

“administrator” has the same meaning as in paragraph 1 of Schedule 1 to the 1995 Act.

Recognition and enforcement of orders under the 1995 Act

3.—(1) An order to which this article applies shall, subject to the following provisions of this Order, have effect in the law of England and Wales, but shall be enforced in England and Wales only

(1) 1995 c. 43, amended by section 62(1) of, and paragraph 20 of Schedule 1 to, the Crime and Punishment (Scotland) Act 1997, and by section 125(1) of, and paragraphs 11(1) and (3) of Schedule 15 to, the Terrorism Act 2000.

in accordance with the provisions of this Order and any provision made by rules of court as to the manner in which, and conditions subject to which, such orders are to be enforced there.

(2) The functions of a person appointed under Schedule 1 to the 1995 Act shall, subject to the following provisions of this Order, have effect in the law of England and Wales.

(3) If an order to which this article applies is registered under article 4 of this Order—

- (a) the High Court shall have, in relation to its enforcement, the same power,
- (b) proceedings for or with respect to its enforcement may be taken, and
- (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,

as if the order had originally been made in that Court.

(4) The orders to which this article applies are orders of a Scottish court—

- (a) made:
 - (i) under or for the purposes of sections 20, 28, 29, 30, 31, 33(1) and 34 of, and paragraphs 1, 2(3), 4 and 12 of Schedule 1 to, the 1995 Act; and
 - (ii) in connection with an offence (other than a drug-trafficking offence) to which Part I of the 1995 Act applies;
- (b) relating to the exercise by the court of its powers under those sections; or
- (c) relating to administrators in the performance of their functions under the 1995 Act,

but not including an order in proceedings for enforcement of any such order.

(5) In this article and in article 4 below “order” means any order, direction or judgment (by whatever name called).

Provisions supplementary to article 3

4.—(1) The High Court shall, on application made to it in accordance with rules of court for registration of an order to which article 3 of this Order applies, direct that the order shall, in accordance with such rules, be registered in that court.

(2) The High Court shall have the like power to make an order under section 33 of the Supreme Court Act 1981(2) (extended power to order inspection of property etc.) in relation to proceedings brought or likely to be brought under the 1995 Act as if those proceedings had been brought or were likely to be brought in the High Court.

(3) The High Court may, additionally, for the purpose of—

- (a) assisting the achievement in England and Wales of the purposes of orders to which article 3 of this Order applies; or
- (b) assisting administrators in the performance of their functions under or for the purposes of the 1995 Act,

make such orders and do otherwise as seems to it appropriate.

(4) A document purporting to be a copy of an order made by a Scottish court under or for the purposes of Part I, II or III of the 1995 Act and to be certified as such by a proper officer of that court shall, in England and Wales, be received in evidence without further proof.

Exercise of powers

5. Sub-sections (2) to (6) of section 16 of the 1995 Act (exercise of powers by court etc.) shall apply as regards the powers conferred on the High Court under this Order as those sub-sections apply

(2) 1981 c. 54.

as regards the powers conferred on the Scottish courts by the sections mentioned in sub-section (1) of the said section 16;

Provided that sub-section (4) of the said section shall apply as if the words: “and, in relation to a drug trafficking offence, paragraph (b)” were omitted from that section.

Restraint orders—land

6.—(1) The Land Charges Act 1972⁽³⁾ and the Land Registration Act 1925⁽⁴⁾ shall apply—

- (a) in relation to restraint orders made under section 28 of the 1995 Act, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
- (b) in relation to applications for such orders as they apply in relation to pending land actions.

(2) The Lord Advocate or any person conducting a prosecution in Scotland on his behalf shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which such a restraint order, or an application for such an order, relates.

A.K. Galloway
Clerk of the Privy Council

⁽³⁾ 1972 c. 61.
⁽⁴⁾ 1925 c. 21.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement in England and Wales of orders made in Scotland in connection with the confiscation of the proceeds of crime under the Proceeds of Crime (Scotland) Act 1995 (“the 1995 Act”). Provision is made in sections 35, 36, 37 and 38 of the 1995 Act for the enforcement in Scotland of orders made in England and Wales under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994.

Article 3 provides for orders made under sections 20, 28, 29, 30, 31, 33(1) and 34 of, and paragraphs 1, 2(3), 4 and 12 of Schedule 1 to, the 1995 Act in connection with offences (except drug-trafficking offences) to which Part I of that Act applies to have effect in the law of England and Wales. The enforcement of such orders is by the High Court, upon registration of the order in accordance with article 4(1). Article 3 also provides for the functions of an administrator appointed under the 1995 Act to have effect in the law of England and Wales.

Article 4(1) makes provision for the procedure for registration of the orders to which article 3 applies. Paragraph (2) enables the High Court to exercise a specific power to order inspection in connection with court proceedings under the 1995 Act. Paragraph (3) confers upon the High Court a further general, ancillary power to enable it to assist in the achievement of the purposes of Scottish court orders, or in the performance by administrators of their functions under the 1995 Act.

Article 5 provides that in the exercise of its powers under this Order the High Court is to apply the principles applicable to the exercise by a Scottish court of its powers in relation to enforcement of its own orders under the 1995 Act.

Article 6 allows for the protection by registration under the Land Charges Act 1972 and the Land Registration Act 1925 of restraint orders made by a Scottish court under the 1995 Act.