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STATUTORY INSTRUMENTS

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**2005 No. 3179**

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

PART 3

External Forfeiture Orders

**Action on receipt of external forfeiture order in connection with criminal convictions**

14.—(1) Except where paragraph (2) applies, the Secretary of State may refer an external forfeiture order concerning relevant property in Northern Ireland to the Director of Public Prosecutions for Northern Ireland to process it.

(2) This paragraph applies where it appears to the Secretary of State that —

- (a) the order concerns relevant property in Northern Ireland, and
- (b) property specified in the order was found, or was believed, to have been obtained as a result of, or in connection with, criminal conduct involving serious or complex fraud.

(3) Where paragraph (2) applies, the Secretary of State may refer the order to the Director of the Serious Fraud Office to process it.

(4) In this Part “the relevant Director” means the Director to whom an external forfeiture order is referred under paragraph (1) or (3).

**Authentication by the overseas court**

15.—(1) Paragraph (2) applies where an overseas court has authenticated its involvement in—

- (a) any judgment,
- (b) any order,
- (c) any other document concerned with such a judgment or order or proceedings relating to it.

(2) Where this paragraph applies, any statement in the judgment, order or document is admissible in evidence in proceedings under this Part.

**Applications to give effect to external forfeiture orders**

16.—(1) An application may be made by the relevant Director to the Crown Court to give effect to an external forfeiture order.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1) —

- (a) shall include a request to appoint the relevant Director as the enforcement authority for the order;

- (b) may be made on an application to a judge in chambers without giving notice to the other party.

### **Conditions for Crown Court to give effect to external forfeiture orders**

17.—(1) The Crown Court must decide to give effect to an external forfeiture order if it is satisfied that all of the following conditions are met.

(2) The first condition is that the external forfeiture order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external forfeiture order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external forfeiture order would not be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998<sup>(1)</sup>) of any person affected by it.

(5) The fourth condition is that the property whose confiscation is specified in the external forfeiture order must not be subject to a charge under any of the following provisions—

- (a) section 9 of the Drug Trafficking Offences Act 1986<sup>(2)</sup>;
  - (b) section 78 of the Criminal Justice Act 1988<sup>(3)</sup>;
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(4)</sup>;
  - (d) section 27 of the Drug Trafficking Act 1994<sup>(5)</sup>;
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(6)</sup>.
- (6) In paragraph (3) “appeal” includes—
- (a) any proceedings by way of discharging or setting aside the order; and
  - (b) an application for a new trial or stay of execution.

### **Registration of external forfeiture orders**

18.—(1) Where the Crown Court decides to give effect to an external forfeiture order, it must

- (a) register the order in that court;
- (b) provide for notice of the registration to be given to any person affected by it; and
- (c) appoint the relevant Director as the enforcement authority for the order.

(2) Only an external forfeiture order registered by the Crown Court may be implemented under this Order.

(3) The Crown Court may cancel the registration of the external forfeiture order, or vary the property to which it applies, on an application by the relevant Director or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in article 17 is not satisfied.

(4) The Crown Court must cancel the registration of the external forfeiture order, on an application by the relevant Director or any person affected by it, if it appears to the court that the order has been satisfied—

- (a) in the case of an order for the recovery of specified property, by the surrender of the property, or

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(1) 1998 c. 42.  
(2) 1986 c. 32.  
(3) 1988 c. 33.  
(4) S.I. 1990/2588 (N.I. 17).  
(5) 1994 c. 37.  
(6) S.I. 1996/1299 (N.I. 9).

(b) by any other means.

(5) Where the registration of an external forfeiture order is cancelled or varied under paragraph (3) or (4), the Crown Court must provide for notice of this to be given to the relevant Director and any person affected by it.

### **Appeal to Court of Appeal about external forfeiture orders**

**19.**—(1) If on an application for the Crown Court to give effect to an external forfeiture order by registering it, the court decides not to do so, the relevant Director may appeal to the Court of Appeal against the decision.

(2) If an application is made under article 18(3) or (4) in relation to the registration of an external forfeiture order, the following persons may appeal to the Court of Appeal in respect of the Crown Court’s decision on the application—

- (a) the relevant Director;
- (b) any person affected by the registration.

(3) On an appeal under paragraph (1) or (2) the Court of Appeal may—

- (a) confirm or set aside the decision to register; or
- (b) direct the Crown Court to register the external forfeiture order (or so much of it as relates to property other than to which article 17(5) applies).

### **Appeal to House of Lords about external forfeiture orders**

**20.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 19.

(2) An appeal under this article lies at the instance of any person who was a party to the proceedings before the Court of Appeal.

(3) On an appeal under this article the House of Lords may—

- (a) confirm or set aside the decision of the Court of Appeal, or
- (b) direct the Crown Court to register the external forfeiture order (or so much of it as relates to property other than property to which article 17(5) applies).

### **Appointment of enforcement receivers**

**21.**—(1) This article applies if—

- (a) an external forfeiture order is registered, and
- (b) it is not satisfied.

(2) On the application of the relevant Director, the Crown Court may by order appoint a receiver in respect of the property in respect of which the external forfeiture order specifies the recovery.

### **Powers of enforcement receivers in respect of external forfeiture orders for the recovery of specified property**

**22.**—(1) If the court appoints a receiver under article 21, it may act under this article on the application of the relevant Director where the external forfeiture order is for the recovery of property specified in the order (“the specified property”).

(2) The court may by order confer on the receiver the following powers in relation to the specified property—

- (a) power to take possession of the property;

- (b) power to manage or otherwise deal with the property;
  - (c) power to realise the property, in such manner as the court may specify;
  - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The court may by order confer on the receiver power to enter any premises in Northern Ireland and to do any of the following—
- (a) search for or inspect anything authorised by the court;
  - (b) make or obtain a copy, photograph or other record of anything so authorised;
  - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (4) The court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—
- (a) hold property;
  - (b) enter into contracts;
  - (c) sue and be sued;
  - (d) employ agents;
  - (e) execute powers of attorney, deeds or other instruments;
  - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of the specified property to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
  - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) The court must not—
- (a) confer the power mentioned in paragraph (2)(b) or (c) in respect of property, or
  - (b) exercise the power conferred on it by paragraph (6) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (8) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.
- (9) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
  - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
  - (c) incurring capital expenditure in respect of the property.

### **Satisfaction of external forfeiture order**

**23.** A registered external forfeiture order is satisfied when the property specified in it has been forfeited and disposed of in accordance with that order.

### **Restrictions relating to enforcement receivers**

**24.**—(1) Paragraphs (2) and (3) apply if a court makes an order under article 21 appointing a receiver in respect of any specified property.

(2) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within paragraph (3) except with the leave of the Crown Court and subject to any terms the Crown Court may impose.

(3) A right is within this paragraph if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(4) If a court in which proceedings are pending in respect of any property is satisfied that an order under article 21 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(5) Before exercising any power conferred by paragraph (4), the court must give an opportunity to be heard to—

- (a) the relevant Director, and
- (b) the receiver (if the order under article 21 has been made).