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STATUTORY INSTRUMENTS

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**2005 No. 3179**

**CRIMINAL LAW, NORTHERN IRELAND**

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

<i>Made</i> - - - -	<i>15th November 2005</i>
<i>Laid before Parliament</i>	<i>25th November 2005</i>
<i>Coming into force</i> - -	<i>31st December 2005</i>

At the Court at Buckingham Palace, the 15th day of November 2005

Present,

The Queen' Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 9 of the Criminal Justice (International Co-operation) Act 1990(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**PART 1**

**General Provisions**

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Northern Ireland) Order 2005, and shall come into force on 31st December 2005.

(2) This Order extends to Northern Ireland only.

**Revocation**

2.—(1) The Orders listed in Schedule 1 to this Order are hereby revoked.

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(a) 1990 c. 5; section 9 was amended by section 21 of the Criminal Justice Act 1993 (c. 36), by section 14 of the Proceeds of Crime Act 1995 (c. 11) and by section 9 of the Serious Organised Crime and Police Act 2005 (c. 15).

(2) Nothing in paragraph (1) applies in relation to a restraint order made or an external forfeiture order registered under the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Northern Ireland) Order 1991(a) before the coming into force of this Order.

## PART 2

### Requests for Restraint of Property

#### Action on receipt of request for restraint of property

3.—(1) Except where paragraph (2) applies, the Secretary of State may refer to the Director of Public Prosecutions for Northern Ireland a request for the restraint of property made—

- (a) by or on behalf of an overseas authority in a designated country, and
- (b) for the purpose of facilitating the enforcement of any external forfeiture order which has yet to be made,

to process it.

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

- (a) is made in connection with criminal investigations or proceedings which relate to an offence involving serious or complex fraud, and
- (b) concerns relevant property in Northern Ireland.

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

(4) In this Order the “relevant Director” means the Director to whom a request is referred under paragraph (1) or (3).

(5) The relevant Director may ask the overseas authority which made the request for such further information as may be necessary to determine whether the request is likely to satisfy the conditions in article 4.

(6) A request under paragraph (5) may include a request for statements which may be used as evidence.

#### Conditions for High Court to give effect to request

4.—(1) On an application by a relevant Director, the High Court may exercise the powers conferred by article 5 if the following conditions are satisfied.

(2) The conditions are that—

- (a) relevant property in Northern Ireland is identified in the request;
- (b) a criminal investigation or proceedings for an offence have been started in the country from which the request was made, and
- (c) it appears to the court that there are reasonable grounds for believing that as a result of that investigation or those proceedings an external forfeiture order may be made against the person named in the request.

(3) If these conditions are satisfied by virtue of a criminal investigation having been started, references in this Order to the defendant are to the alleged offender.

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(a) S.I. 1991/1464, as amended by S.I. 1992/1721, 1993/1791, 1993/3148, 1994/1640, 1996/2878, 1997/1317, 1997/2977, 2001/957, 2002/255 and 2002/2845.

## Restraint orders

5.—(1) If the conditions set out in article 4 are satisfied, the High Court may make an order (“a restraint order”) prohibiting any specified person from dealing with relevant property which is identified in the request and specified in the order.

(2) A restraint order may be made subject to exceptions, and an exception may in particular—

- (a) make provision for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking the enforcement of the foreign order;
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
- (c) be made subject to conditions.

(3) Paragraph (4) applies if—

- (a) a court makes a restraint order, and
- (b) the applicant for the order applies to the court to proceed under paragraph (4) (whether as part of the application for the restraint order or at any time afterwards).

(4) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(5) 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(a);
  - (b) section 78 of the Criminal Justice Act 1988(b);
  - (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(c);
  - (d) section 27 of the Drug Trafficking Act 1994(d);
  - (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(e).
- (6) Dealing with property includes removing it from Northern Ireland.

## Application, discharge and variation of restraint orders

6.—(1) A restraint order—

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

(2) An application to discharge or vary a restraint order or an order under article 5(4) may be made to the High Court by—

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

(3) Paragraphs (4) to (6) apply to an application under paragraph (2).

(4) The court—

- (a) may discharge the order;
- (b) may vary the order.

(5) If the conditions in article 4 were satisfied by virtue of the fact that proceedings were started, the court must discharge the order if—

- (a) at the conclusion of the proceedings, no external forfeiture order has been made, or

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(a) 1986 c.32.

(b) 1988 c.33.

(c) S.I. 1990/2588 (N.I. 17).

(d) 1994 c.37.

(e) S.I. 1996/1299 (N.I. 9).

- (b) within a reasonable time an external forfeiture order has not been registered under this Order.

(6) If the conditions in article 4 were satisfied by virtue of the fact that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

### **Appeal to Court of Appeal about restraint orders**

7.—(1) If on an application for a restraint order the High Court decides not to make one, the relevant Director may appeal to the Court of Appeal against the decision.

(2) If an application is made under article 6(2) in relation to a restraint order or an order under article 5(4), the following persons may appeal to the Court of Appeal in respect of the High Court's decision on the application—

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

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

- (a) confirm the decision, or
- (b) make such order as it believes is appropriate.

### **Appeal to House of Lords about restraint orders**

8.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 7.

(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 the decision of the Court of Appeal, or
- (b) make such order as it believes is appropriate.

### **Seizure in pursuance of restraint order**

9.—(1) If a restraint order is in force a constable may seize any property which is specified in it to prevent its removal from Northern Ireland.

(2) Property seized under paragraph (1) must be dealt with in accordance with the directions of the court which made the order.

### **Supplementary (restraint orders)**

10.—(1) The person applying for a restraint order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970<sup>(a)</sup> (cautions) as a person interested in relation to any registered land to which—

- (a) the application relates, or
- (b) a restraint order made in pursuance of the application relates.

(2) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for a restraint order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under subsection (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

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<sup>(a)</sup> 1970 c.18 (N.I.).

(4) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order discharging the restraint order may require that the entry be vacated.

(5) In this article—

- (a) “Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970, and
- (b) “Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954<sup>(a)</sup>.

### **Appointment of management receivers**

**11.**—(1) Paragraph (2) applies if—

- (a) the High Court makes a restraint order, and
- (b) the relevant Director applies to the court to proceed under paragraph (2) (whether as part of the application for the restraint order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any property which is specified in the restraint order.

### **Powers of management receivers**

**12.**—(1) If the court appoints a receiver under article 11 it may act under this article on the application of the relevant Director.

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

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet the receiver’s remuneration and expenses.

(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 purpose 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 property which is specified in the restraint order to give possession of it to the receiver.

(6) The court—

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(a) 1954 c.33 (N.I.).

- (a) may order a person holding an interest in property which is specified in the restraint order 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) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

- (a) section 9 of the Drug Trafficking Offences Act 1986**(a)**;
- (b) section 78 of the Criminal Justice Act 1988**(b)**;
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990**(c)**;
- (d) section 27 of the Drug Trafficking Act 1994**(d)**;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996**(e)**.

(8) The court must not—

- (a) confer the power mentioned in paragraph (2)(b) or (d) 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.

(9) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.

(10) 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.

### **Restrictions relating to restraint orders**

13.—(1) Paragraphs (2) and (3) apply if a court makes a restraint order.

(2) If the order applies to 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 High Court and subject to any terms the High 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 a restraint order has been applied for or made in respect of the property, 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) any receiver appointed in respect of the property under article 11 or 21.

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(a) 1986 c.32.  
(b) 1988 c.33.  
(c) S.I. 1990/2588 (N.I. 17).  
(d) 1994 c.37.  
(e) S.I. 1996/1299 (N.I. 9).

## 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(a)) 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(b);
- (b) section 78 of the Criminal Justice Act 1988(c);
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(d);
- (d) section 27 of the Drug Trafficking Act 1994(e);
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(f).

(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
- (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—

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(a) 1998 c.42.  
(b) 1986 c.32.  
(c) 1988 c.33.  
(d) S.I. 1990/2588 (N.I. 17).  
(e) 1994 c.37.  
(f) S.I. 1996/1299 (N.I. 9).



- (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).

**PART 4**  
**RECEIVERS AND PROCEDURE**

**Protection of receiver appointed under articles 11 and 21**

**25.**—(1) If a receiver appointed under article 11 or 21—

- (a) takes action in relation to property which is not the specified property,
- (b) would be entitled to take the action if it were the specified property, and
- (c) believes on reasonable grounds that he is entitled to take the action,

he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

**Further applications by receivers**

**26.**—(1) This article applies to a receiver appointed under article 11 or 21.

(2) The receiver may apply to the High Court if he is appointed under article 11 or to the Crown Court if he is appointed under article 21 for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the High Court if the receiver is appointed under article 11 or to the Crown Court if the receiver is appointed under article 21—

- (a) any person affected by action taken by the receiver;
- (b) any person who may be affected by action the receiver proposes to take.

(4) On an application under this article the court may make such order as it believes is appropriate.

**Discharge and variation of receiver orders**

**27.**—(1) The following persons may apply to the High Court to vary or discharge an order made under article 11 or 12, or to the Crown Court to vary or discharge an order made under article 21 or 22—

- (a) the receiver;
- (b) the relevant Director;
- (c) any person affected by the order.

(2) On an application under this article the court—

- (a) may discharge the order;
- (b) may vary the order.

(3) But in the case of an order under article 11 or 12—

- (a) if the conditions in article 4 were satisfied by virtue of the fact that proceedings had started, the court must discharge the order if at the conclusion of the proceedings no external forfeiture order has been made, or if within a reasonable time an external forfeiture order has not been registered under Part 3 of this Order;
- (b) if the conditions were satisfied by virtue of the fact that an investigation had started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

**Management receivers: discharge**

**28.**—(1) This article applies if—

- (a) a receiver stands appointed under article 11 in respect of property which is identified in the restraint order (the management receiver), and
  - (b) the court appoints a receiver under article 21.
- (2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by article 12.
- (3) Paragraph (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under article 12(2)(d).
- (4) If the management receiver complies with an order under paragraph (2) he is discharged—
- (a) from his appointment under article 11;
  - (b) from any obligation under this Order arising from his appointment.
- (5) If this article applies the court may make such a consequential or incidental order as it believes is appropriate.

### **Appeal to Court of Appeal about receivers**

- 29.**—(1) If on an application for an order under any of articles 11, 12, 21 or 22 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If the court makes an order under any of articles 11, 12, 21 or 22, the following persons may appeal to the Court of Appeal in respect of the court’s decision—
- (a) the person who applied for the order;
  - (b) any person affected by the order.
- (3) If on an application for an order under article 26 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (4) If the court makes an order under article 26 the following persons may appeal to the Court of Appeal in respect of the court’s decision—
- (a) the person who applied for the order;
  - (b) any person affected by the order;
  - (c) the receiver.
- (5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under article 27—
- (a) the person who applied for the order in respect of which the application was made;
  - (b) any person affected by the court’s decision;
  - (c) the receiver.
- (6) On an appeal under this article the Court of Appeal may—
- (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.

### **Appeal to the House of Lords about receivers**

- 30.**—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 29.
- (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 the decision of the Court Appeal, or
  - (b) make such order as it believes is appropriate.

### **Powers of court and receiver**

**31.**—(1) This article applies to—

- (a) the powers conferred on a court by this Order;
- (b) the powers of a receiver appointed under article 11 or 21.

(2) The powers—

- (a) must be exercised with a view to the value for the time being of specified property being made available (by the property’s realisation) for satisfying an external forfeiture order that has been or may be made against the defendant;
- (b) must be exercised, in a case where an external forfeiture order has not been made, with a view to securing that there is no diminution in the value of the property identified in the request;
- (c) must be exercised without taking account of any obligation of a defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any external forfeiture order against the defendant that has been or may be registered under article 18;
- (d) may be exercised in respect of a debt owed by the Crown.

(3) Paragraph (2) has effect subject to the following rules—

- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
- (b) in the case of specified property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;
- (c) in a case where an external forfeiture order has not been made against the defendant, property must not be sold if the court so orders under paragraph (4).

(4) If on an application by the defendant or the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under paragraph (4) may be revoked or varied.

### **Procedure on appeal to Court of Appeal under this Order**

**32.**—(1) An appeal to the Court of Appeal under this Order lies only with the leave of that Court.

(2) In relation to appeals to the Court of Appeal under this Order, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980(a), subject to any specified modifications.

(3) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Court of Appeal under article 7, 19 or 29 are in the discretion of the court.

(4) The court shall have full power to determine by whom and to what extent the costs are to be paid.

(5) In any proceedings mentioned in paragraph (3), the court may—

- (a) disallow, or
- (b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

(6) In paragraph (5) “wasted costs” means any costs incurred by a party—

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

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(a) 1980 c.47.

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.

(7) “Legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

### **Procedure on appeal to House of Lords under this Order**

33. In relation to appeals to the House of Lords under this Order, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980, subject to any specified modifications.

## **PART 5**

### **INTERPRETATION**

#### **General interpretation**

34. In this Order—

“designated country” means a country or territory designated under Schedule 2 to this Order;

“overseas authority” means an authority which has responsibility in a country or territory outside the United Kingdom for making a request to an authority in another country or territory (including the United Kingdom) to prohibit dealing with relevant property; “overseas court” means a court of a country or territory outside the United Kingdom;

“relevant Director” has the meaning—

- (a) in the context of a request for restraint of property, set out in article 3(4);
- (b) in the context of an external forfeiture order, set out in article 14(4).

#### **External forfeiture orders**

35.—(1) An order made—

- (a) by a court in a designated country,
- (b) for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which a relevant offence has been committed or which was used or intended for use in connection with the commission of such an offence,

is referred to in this Order as an “external forfeiture order”.

(2) In paragraph (1)—

- (a) a “relevant offence” means any offence that corresponds to or is similar to an offence under the law of Northern Ireland;
- (b) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

#### **Designated countries**

36. The countries or territories set out in Schedule 2 to this Order are hereby designated for the purposes of section 9 of the Criminal Justice (International Co-operation) Act 1990.

#### **Property**

37.—(1) In this Order—

- (a) a reference to property is a reference to all property wherever situated and includes—
  - (i) money;

- (ii) all forms of property, real or personal, heritable or moveable;
- (iii) things in action and other intangible or incorporeal property;
- (b) property is held by a person if he holds an interest in it;
- (c) property is obtained by a person if he obtains an interest in it;
- (d) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
- (e) references to property held by a person include references to property vested in his trustee in bankruptcy;
- (f) references to property held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
- (g) references to an interest, in relation to land in Northern Ireland, are to any legal estate or equitable interest or power.

(2) References to an interest, in relation to property other than land, include references to a right (including a right to possession).

(3) Property is “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy an external forfeiture order which has been made or which may be made.

### **Tainted gifts**

**38.**—(1) In this Order, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external forfeiture order or request relates was committed, or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before or after the coming into force of this Order.

### **Gifts and their recipients**

**39.**—(1) In this Order, a defendant is to be treated as making a gift if he transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer.

(2) If paragraph (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—

- (a) whose numerator is the difference between the two values mentioned in paragraph (1), and
- (b) whose denominator is the value of the property at the time of the transfer.

(3) In this Order references to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

### **Value: the basic rule**

**40.**—(1) Subject to article 41, this article applies where it is necessary under this Order to decide the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in paragraph (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in paragraph (4).

(4) Those provisions are—

- (a) section 9 of the Drug Trafficking Offences Act 1986**(a)**;
- (b) section 78 of the Criminal Justice Act 1988**(b)**;
- (c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990**(c)**;
- (d) section 27 of the Drug Trafficking Act 1994**(d)**;
- (e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996**(e)**.

### **Value of tainted gifts**

**41.**—(1) The value at any time (the material time) of a tainted gift is the greater of the following—

- (a) the value (at time of the gift) of the property given, adjusted to take account of later changes in the value of money;
- (b) the value (at the material time) of the property found under paragraph (2).

(2) The property found under this paragraph is as follows—

- (a) if the recipient holds the property given, the property found under this paragraph is that property;
- (b) if the recipient holds no part of the property given, the property found under this paragraph is any property which directly or indirectly represents it in his hands;
- (c) if the recipient holds part of the property given, the property found under this paragraph is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in paragraph (1)(a) and (b) to the value are to the value found in accordance with article 40.

### **Meaning of “defendant”**

**42.** In this Order “defendant”—

- (a) in relation to a restraint order means—
  - (i) in a case in which the conditions in article 4 are satisfied by virtue of the fact that a criminal investigation has been started, the alleged offender;
  - (ii) in a case in which the conditions in article 4 are satisfied by virtue of the fact that proceedings for an offence have been started, the person against whom those proceedings have been started (whether or not he has been convicted);
- (b) in relation to an external forfeiture order, the person convicted of criminal conduct.

*A.K. Galloway*  
Clerk of the Privy Council

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(a) 1986 c.32.  
(b) 1988 c.33.  
(c) S.I. 1990/2588 (N.I. 17).  
(d) 1994 c.37.  
(e) S.I. 1996/1299 (N.I. 9).



## SCHEDULE 1

Article 2

The following Orders are hereby revoked—

- (a) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Northern Ireland) Order 1991**(a)**;
- (b) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1992**(b)**;
- (c) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1993**(c)**;
- (d) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) (No. 2) Order 1993**(d)**;
- (e) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1994**(e)**;
- (f) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1996**(f)**;
- (g) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 1997**(g)**;
- (h) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) (No. 2) Order 1997**(h)**;
- (i) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 2001**(i)**;
- (j) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) Order 2002**(j)**;
- (k) the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Amendment) (No. 2) Order 2002**(k)**.

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- (a) S.I. 1991/1464.
  - (b) S.I. 1992/1721.
  - (c) S.I. 1993/1791.
  - (d) S.I. 1993/3148.
  - (e) .I. 1994/1640.
  - (f) S.I. 1996/2878.
  - (g) S.I. 1997/1317.
  - (h) S.I. 1997/2977.
  - (i) S.I. 2001/957.
  - (j) S.I. 2002/255.
  - (k) S.I. 2002/2845.

## SCHEDULE 2

Article 37

### Designated Countries

Afghanistan  
Albania  
Algeria  
Andorra  
Angola  
Antigua and Barbuda  
Argentina  
Armenia  
Australia  
Austria  
Azerbaijan  
Bahamas  
Bahrain  
Bangladesh  
Barbados  
Belarus  
Belgium  
Belize  
Benin  
Bhutan  
Bolivia  
Bosnia and Herzegovina  
Botswana  
Brazil  
Brunei Darussalem  
Bulgaria  
Burkina Faso  
Burundi  
Cambodia  
Cameroon  
Canada

Cape Verde  
Central African Republic  
Chad  
Chile  
China  
Colombia  
Comoros  
Congo  
Cook Islands  
Costa Rica  
Côte D'Ivoire  
Croatia  
Cuba  
Cyprus  
Czech Republic  
Denmark  
Djibouti  
Dominica  
Dominican Republic  
Ecuador  
Egypt  
El Salvador  
Eritrea  
Equatorial Guinea  
Estonia  
Ethiopia  
Fiji  
Finland  
France  
Gabon  
Gambia  
Georgia  
Germany  
Ghana  
Greece

Grenada  
Guatemala  
Guinea  
Guinea-Bissau  
Guyana  
Haiti  
Honduras  
Hungary  
Iceland  
India  
Indonesia  
Iran (Islamic Republic of)  
Iraq  
Ireland  
Israel  
Italy  
Jamaica  
Japan  
Jordan  
Kazakhstan  
Kenya  
Kuwait  
Kyrgyzstan  
Lao's People's Democratic Republic  
Latvia  
Lebanon  
Lesotho  
Liberia  
Libyan Arab Jamahiriya  
Liechtenstein  
Lithuania  
Luxemburg  
Madagascar  
Malawi  
Malaysia

Maldives  
Mali  
Malta  
Mauritania  
Mauritius  
Mexico  
Micronesia (Federal States of)  
Moldova  
Monaco  
Mongolia  
Morocco  
Mozambique  
Myanmar  
Namibia  
Nauru  
Nepal  
Netherlands  
New Zealand  
Nicaragua  
Niger  
Nigeria  
Norway  
Oman  
Pakistan  
Panama  
Paraguay  
Peru  
Philippines  
Poland  
Portugal  
Qatar  
Republic of Korea  
Romania  
Russian Federation  
Rwanda

Saint Kitts & Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
San Marino  
San Tome & Principe  
Saudi Arabia  
Senegal  
Serbia and Montenegro  
Seychelles  
Sierra Leone  
Singapore  
Slovakia  
Slovenia  
South Africa  
Spain  
Sri Lanka  
Sudan  
Suriname  
Swaziland  
Sweden  
Switzerland  
Syrian Arab Republic  
Tajikistan  
Thailand  
The former Yugoslav Republic of Macedonia  
Togo  
Tonga  
Trinidad and Tobago  
Tunisia  
Turkey  
Turkmenistan  
Uganda  
Ukraine  
United Arab Emirates  
United Republic of Tanzania

United States of America

Uruguay

Uzbekistan

Venezuela

Vietnam

Yemen

Zambia

Zimbabwe

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision in respect of the enforcement in Northern Ireland of orders made in designated countries for the forfeiture of anything in respect of which an offence has been committed or which was used in connection with the commission of such an offence.

Part 2 makes provisions for prohibitions (“restraint orders”) on dealing with property, situated in Northern Ireland, which is specified in a request by an overseas authority. In order to exercise the powers to make a restraint, the High Court must be satisfied that the conditions set out in article 4 are satisfied. The conditions include the requirement that a criminal investigation or proceedings have been started in the country from which the external request was made with regard to an offence. The persons responsible for applying to the High Court are those set out in article 3(1) and (3). Articles 6 to 10 make supplementary provision about the making of restraint orders, including provision for appeals. Articles 11 and 12 provide for the appointment and powers of receivers in respect of property subject to restraint orders.

Part 3 makes provision for the registration of external forfeiture orders, which arise from a criminal conviction in the country from which the order was sent and concern relevant property in Northern Ireland. An application for registration is to be made by the persons listed in article 14(1) and (3). The conditions set out in article 17 must be satisfied if the Crown Court is to give effect to the external forfeiture order by registering it. Where the conditions are satisfied, the Court must register the external forfeiture order (see article 17(1)). Articles 19 and 20 provide for appeals and article 23 sets out the circumstances when a registered external forfeiture order is to be taken as satisfied. Article 21 provides for the appointment of enforcement receivers on the application of the Director of Public Prosecutions for Northern Ireland or Director of the Serious Fraud Office. The powers of receivers are in respect of the property specified in the registered external forfeiture order. Article 24 imposes restrictions on actions by persons other than receivers on property that is specified in a registered external forfeiture order.

Part 4 makes further provision about receivers. This includes provision protecting the receiver in respect of things done by him (article 25) and the discharge and variation of orders affecting receivers (articles 27 and 28). Articles 29 and 30 provide for the procedure on appeals about receivers to the Court of Appeal and the House of Lords.

Part 5 provides for interpretation.

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