
STATUTORY INSTRUMENTS

2005 No. 3181

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005

PART 2

GIVING EFFECT IN ENGLAND AND WALES TO EXTERNAL REQUESTS IN CONNECTION WITH CRIMINAL INVESTIGATIONS OR PROCEEDINGS AND TO EXTERNAL ORDERS ARISING FROM SUCH PROCEEDINGS

CHAPTER 3

RECEIVERS AND PROCEDURE

Protection of receiver appointed under articles 15, 27 and 30

40. If a receiver appointed under article 15, 27 or 30—

- (a) takes action in relation to property which is not realisable property or, as the case may be, the specified property,
- (b) would be entitled to take the action if it were realisable property or, as the case may be, 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.

Further applications by receivers

41.—(1) This article applies to a receiver appointed under article 15, 27 or 30.

(2) The receiver may apply to the Crown Court for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the Crown Court—

- (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

42.—(1) The following persons may apply to the Crown Court to vary or discharge an order made under article 15, 16 or 27 to 32—

- (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 15 or 16—
 - (a) if the condition in article 7 which was satisfied was that proceedings were started, the court must discharge the order if at the conclusion of the proceedings no external order has been made;
 - (b) if the condition which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time an external order has not been registered under Chapter 2 of this Part;
 - (c) if the condition which was satisfied was that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

Management receivers: discharge

- 43.**—(1) This article applies if—
- (a) a receiver stands appointed under article 15 in respect of property which is identified in the restraint order (the management receiver), and
 - (b) the court appoints a receiver under article 27 or makes an order for the appointment of a receiver under article 30.
- (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 16.
- (3) But in a case where the court makes an order under article 30 its order under paragraph (2) does not take effect until the order under article 30 takes effect.
- (4) Paragraph (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under article 16(2)(d).
- (5) If the management receiver complies with an order under paragraph (2) he is discharged—
- (a) from his appointment under article 15;
 - (b) from any obligation under this Order arising from his appointment.
- (6) 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

- 44.**—(1) If on an application for an order under any of articles 15, 16, 27 to 29, 31 or 32 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 15, 16, 27 to 29, 31 or 32, 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 41 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 41 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 42—
- (a) the person who applied for the order in respect of which the application was made or (if the order was made under article 31 or 32 the Director of the Agency);
 - (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

45.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 44.

(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

46.—(1) This article applies to—

- (a) the powers conferred on a court by this Part;
- (b) the powers of a receiver appointed under article 15, 27 or 30.

(2) The powers—

- (a) must be exercised with a view to the value for the time being of realisable property or specified property being made available (by the property’s realisation) for satisfying an external order that has been or may be made against the defendant;
- (b) must be exercised, in a case where an external order has not been made, with a view to securing that there is no diminution in the value of the property identified in the external 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 order against the defendant that has been or may be registered under article 22;
- (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 realisable property or 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 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 Part 2

- 47.**—(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.
- (2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981⁽¹⁾ (distribution of business between civil and criminal divisions) the criminal division of the Court of Appeal is the division—
- (a) to which an appeal to that Court under this Part is to lie, and
 - (b) which is to exercise that Court’s jurisdiction under this Part.
- (3) In relation to appeals to the Court of Appeal under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968⁽²⁾, subject to any specified modifications.
- (4) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the criminal division of the Court of Appeal under article 10, 23 or 44 are in the discretion of the court.
- (5) The court shall have full power to determine by whom and to what extent the costs are to be paid.
- (6) In any proceedings mentioned in paragraph (4), 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.
- (7) In paragraph (6) “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
 - (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.
- (8) “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 Part 2

- 48.**—(1) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal) does not prevent an appeal to the House of Lords under this Part.
- (2) In relation to appeals to the House of Lords under this Part, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968, subject to any specified modifications.

(1) 1981 c. 54.
(2) 1968 c. 19.