
STATUTORY INSTRUMENTS

2005 No. 3181

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

PART 4

GIVING EFFECT IN NORTHERN IRELAND 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 101, 113 and 116

126. If a receiver appointed under article 101, 113 or 116—

- (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

127.—(1) This article applies to a receiver appointed under article 101, 113 or 116.

(2) The receiver may apply to—

- (a) the High Court if he is appointed under article 101;
- (b) the Crown Court if he is appointed under article 113 or 116,

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 101 or to the Crown Court if the receiver is appointed under article 113 or 116—

- (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

128.—(1) The following persons may apply to the High Court to vary or discharge an order made under article 101 or 102 or to the Crown Court to vary or discharge an order made under any of articles 113 to 118—

- (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 101 or 102—
- (a) if the condition in article 94 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

129.—(1) This article applies if—

- (a) a receiver stands appointed under article 101 in respect of property which is identified in the restraint order (the management receiver), and
- (b) the court appoints a receiver under article 113 or makes an order for the appointment of a receiver under article 116.

(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 102.

(3) But in a case where the court makes an order under article 116 its order under paragraph (2) does not take effect until the order under article 116 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 102(2)(d).

(5) If the management receiver complies with an order under paragraph (2) he is discharged—

- (a) from his appointment under article 101;
- (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

130.—(1) If on an application for an order under any of articles 101, 102, 113 to 115, 117 or 118, the court decides not to make one, the person who applies for the order may appeal to the Court of Appeal against the decision.

(2) If the court makes an order under any of articles 101, 102, 113 to 115, 117 or 118, 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 127 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 127 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 128—
- (a) the person who applied for the order in respect of which the application was made or (if the order was made under article 117 or 118) 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

131.—(1) An appeal lies to the House of Lords from a decision of the Court of Appeal on an appeal under article 130.

(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

132.—(1) This article applies to—

- (a) the powers conferred on a court by this Part;
 - (b) the powers of a receiver appointed under article 101, 113 or 116.
- (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 108;
 - (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 4

- 133.**—(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court.
- (2) 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 (Northern Ireland) Act 1980⁽¹⁾, 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 97, 109 or 130 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
 - (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 Part 4

- 134.** 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 (Northern Ireland) Act 1980, subject to any specified modifications.

(1) 1980 c. 47.