
STATUTORY INSTRUMENTS

2013 No. 2604

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2013

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| <i>Made</i> | - - - - | <i>9th October 2013</i> |
| <i>Laid before Parliament</i> | | <i>16th October 2013</i> |
| <i>Coming into force</i> | - - | <i>11th November 2013</i> |

At the Court at Buckingham Palace, the 9th day of October 2013

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 444 and 459(2) of the Proceeds of Crime Act 2002⁽¹⁾, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2013 and shall come into force on 11th November 2013.

(2) In this Order “the Act” means the Proceeds of Crime Act 2002.

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

2. The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005⁽²⁾ is amended as follows.

3. After article 141 insert—

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- (1) 2002 c. 29. Section 444 was amended by section 108(2) and (3) of the Serious and Organised Crime and Police Act 2005 (c. 15) and by section 74(2)(f) of and paragraphs 121 and 138 of Part 6 of Schedule 8 to the Serious Crime Act 2007 (c. 27) and by article 12 of and paragraphs 47 and 70 of Schedule 14 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976).
- (2) S.I. 2005/3181 as amended by the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 (S.I. 2008/302).

“PART 4A

Giving effect in England and Wales and Northern Ireland to External Requests by means of Civil Proceedings

General

141A.—(1) This Part has effect for the purpose of enabling an enforcement authority to obtain from the High Court a prohibition order in relation to relevant property in England and Wales or Northern Ireland which is the subject of an external request.

(2) The powers conferred by this Part are exercisable in relation to relevant property whether or not proceedings for criminal conduct have been brought in connection with the property in the country from which the external request was sent.

Action on receipt of external request

141B.—(1) The Secretary of State may refer to an enforcement authority an external request to prohibit dealing with relevant property in England and Wales or Northern Ireland.

(2) The enforcement authority may on receipt of the request act under this Part.

High Court giving effect to external request

141C.—(1) The High Court in England and Wales may exercise the powers under this Part if the relevant property identified in the external request is in England and Wales.

(2) The High Court in Northern Ireland may exercise the powers under this Part if the relevant property identified in the external request is in Northern Ireland.

High Court proceedings for a prohibition order following an external request

141D.—(1) The High Court may make a prohibition order in relation to property if the High Court is satisfied that—

- (a) it is relevant property identified in an external request, and
- (b) proceedings have not been taken in relation to the property under Chapter 2 of Part 5 of this Order.

(2) A prohibition order is an order that—

- (a) specifies or describes the property to which it applies, and
- (b) subject to any exclusions (see article 141G(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

Application, variation and setting aside of order

141E.—(1) A prohibition order may—

- (a) be made only on an application by the enforcement authority,
- (b) be made by a without notice application to a High Court judge.

(2) An application to vary or set aside a prohibition order may be made to the High Court by—

- (a) the enforcement authority,
- (b) any person affected by the order.

(3) The High Court may at any time—

- (a) vary the prohibition order,
- (b) set aside the prohibition order.

(4) Before exercising power under this Part to vary or set aside a prohibition order, the High Court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

General exceptions

141F.—(1) If—

- (a) a person disposes of relevant property, and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it is relevant property,

a prohibition order may not be made in respect of the relevant property.

(2) If relevant property is vested, forfeited or otherwise disposed of in pursuance of powers conferred under this Order, a prohibition order may not be made in respect of the relevant property.

(3) If—

- (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,
- (b) the claimant's claim is based on the defendant's criminal conduct, and
- (c) the sum received, or the property obtained, by the claimant is relevant property,

a prohibition order may not be made in respect of the relevant property.

(4) If—

- (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994⁽³⁾ or section 249 of the Criminal Procedure (Scotland) Act 1995⁽⁴⁾ or section 130 of the Powers of Criminal Courts (Sentencing) Act 2000⁽⁵⁾ or in pursuance of a service compensation order under the Armed Forces Act 2006⁽⁶⁾, and
- (b) the sum received is relevant property,

a prohibition order may not be made in respect of the relevant property.

(5) If—

- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969⁽⁷⁾ or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and
- (b) the sum received, or the property obtained, is relevant property,

a prohibition order may not be made in respect of the relevant property.

(6) If—

(3) S.I. 1994/2795 (N.I. 15).
(4) 1995 c. 46.
(5) 2000 c. 6.
(6) 2006 c. 52.
(7) 1969 c. 16 (N.I.).

- (a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000⁽⁸⁾ (restitution orders), an amount is paid to or distributed among any persons in accordance with the court's directions, and
 - (b) the sum received by them is relevant property,
- a prohibition order may not be made in respect of the relevant property.

(7) If—

- (a) in pursuance of a requirement of the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of section 384(5) of the Financial Services and Markets Act 2000 (power to require restitution), an amount is paid to or distributed among any persons, and
 - (b) the sum received by them is relevant property,
- a prohibition order may not be made in respect of the relevant property.

(8) A prohibition order may not be made in respect of relevant property while a restraint order applies to it, that is—

- (a) an order under sections 41, 120 or 190 of the Act,
- (b) an order under articles 8, 58 or 95 of this Order, or
- (c) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act.

(9) A prohibition order may not be made in respect of relevant property if the relevant property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—

- (a) an order under section 6, 92 or 156 of the Act,
- (b) an external order registered under Parts 2, 3 or 4 of this Order, or
- (c) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act,

and, in relation to an order mentioned in paragraph (c), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

Exclusions

141G.—(1) The power to vary a prohibition order includes (in particular) power to make exclusions as follows—

- (a) power to exclude property from the order, and
 - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purposes of enabling any person—
- (a) to meet their reasonable living expenses,
 - (b) to meet their reasonable legal expenses in connection with the prohibition order, or

- (c) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) If excluded property is not specified in the order it must be described in the order in general terms.

Restriction on proceedings and remedies

141H.—(1) While a prohibition order has effect—

- (a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies, and
- (b) no distress may be levied against the property to which the order applies except with the leave of the High Court and subject to any terms the High Court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibition order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a prohibition order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the 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, except with the leave of the High Court and subject to any terms the High Court may impose.

(4) Before exercising any power conferred by this article, the High Court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the High Court's decision.

Receiver in connection with prohibition order

141I.—(1) Paragraph (2) applies if—

- (a) the High Court makes a prohibition order on an application by the enforcement authority, and
- (b) the enforcement authority applies to the High Court to proceed under paragraph (2) (whether as part of the application for the prohibition order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any property to which the prohibition order applies.

(3) An application for an order under this article may be made by a without notice application to a High Court judge.

(4) In the application for an order under this article, the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the enforcement authority.

Powers of receiver

141J.—(1) If the High Court appoints a receiver under article 141I, the High Court may act under this article on the application of the enforcement authority.

(2) The High Court may by order authorise or require the receiver—

- (a) to manage any property in respect of which the receiver is appointed,

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it),

(c) to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) Paragraph (2)(c) does not apply in relation to the remuneration of the receiver if the receiver is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

(4) Managing property includes—

(a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,

(b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,

(c) incurring capital expenditure in respect of the property.

(5) The High Court may by order require any person in respect of whose property the receiver is appointed—

(a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place it in the custody of the receiver (if, in either case, the person is able to do so),

(b) to do anything reasonably required by the receiver for the preservation of the property,

(c) to bring any documents relating to the property which are in their possession or control to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the receiver or to place them in the custody of the receiver.

(6) In paragraph (5)(c) “document” means anything in which information of any description is recorded.

(7) Any prohibition on dealing with property imposed by a prohibition order does not prevent a person from complying with any requirements imposed by virtue of this article.

(8) If—

(a) the receiver deals with any property which is not property in respect of which they are appointed under article 141I, and

(b) at the time the receiver deals with the property they believe on reasonable grounds that they are entitled to do so by virtue of their appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from their dealing with the property except so far as the loss or damage is caused by their negligence.

(9) Sections 75 and 77 of the Taxes Management Act 1970⁽⁹⁾ shall not apply in relation to the receiver.

Supervision of receiver and variations

141K.—(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under article 141I—

(a) the receiver,

- (b) any party to the proceedings for the appointment of the receiver or the prohibition order concerned,
 - (c) any person affected by any action taken by the receiver,
 - (d) any person who may be affected by any action proposed to be taken by the receiver.
- (2) Before giving any directions under paragraph (1), the High Court must give an opportunity to be heard to—
- (a) the receiver,
 - (b) the parties to the proceedings for the appointment of the receiver and for the prohibition order concerned,
 - (c) any person who may be interested in the application under paragraph (1).
- (3) The High Court may at any time vary or set aside the appointment of a receiver under article 141I, any order under article 141J or any directions under this article.
- (4) Before exercising any power under paragraph (3), the High Court must give an opportunity to be heard to—
- (a) the receiver,
 - (b) the parties to the proceedings for the appointment of the receiver, for the order under article 141J or, as the case may be, for the directions under this article,
 - (c) the parties to the proceedings for the prohibition order concerned,
 - (d) any person who may be affected by the court's decision.

Registration

141L.—(1) The registration Acts—

- (a) apply in relation to prohibition orders as they apply in relation to orders which affect land and are made by the High Court for the purpose of enforcing judgments or recognisances,
- (b) apply in relation to applications for prohibition orders as they apply in relation to other pending land actions.

(2) The registration Acts are—

- (a) the Land Charges Act 1972⁽¹⁰⁾, and
- (b) the Land Registration Act 2002⁽¹¹⁾.

(3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a prohibition order.

Registration (Northern Ireland)

141M.—(1) A person applying for a prohibition order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970⁽¹²⁾ (cautions) as a person interested in relation to any registered land to which—

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

⁽¹⁰⁾ 1972 c. 61.

⁽¹¹⁾ 2002 c. 9.

⁽¹²⁾ 1970 c. 18 (N.I.).

(2) Upon being served with a copy of a prohibition order, the Registrar must, in respect of any registered land to which a prohibition order or an application for a prohibition 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) apply to an entry made under paragraph (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.

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

(5) In this article—

“Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970, and

“Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954⁽¹³⁾.

Compensation

141N.—(1) This article applies where property ceases to be subject to a prohibition order because the order is—

- (a) set aside, or
- (b) varied to exclude the property from the order.

(2) The person whose property it is may make an application to the High Court for compensation.

(3) If the High Court is satisfied that—

- (a) no proceedings under Chapter 2 of Part 5 of this Order have been brought in relation to the property,
- (b) it is unlikely that such proceedings will be brought, and
- (c) the applicant has suffered loss as a result of the prohibition order,

it may require the enforcement authority which obtained the prohibition order to pay compensation to the applicant.

(4) The amount of compensation to be paid under this article is the amount the High Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) An application for compensation under paragraph (2) may not be made after the end of the period of three months beginning with the day on which the prohibition order is set aside or varied as mentioned in paragraph (1).

(6) If any proceedings under Chapter 2 of Part 5 of this Order are brought in relation to the property, article 194 (compensation where such proceedings unsuccessful) applies in relation to the prohibition order as it applies in relation to a property freezing order.

Financial threshold

141O. The enforcement authority may not apply for a prohibition order unless the enforcement authority reasonably believes that the aggregate value of the relevant property which will be subject to the prohibition order is not less than £10,000.

(13) 1954 c. 33 (N.I.).

Insolvency

141P.—(1) Proceedings for a prohibition order may not be taken or continued in respect of property to which paragraph (2) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

(2) This paragraph applies to relevant property if—

- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
- (b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act, or Part 2 of the 1989 Order, has effect in relation to company,
- (c) an order under section 2 of the 1985 Act, section 286 of the 1986 Act or Article 259 of the 1989 Order (appointment of interim trustee or interim receiver) has effect in relation to the property,
- (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt, or of a person whose estate has been sequestrated,
- (e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to them, or
- (f) it is property comprised in the estate of a person who has granted a trust deed within the meaning of the 1985 Act.

(3) An application under this article, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings in relation to relevant property may be made without notice to any person.

(4) Paragraph (3) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

(5) References to the provisions in the 1986 Act in sections 420 or 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include paragraphs (1) and (2) above.

Insolvency: interpretation

141Q.—(1) This article applies for the purposes of article 141P.

(2) The 1985 Act means the Bankruptcy (Scotland) Act 1985⁽¹⁴⁾.

(3) The 1986 Act means the Insolvency Act 1986⁽¹⁵⁾.

(4) The 1989 Order means the Insolvency (Northern Ireland) Order 1989⁽¹⁶⁾.

(5) The appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in article 141P(2), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court.

(6) In paragraph (5) above and (8) below “the applicable enactment” means whichever enactment mentioned in paragraphs (2) to (4) above is relevant to the resolution, arrangement, order or trust deed mentioned in article 141P(2).

(7) Acting as an insolvency practitioner has the same meaning as in article 4.

⁽¹⁴⁾ 1985 c. 66.

⁽¹⁵⁾ 1986 c. 45.

⁽¹⁶⁾ S.I. 1989/2405 (N.I. 19).

(8) Other expressions used in article 141P and in the applicable enactment have the same meaning as in that enactment.

Interpretation

141R.—(1) In this Part—

“dealing” with property includes disposing of it, taking possession of it or removing it from the jurisdiction,

“enforcement authority”—

- (a) in relation to England and Wales, means the National Crime Agency, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office,
- (b) in relation to Northern Ireland, means the National Crime Agency, the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland,

“interest”, in relation to land means any legal estate and any equitable interest or power,

“interest”, in relation to property other than land, includes any right (including a right to possession of the property),

“part”, in relation to property, includes a portion,

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984⁽¹⁷⁾,

“prohibition order” has the meaning given by article 141D,

“value” means market value.

(2) The following provisions apply for the purposes of this Part.

(3) References to a person disposing of their property include a reference—

- (a) to them disposing of a part of it, or
- (b) to them granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(4) A person who makes a payment to another is to be treated as making a disposal of their property to the other, whatever form the payment takes.

(5) Where a person’s property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by them to the other.

(6) A person is only to be treated as having obtained their property for value in a case where they gave unexecuted consideration if the consideration has become executed consideration.

(7) In relation to a prohibition order references to the enforcement authority are, unless the context otherwise requires, references to the enforcement authority which is seeking, or (as the case may be) has obtained, the order.

⁽¹⁷⁾ 1984 c. 60.

PART 4B

Giving effect in Scotland to External Requests by means of Civil Proceedings

General

141ZA.—(1) This Part has effect for the purpose of enabling the Scottish Ministers to obtain from the court a prohibition order in relation to relevant property in Scotland which is the subject of an external request.

(2) The powers conferred by this Part are exercisable in relation to relevant property whether or not proceedings for criminal conduct have been brought in connection with the property in the country from which the external request was sent.

Action on receipt of external request

141ZB.—(1) The Secretary of State may refer to the Scottish Ministers an external request to prohibit dealing with relevant property in Scotland.

(2) The Scottish Ministers may on receipt of the request act under this Part.

Proceedings for a prohibition order following an external request

141ZC.—(1) The court may make a prohibition order in relation to property if satisfied that—

- (a) it is relevant property identified in an external request, and
- (b) proceedings have not been taken in relation to the property under Chapter 2 of Part 5 of this Order.

(2) A prohibition order is an order that—

- (a) specifies or describes the property to which it applies, and
- (b) subject to any exclusions (see article 141ZF(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

Application, variation and recall of prohibition order

141ZD.—(1) A prohibition order may—

- (a) be made only on an application by the Scottish Ministers,
- (b) be made to the court without notice.

(2) An application to vary or recall a prohibition order may be made to the court by—

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The court may at any time vary or recall the prohibition order.

(4) Before exercising a power under this Part to vary or recall a prohibition order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

General exceptions

141ZE.—(1) If—

- (a) a person disposes of relevant property, and

- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it is relevant property,

a prohibition order may not be made in respect of the relevant property.

(2) If relevant property is vested, forfeited or otherwise disposed of in pursuance of powers conferred under this Order, a prohibition order may not be made in respect of the relevant property.

(3) If—

- (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defender makes a payment to the pursuer or the pursuer otherwise obtains property from the defender,
- (b) the pursuer's claim is based on the defender's criminal conduct, and
- (c) the sum received, or the property obtained, by the pursuer is relevant property,

a prohibition order may not be made in respect of the relevant property.

(4) If—

- (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994⁽¹⁸⁾, section 249 of the Criminal Procedure (Scotland) Act 1995⁽¹⁹⁾, section 130 of the Powers of Criminal Courts (Sentencing) Act 2000⁽²⁰⁾ or in pursuance of a service compensation order under the Armed Forces Act 2006⁽²¹⁾, and
- (b) the sum received is relevant property,

a prohibition order may not be made in respect of the relevant property.

(5) If—

- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969⁽²²⁾ or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and
- (b) the sum received, or the property obtained, is relevant property,

a prohibition order may not be made in respect of the relevant property.

(6) If—

- (a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000⁽²³⁾ (restitution orders), an amount is paid to or distributed among any persons in accordance with the court's directions, and
- (b) the sum received by them is relevant property,

a prohibition order may not be made in respect of the relevant property.

(7) If—

- (a) in pursuance of a requirement of the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of section 384(5) of the Financial Services and Markets Act 2000 (power to require restitution), an amount is paid to or distributed among any persons, and

⁽¹⁸⁾ S.I. 1994/2795 (N.I. 15).

⁽¹⁹⁾ 1995 c. 46.

⁽²⁰⁾ 2000 c. 6.

⁽²¹⁾ 2006 c. 52.

⁽²²⁾ 1969 c. 16 (N.I.).

⁽²³⁾ 2000 c. 8.

(b) the sum received by them is relevant property,
a prohibition order may not be made in respect of the relevant property.

(8) A prohibition order may not be made in respect of relevant property while a restraint order applies to it, that is—

- (a) an order under sections 41, 120 or 190 of the Act,
- (b) an order under articles 8, 58 or 95 of this Order, or
- (c) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act.

(9) A prohibition order may not be made in respect of relevant property if the relevant property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—

- (a) an order under section 6, 92 or 156 of the Act,
- (b) an external order registered under Parts 2, 3 or 4 of this Order, or
- (c) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act,

and, in relation to an order mentioned in paragraph (c), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

Exclusions

141ZF.—(1) The power to vary a prohibition order includes (in particular) power to make exclusions as follows—

- (a) power to exclude property from the order, and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purposes of enabling any person—

- (a) to meet their reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

Prohibition orders: restriction on proceedings and remedies

141ZG.—(1) While a prohibition order has effect, the court may sist any action, execution or other legal process in respect of the property to which the order applies.

(2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibition order has been applied

for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Inhibition of property affected by prohibition order

141ZH.—(1) On the application of the Scottish Ministers, the court may, in relation to the property mentioned in paragraph (2), grant warrant for inhibition against any person specified in a prohibition order.

(2) That property is heritable property situated in Scotland to which the prohibition order applies (whether generally or to such of it as is specified in the application).

(3) The warrant for inhibition—

- (a) has effect as if granted on the dependence of an action for debt by the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly, and
- (b) has the effect of letters of inhibition and must forthwith be registered by the Scottish Ministers in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868⁽²⁴⁾ (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under paragraph (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this article ceases to have effect when, or in so far as, the prohibition order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(6) If an inhibition ceases to have effect to any extent by virtue of paragraph (5) the Scottish Ministers must—

- (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
- (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

Arrestment of property affected by prohibition order

141ZI.—(1) On the application of the Scottish Ministers the court may, in relation to moveable property to which a prohibition order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under paragraph (1) may be made at the same time as the application for the prohibition order or at any time thereafter.

(3) A warrant for arrestment may only be granted under paragraph (1) if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under paragraph (1) has effect as if granted on the dependence of an action for debt at the instance of the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this article ceases to have effect when, or in so far as, the prohibition order ceases to apply in respect of the property to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of paragraph (5) the Scottish Ministers must apply to the court for an order recalling or, as the case may be, restricting the arrestment.

Compensation

141ZJ.—(1) This article applies where property ceases to be subject to a prohibition order because the order is—

- (a) recalled, or
- (b) varied to exclude the property from the order.

(2) The person whose property it is may make an application to the court for compensation.

(3) If the court is satisfied that—

- (a) no proceedings under Chapter 2 of Part 5 of this Order have been brought in relation to the property,
- (b) it is unlikely that such proceedings will be brought, and
- (c) the applicant has suffered loss as a result of the prohibition order,

it may require the Scottish Ministers to pay compensation to the applicant.

(4) The amount of compensation to be paid under this article is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) An application for compensation under paragraph (2) may not be made after the end of the period of three months beginning with the day on which the prohibition order is recalled or varied as mentioned in paragraph (1).

(6) If any proceedings under Chapter 2 of Part 5 of this Order are brought in relation to the property, article 194 (compensation where such proceedings unsuccessful) applies in relation to the prohibition order as it applies in relation to a prohibitory property order.

Financial threshold

141ZK. The Scottish Ministers may not apply for a prohibition order unless they reasonably believe that the aggregate value of the relevant property which will be subject to the prohibition order is not less than £10,000.

Insolvency

141ZL.—(1) Proceedings for a prohibition order may not be taken or continued in respect of property to which paragraph (2) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

(2) This paragraph applies to relevant property if—

- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
- (b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act, or Part 2 of the 1989 Order, has effect in relation to the company,
- (c) an order under section 2 of the 1985 Act, section 286 of the 1986 Act or Article 259 of the 1989 Order (appointment of interim trustee or interim receiver) has effect in relation to the property,

- (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt, or of a person whose estate has been sequestrated,
- (e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to them, or
- (f) it is property comprised in the estate of a person who has granted a trust deed within the meaning of the 1985 Act.

(3) An application under this article, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings in relation to relevant property may be made without notice to any person.

(4) Paragraph (3) does not affect any requirement for notice of any application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

(5) References to the provisions of the 1986 Act in sections 420 or 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include paragraphs (1) and (2) above.

Insolvency: interpretation

141ZM.—(1) This article applies for the purposes of article 141ZL.

(2) The 1985 Act means the Bankruptcy (Scotland) Act 1985⁽²⁵⁾.

(3) The 1986 Act means the Insolvency Act 1986⁽²⁶⁾.

(4) The 1989 Order means the Insolvency (Northern Ireland) Order 1989⁽²⁷⁾.

(5) The appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in article 141ZL(2), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court.

(6) In paragraph (5) above and (8) below “the applicable enactment” means whichever enactment mentioned in paragraphs (2) to (4) above is relevant to the resolution, arrangement, order or trust deed mentioned in article 141ZL(2).

(7) Acting as an insolvency practitioner has the same meaning as in article 4.

(8) Other expressions used in article 141ZL and in the applicable enactment have the same meaning as in that enactment.

Interpretation

141ZN.—(1) In this Part—

“the court”, except in article 141ZG(2), means the Court of Session,

“dealing” with property includes disposing of it, taking possession of it or removing it from the jurisdiction,

“interest”, in relation to land means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

“interest”, in relation to property other than land, includes any right (including a right to possession of the property),

“part”, in relation to property, includes a portion,

“prohibition order” has the meaning given by article 141ZC,

⁽²⁵⁾ 1985 c. 66.

⁽²⁶⁾ 1986 c. 45.

⁽²⁷⁾ S.I. 1989/2405 (N.I. 19).

“value” means market value.

(2) The following provisions apply for the purposes of this Part.

(3) References to a person disposing of their property include a reference—

(a) to them disposing of a part of it, or

(b) to them granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(4) A person who makes a payment to another is to be treated as making a disposal of their property to the other, whatever form the payment takes.

(5) Where a person’s property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by them to the other.

(6) A person is only to be treated as having obtained their property for value in a case where they gave unexecuted consideration if the consideration has become executed consideration.”.

Limitation

4.—(1) The Limitation Act 1980(28) is amended as follows.

(2) After section 27A there is inserted—

“27AB Actions to prohibit dealing with property subject to an external request

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Part 4A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(29) (giving effect to external request by means of civil proceedings).

(2) Proceedings under that Part for a prohibition order in respect of relevant property shall not be brought after the expiration of the period of 20 years from the date on which the relevant person’s cause of action accrued.

(3) Proceedings under that Part are brought when an application is made for a prohibition order.

(4) The relevant person’s cause of action accrues in respect of relevant property when the property is obtained (or when it is believed to have been obtained) as a result of or in connection with criminal conduct.

(5) In this section—

(a) “criminal conduct” is to be construed in accordance with section 447(8) of the Act,

(b) expressions used in this section and Part 4A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.

(6) In this section “relevant person” means—

(a) the National Crime Agency,

(28) 1980 c. 58. Section 27A was inserted by section 288 of the Proceeds of Crime Act 2002 (c. 29) and was amended by section 109 of and paragraph 2(a) and (b) of Schedule 6 to the Serious Organised Crime and Police Act 2005 (c. 15), and by section 74(2) (g) of and paragraph 147(1) to (4) of Part 7 of Schedule 8 to the Serious Crime Act 2007 (c. 27) and by section 62(1)(a) of the Policing and Crime Act 2009 (c. 26). Section 27B was inserted by article 201 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181) and was amended by article 4(1) to (3) of the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 (S.I. 2008/302) and by section 62(1)(a) of the Policing and Crime Act 2009 (c. 26).

(29) S.I. 2005/3181.

- (b) the Director of Public Prosecutions,
 - (c) the Director of Revenue and Customs Prosecutions, or
 - (d) the Director of the Serious Fraud Office.”.
- (3) In section 27B, after subsection (3), there is inserted—
- “(3A) If, before an event mentioned in subsection (3) occurs, an application is made for a prohibition order under Part 4A of the Order, the proceedings under Chapter 2 of Part 5 of the Order are to be treated as having been brought when that application is made.”.

5.—(1) The Limitation (Northern Ireland) Order 1989⁽³⁰⁾ is amended as follows.

(2) After article 72A there is inserted—

“72AB Actions to prohibit dealing with property subject to an external request

- (1) None of the time limits fixed by Parts 2 and 3 applies to any proceedings under Part 4A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005⁽³¹⁾ (giving effect to external request by means of civil proceedings).
 - (2) Proceedings under that Part of that Order for a prohibition order in respect of relevant property shall not be brought after the expiration of the period of 20 years from the date on which the relevant person’s cause of action accrued.
 - (3) Proceedings under that Part are brought when an application is made for a prohibition order.
 - (4) The relevant person’s cause of action accrues in respect of relevant property when the property is obtained (or when it is believed to have been obtained) as a result of or in connection with criminal conduct.
 - (5) In this Article—
 - (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Act,
 - (b) expressions used in this Article and Part 4A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this Article as in that Part.
 - (6) In this Article “relevant person” means—
 - (a) the National Crime Agency,
 - (b) the Director of Public Prosecutions for Northern Ireland, or
 - (c) the Director of the Serious Fraud Office.”.
- (3) In article 72B, after paragraph (3), there is inserted—
- “(3A) If, before an event mentioned in paragraph (3) occurs, an application is made for a prohibition order under Part 4A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, the proceedings under Chapter 2 of Part 5 of the Order are to be treated as having been brought when that application is made.”.

(30) [S.I. 1989/1339 \(N.I. 11\)](#). Article 72A was inserted by section 288 of the Proceeds of Crime Act 2002 ([c. 29](#)) and was amended by section 109 of and paragraph 3(a) and (b) of Schedule 6 to the Serious Organised Crime and Police Act 2005 ([c. 15](#)), and by section 74(2) of and paragraph 153(2) to (4) of Schedule 8 to the Serious Crime Act 2007 ([c. 27](#)) and by section 62(1) (c) of the Policing and Crime Act 2009 ([c. 26](#)). Article 72B was inserted by article 201 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ([S.I. 2005/3181](#)) and was amended by article 5(2) to (3) of the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 ([S.I. 2008/302](#)) and by section 62(1)(c) of the Policing and Crime Act 2009 ([c. 26](#)).

(31) [S.I. 2005/3181](#).

6.—(1) The Prescription and Limitation (Scotland) Act 1973⁽³²⁾ is amended as follows.

(2) After section 19B there is inserted—

“19BA Actions to prohibit dealing with property subject to an external request

(1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Part 4B of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (giving effect to external requests by means of civil proceedings).

(2) Proceedings under that Part for a prohibition order in respect of relevant property shall not be commenced after the expiration of the period of 20 years from the date on which the Scottish Ministers’ right of action accrued.

(3) Proceedings under that Part are commenced when an application is made for a prohibition order.

(4) The Scottish Ministers’ right of action accrues in respect of any relevant property when the property is obtained (or when it is believed to have been obtained) as a result of or in connection with criminal conduct.

(5) In this section—

- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002,
- (b) expressions used in this section and Part 4B of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.

(3) In section 19C—

- (a) in subsection (1), after “2005” insert “(“the 2005 Order””,
- (b) after subsection (3) insert—

“(3A) If, before an event mentioned in subsection (3) occurs, an application is made for a prohibition order under Part 4B of the 2005 Order, proceedings under that Chapter are to be treated as having been commenced when that application is made.”,

- (c) in subsection (5)(b), for “the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005”, substitute “the 2005 Order”.

Richard Tilbrook
Clerk of the Privy Council

(32) 1973 c. 52. Section 19B was inserted by section 288 of the Proceeds of Crime Act 2002 (c. 29) and was amended by section 109 of and paragraph 1(a) and (b) of Schedule 6 to the Serious Organised Crime and Police Act 2005 (c. 15), and by section 62(1)(b) of the Policing and Crime Act 2009 (c. 26). Section 19C was inserted by article 201 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181) and was amended by section 62(1)(b) of the Policing and Crime Act 2009 (c. 26).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for a prohibition on dealing with relevant property which is the subject of an external request, within the meaning of section 447(1) of the Proceeds of Crime Act 2002 (c. 29) (“the 2002 Act”), by means of proceedings before the High Court (in England, Wales or Northern Ireland) or the Court of Session (in Scotland). The provisions correspond (subject to specified modifications) to the civil recovery provisions in the 2002 Act. Overseas requests that are criminal in nature will continue to be dealt with through the provisions in the Crime (International Co-operation) Act 2003 (c. 32).

Article 3 inserts new Parts 4A and 4B into the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181) (“the 2005 Order”).

In relation to England, Wales and Northern Ireland, articles 141A and 141B provide that the Secretary of State may refer to an enforcement authority an external request to prohibit dealing with relevant property in England and Wales or Northern Ireland. The enforcement authority may obtain from the High Court a prohibition order in certain circumstances. The external request may concern relevant property whether or not proceedings have been brought for an offence in connection with the property in the country sending the request.

Articles 141C and 141D explain where proceedings are to take place and the powers of the High Court to prohibit a person from dealing with relevant property by way of a prohibition order.

Article 141E identifies who can make an application for a prohibition order and it enables the High Court to vary or set aside a prohibition order.

Article 141F sets out when relevant property will not be the subject of a prohibition order.

Article 141G provides that the High Court may exclude property from the prohibition order and make exclusions from the prohibition on dealing with property to which the prohibition order applies.

Article 141H provides restrictions on proceedings and remedies in respect of property to which a prohibition order applies.

Articles 141I and 141J enables the High Court to appoint a receiver in respect of property to which a prohibition order applies and deals with the powers of the receiver. The application for the receiver is made by the enforcement authority whether as part of the application for a prohibition order or at any time afterwards.

Article 141K provides for the supervision of the receiver and enables the receiver, any party to the proceedings and anyone else affected by the receiver’s actions to ask the High Court to clarify the receiver’s powers.

Articles 141L and 141M ensure that where a prohibition order affecting land is applied for, its effect may be reinforced by taking action at the Land Registry to prevent disposal of the land in question.

Article 141N deals with the case where property has been made subject to a prohibition order but the prohibition order is set aside or varied. The person whose property it is may, in certain circumstances, seek compensation at the discretion of the High Court.

Article 141O provides that the enforcement authority may not apply for a prohibition order unless it reasonably believes that the aggregate value of the relevant property which will be the subject of the prohibition order is not less than £10,000. This ensures that prohibition orders will not be used in minor or trivial cases.

Article 141P and 141Q sets out the interrelationship between prohibition orders and insolvency proceedings.

Articles 141ZA to 141ZM of Part 4B make similar provision for Scotland to that in Part 4A for England, Wales and Northern Ireland.

Article 4 sets a limitation period within which proceedings may be brought and widens the scope of when proceedings are deemed to have been brought.

Article 5 makes similar provision to article 4 but in relation to the Limitation (Northern Ireland) Order 1989 ([S.I. 1989/1339 \(NI 11\)](#)).

Article 6 makes similar provision to articles 4 and 5 but in relation to the Prescription and Limitation (Scotland) Act [1973 \(c.52\)](#).