STATUTORY INSTRUMENTS

2015 No. 1750

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015

Made - - - -	*8th October 2015*
Laid before Parliament	*15th October 2015*
Coming into force - -	*30th November 2015*

At the Court at Buckingham Palace, the 8th day of October 2015

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(**a**), is pleased, by and with the advice of Her Privy Council, to order as follows.

PART 1

General provisions

Citation, commencement and extent

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015.

(2) This Order comes into force on 30th November 2015.

(3) This Order does not extend to Northern Ireland.

Interpretation

2. In this Order, "the 2005 Order" means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**b**).

(**a**) 2002 c. 29.
(**b**) S.I. 2005/3181, amended by S.I. 2006/594, 2008/302, 2009/2054, 2011/1242, 2013/472, 2013/534, 2013/2604, 2014/834 and 2014/3141.

PART 2

Amendment of Part 1 of the 2005 Order

Amendment of Part 1 of the 2005 Order

3. Part 1 of the 2005 Order (general provisions) is amended as follows.

Amendment of article 3 (insolvency practitioners)

4.—(1) Article 3 (insolvency practitioners) is amended as follows.

(2) After paragraph (6), insert—

"(6A) Paragraph (7) also applies if—

(a) property is detained under or by virtue of article 11A, 17I, 17J, 60A, 65I or 65J;

(b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of the detained property; and

(c) the expenses are ones which (but for the effect of the detention of the property) might have been met by taking possession of and realising the property.".

(3) For paragraph (7) substitute—

"(7) Whether or not the insolvency practitioner has seized or disposed of any property, the insolvency practitioner is entitled to payment of the expenses under—

(a) article 33(2), 34(3) or 48D(2) if the restraint order was made under article 8 or the property was detained under or by virtue of article 11A, 17I or 17J;

(b) article 77(2), 78(3) or 86D(2) if the restraint order was made under article 58 or the property was detained under or by virtue of article 60A, 65I or 65J.".

PART 3

Amendment of Part 2 of the 2005 Order

Amendment of Part 2 of the 2005 Order

5. Part 2 of the 2005 Order (giving effect in England and Wales to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings) is amended as follows.

Amendment of article 7 (conditions for Crown Court to give effect to external request)

6. In article 7 (conditions for Crown Court to give effect to external request), in paragraph (2)(c), for "is reasonable cause to believe" substitute "are reasonable grounds to suspect".

Amendment of article 8 (restraint orders)

7. After paragraph (4) of article 8 (restraint orders) insert—

"(4A) Paragraphs (4B) and (4C) apply where the Crown Court makes a restraint order (by virtue of the first condition in article 7) as a result of a criminal investigation having been started in the country from which the external request was made with regard to an offence.

(4B) The court—

(a) must include in the restraint order a requirement for the applicant for the restraint order to report to the court on the progress of the investigation at such times and in such manner as the restraint order may specify (a "reporting requirement"); and

(b) must discharge the restraint order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the restraint order is made under article 9(2)).

(4C) The duty under paragraph (4B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—

(a) must give reasons for its decision; and

(b) may at any time vary the restraint order so as to include a reporting requirement (and this power applies whether or not an application to vary the restraint order is made under article 9(2)).".

Insertion of article 8A

8. After article 8 (restraint orders) insert—

"**Restraint orders: power to retain seized property etc**

8A.—(1) A restraint order may include provision authorising the detention of any property to which it applies if the property—

(a) is seized by an appropriate officer under a relevant seizure power; or

(b) is produced to an appropriate officer in compliance with a production order under—

(i) article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**a**); or

(ii) article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**b**).

(2) Provision under paragraph (1) may, in particular—

(a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;

(b) relate to property that has already been seized or produced or to property that may be seized or produced in future.".

Insertion of article 11A

9. After article 11 (appeal to Supreme Court about restraint orders) insert—

"Detention of property pending appeal

11A.—(1) This article applies where—

(a) a restraint order includes provision under article 8A authorising the detention of property; and

(b) the restraint order is discharged under article 9(4)(a) or 10(3)(b).

(2) This article also applies where—

(a) a restraint order includes provision under article 8A authorising the detention of property; and

(b) the restraint order is varied under article 9(4)(a) or 10(3)(b) so as to omit any such provision.

(3) The property may be detained until there is no further possibility of an appeal against—

(**a**) S.I. 2013/2605.
(**b**) S.I. 2014/1893.

(a) the decision to discharge or vary the restraint order; or

(b) any decision made on an appeal against that decision.".

Omission of article 12 (seizure in pursuance of restraint order)

10. Article 12 (seizure in pursuance of restraint order) is omitted.

Insertion of Chapter 1A

11. After Chapter 1 (external requests), insert—

"CHAPTER 1A

External requests: search and seizure powers

Conditions for exercise of powers

17A.—(1) An appropriate officer may exercise the power conferred by article 17B if satisfied that either of the following conditions is met.

(2) The first condition is that—

(a) a criminal investigation has been started in the country from which the external request was made with regard to an offence;

(b) a person has been arrested for the offence;

(c) proceedings for the offence have not yet been started against the person in that country; and

(d) a restraint order is in force in respect of any realisable property.

(3) The second condition is that—

(a) proceedings for an offence have been started in the country from which the external request was made; and

(d) a restraint order is in force in respect of any realisable property.

(4) In relation to the first condition in this article, subject to article 17B(4), references in this Chapter to the defendant are to the person mentioned in that condition.

Power to seize property

17B.—(1) On being satisfied that either condition in article 17A is met, an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—

(a) the property may otherwise be made unavailable for satisfying any external order that has been or may be made against the defendant; or

(b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.

(2) But the officer may not seize exempt property.

(3) "Exempt property" means—

(a) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in the defendant's employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family.

(4) In relation to realisable property which is free property held by the recipient of a tainted gift, references in paragraph (3) to the defendant are to be read as references to the recipient of that gift.

(5) "Free property" has the same meaning as in section 82 of the Act.

(6) "Tainted gift" has the same meaning as in section 77 of the Act.

(7) The power conferred by this article may be exercised only with the appropriate approval under article 17F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

Search power: premises

17C.—(1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—

(a) the officer has reasonable grounds for suspecting may be found there; and

(b) if found there, the officer intends to seize under article 17B.

(2) The power conferred by this article may be exercised only with the appropriate approval under article 17F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) "Premises" has the meaning given by section 23 of the Police and Criminal Evidence Act 1984(**a**).

Search power: people

17D.—(1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under article 17B.

(2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that article, require the person—

(a) to permit a search of any property with the person;

(b) to permit a search of the person.

(3) An officer exercising a power under paragraph (2) may detain the person for so long as is necessary for its exercise.

(4) A power conferred by this article may be exercised only with the appropriate approval under article 17F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(5) This article does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979(**b**)).

Search power: vehicles

17E.—(1) The powers specified in paragraph (4) are exercisable if—

(a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under article 17B; and

(b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.

(2) The powers are exercisable only if the vehicle is—

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(**a**) 1984 c. 60.
(**b**) 1979 c. 2.

(3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under paragraph (4) only if the officer has reasonable grounds for believing—

(a) that the person does not reside in the dwelling; and

(b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.

(4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under article 17B, require the person to—

(a) permit entry to the vehicle;

(b) permit a search of the vehicle.

(5) An officer exercising a power under paragraph (4) may detain the vehicle for so long as is necessary for its exercise.

(6) A power conferred by this article may be exercised only with the appropriate approval under article 17F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

"**Appropriate approval**"

17F.—(1) This article has effect for the purposes of articles 17B to 17E.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means—

(a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer;

(b) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose;

(c) in relation to the exercise of a power by a constable, a senior police officer;

(d) in relation to the exercise of a power by an accredited financial investigator(**a**), an accredited financial investigator who is under the direction of a relevant Director as defined in section 352(5A) of the Act(**b**).

(4) A senior police officer means a police officer of at least the rank of inspector.

Exercise of powers without judicial approval

17G.—(1) An appropriate officer must give a written report to the appointed person in any case where—

(a) the officer seizes property under article 17B without the approval of a justice of the peace; and

(b) any of the property seized is not detained for more than 48 hours.

(2) An appropriate officer must also give a written report to the appointed person in any case where—

(a) the officer exercises any of the powers conferred by articles 17C to 17E without the approval of a justice of the peace; and

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(**a**) See section 3 of the Proceeds of Crime Act 2002 (c. 29) for the meaning of "accredited financial investigator".
(**b**) This definition applies for the purposes of Part 8 of the Proceeds of Crime Act 2002 (c. 29).

(b) no property is seized under article 17B.

(3) A report under this article must give particulars of the circumstances which led the officer to believe that—

(a) the powers were exercisable; and

(b) it was not practicable to obtain the approval of a justice of the peace.

(4) The appointed person means a person appointed for the purposes of this article by the Secretary of State.

(5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Secretary of State.

(6) The period of 48 hours mentioned in paragraph (1)(b) is to be calculated in accordance with paragraph (7).

(7) In calculating a period of 48 hours in accordance with this paragraph, no account is to be taken of—

(a) any Saturday or Sunday;

(b) Christmas Day;

(c) Good Friday; or

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971(**a**) in England and Wales.

Report by appointed person on exercise of powers

17H.—(1) As soon as possible after the end of each financial year, the person appointed under article 17G(4) must prepare a report for that year.

(2) "Financial year" means—

(a) the period beginning with the day on which this article comes into force and ending with the next 31st March (which is the first financial year); and

(b) each subsequent period of twelve months beginning with 1st April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by articles 17B to 17E are being exercised in cases where the officer who exercised them is required to give a report under article 17G.

(4) The report may make any recommendations the appointed person considers appropriate.

(5) The appointed person must send a copy of the report to the Secretary of State.

(6) The Secretary of State must—

(a) publish any report received under paragraph (5); and

(b) lay a copy before Parliament.

(7) Before acting under paragraph (6) the Secretary of State must exclude from the report any matter which the Secretary of State thinks is likely to prejudice any criminal investigation or criminal proceedings either in the United Kingdom or abroad (including the country from which the external request was made).

(8) If the Secretary of State excludes any matter from the report the Secretary of State must comply with paragraph (6) in relation to the whole of the report as soon as the Secretary of State thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

(**a**) 1971 c. 80.

Initial detention of seized property

17I.—(1) This article applies if an appropriate officer seizes property under article 17B .

(2) The property may be detained initially for a period of 48 hours.

(3) The period of 48 hours is to be calculated in accordance with article 17G(7).

Further detention pending variation of restraint order

17J. This article applies if—

(a) property is detained under article 17I;

(b) a restraint order is in force in respect of the property; and

(c) the restraint order does not include provision under article 8A authorising the detention of the property.

(2) If within the period mentioned in article 17I an application is made for the restraint order to be varied so as to include provision under article 8A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—

(a) the decision to refuse the application; or

(b) any decision made on an appeal against that decision.

Release of property

17K. This article applies in relation to property which—

(a) has been seized by an appropriate officer under article 17B; and

(b) is detained under or by virtue of article 17I or 17J.

(2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.

(3) The detention condition is met for so long as—

(a) either condition in article 17A is met; and

(b) there are reasonable grounds for the suspicion mentioned in article 17B(1).

(4) Nothing in this article requires property to be released if there is a power to detain it otherwise than under or by virtue of article 17I or 17J.

(5) Nothing in this article affects the operation of any power or duty to release property that arises apart from this article.

Codes of Practice

17L. A Code of Practice made under section 47S of the Act (codes of practice) applies to the powers conferred by this Chapter as it applies to the powers conferred by Part 2 of the Act in relation to search and seizure and detention of property.".

Insertion of articles 24A, 24B and 24C

12. After article 24 (appeal to Supreme Court about external orders), insert—

"**Orders for securing compliance with external order**

24A.—(1) This article applies where the Crown Court registers an external order.

(2) The court may make such order as it believes is appropriate for the purpose of ensuring that the external order is effective (a "compliance order").

(3) The court must consider whether to make a compliance order—

(a) when it registers the external order; and

(b) if it does not make a compliance order then, at any later time (while the registration of the external order is still in effect) on an application made by the relevant Director.

(4) The court may discharge or vary a compliance order on an application made by—

(a) the relevant Director;

(b) any person affected by the compliance order.

Appeal to Court of Appeal against orders under article 24A

24B.—(1) If on an application under article 24A(3)(b) the Crown Court decides not to make a compliance order, the relevant Director may appeal to the Court of Appeal against the decision.

(2) The following persons may appeal to the Court of Appeal in respect of the Crown Court's decision to make, discharge or vary a compliance order—

(a) the relevant Director;

(b) any person affected by the compliance 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.

(4) In this article "compliance order" means an order made under article 24A.

Appeal to Supreme Court against orders under article 24A

24C.—(1) An appeal lies to the Supreme Court against a decision of the Court of Appeal under article 24B.

(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 Supreme Court may—

(a) confirm the decision of the Court of Appeal; or

(b) make such order as it believes is appropriate.".

Amendment of article 26 (time for payment)

13.—(1) Article 26 (time for payment) is amended as follows.

(2) In paragraph (2), for "paragraphs (3) to (6), the amount" substitute "paragraphs (2A) to (6), the full amount".

(3) After paragraph (2), insert—

"(2A) If the Crown Court which registered the external order is satisfied that the person affected by the external order is unable to pay the full amount on the date mentioned in paragraph (2), it may make an order requiring whatever cannot be paid on that date to be paid—

(a) in a specified period; or

(b) in specified periods each of which relates to a specified amount.

(2B) A specified period—

(a) must start with the date mentioned in paragraph (2); and

(b) must not exceed three months.

(2C) The court may make an order extending the period (for all or any part or parts of the amount in question) if—

(a) within any specified period the person affected by the external order applies to the Crown Court for that period to be extended; and

(b) the court is satisfied that, despite having made all reasonable efforts, the person is unable to pay the amount to which the specified period relates within that period.

(2D) An extended period—

(a) must start with the date mentioned in paragraph (2); and

(b) must not exceed six months.

(2E) An order under paragraph (2C)—

(a) may be made after the end of the specified period to which it relates; but

(b) must not be made after the end of the period of six months starting with the date mentioned in paragraph (2).

(2F) Periods specified or extended under this article must be such that, where the court believes that the person affected by the external order will by a particular day be able—

(a) to pay the amount remaining to be paid; or

(b) to pay an amount towards what remains to be paid,

that amount is required to be paid no later than that day.

(2G) The court must not make an order under paragraph (2A) or (2C) unless it gives the relevant Director an opportunity to make representations.".

Amendment of article 34 (sums received by relevant Director)

14. In paragraph (4) of article 34 (sums received by relevant Director), after sub-paragraph (b) insert—

"(c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of article 48B(3).".

Amendment of article 46 (powers of court and receiver)

15. In article 46(1), after paragraph (b) insert—

"(c) the powers conferred on appropriate officers by articles 17B to 17E, 17G and 17I to 17K;

(d) the powers conferred on senior officers by article 17F.".

Amendment of article 47 (procedure on appeal to Court of Appeal under Part 2)

16. In article 47(4), after "23" insert ", 24B".

Insertion of Chapter 3A

17. After Chapter 3 (receivers and procedure), insert—

"CHAPTER 3A

Seized personal property

Seized personal property

48A.—(1) This article applies to personal property which is held by a person and which—

(a) has been seized by an appropriate officer under a relevant seizure power; or

(b) has been produced to an appropriate officer in compliance with a production order under—

(i) article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**a**); or

(ii) article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**b**).

(2) A magistrates' court may by order authorise an appropriate officer to realise the property if—

(a) an external order is made against the person by whom the property is held; and

(b) a receiver has not been appointed under article 27 (appointment of enforcement receivers) in relation to the property.

Costs of storage and realisation

48B.—(1) This article applies if a magistrates' court makes an order under article 48A.

(2) The court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—

(a) storing or insuring the property since it was seized or produced as mentioned in paragraph (1) of that article;

(b) realising the property.

(3) If the court makes a determination under this article the appropriate officer is entitled to payment of the amount under article 34(4)(c).

(4) A determination under this article may be made on the same occasion as the article 48A order or on any later occasion; and more than one determination may be made in relation to any case.

Articles 48A and 48B: appeals

48C.—(1) If a magistrates' court decides not to make an order under article 48A, an appropriate officer may appeal to the Crown Court.

(2) If a magistrates' court makes an order under article 48A, a person affected by the order may appeal to the Crown Court.

(3) But the person mentioned in article 48A(2)(a) may not appeal.

(4) An appropriate officer may appeal to the Crown Court against—

(a) a determination made by a magistrates' court under article 48B;

(b) a decision by a magistrates' court not to make a determination under that article.

Proceeds of realisation

48D.—(1) This article applies to sums which—

(a) are in the hands of an appropriate officer; and

(b) are the proceeds of the realisation of property under article 48A.

(2) The sums must be applied as follows—

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this paragraph by virtue of article 3;

(**a**) S.I. 2013/2605.
(**b**) S.I. 2014/1893.

(b) second, they must be applied in making any payments directed by the magistrates' court or the Crown Court;

(c) third, they must be paid to the relevant Director on account of the amount payable under the external order.

(3) If the amount payable under the external order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—

(a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or the Crown Court directs; and

(b) in such proportions as it directs.

(4) Before making a direction under paragraph (3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it.

(5) If the magistrates' court has made a direction under paragraph (2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.".

Amendment of article 54 (meaning of "defendant")

18. In article 54, in the definition of "defendant", after paragraph (b) insert—

"(c) for the purpose of Chapter 1A, has the meaning given in article 17A(4).".

Insertion of article 54A

19. After article 54 insert—

"No further possibility of appeal

54A.—(1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—

(a) an appeal against a decision of a court; or

(b) an appeal on which an order of a court could be varied or quashed.

(2) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.".

Amendment of article 55 (other interpretation)

20. In article 55 (other interpretation) at the appropriate place insert—

""appropriate officer" means—

(a) an officer of Revenue and Customs;

(b) a constable; or

(c) an accredited financial investigator;

"relevant seizure power" means a power to seize property which is conferred by or by virtue of—

(a) article 17B (power to seize property);

(b) article 13 (search and seizure warrants) of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**a**);

(c) article 13 (search and seizure warrants) of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**b**);

(**a**) S.I. 2013/2605.
(**b**) S.I. 2014/1893.

(d) Part 2 of the Police and Criminal Evidence Act 1984 as applied by section 16 of the Crime (International Co-operation) Act 2003(**a**); or

(e) section 17 of the Crime (International Co-operation) Act 2003.".

PART 4

Amendment of Part 3 of the 2005 Order

Amendment of Part 3 of the 2005 Order

21. Part 3 of the 2005 Order (giving effect in Scotland to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings) is amended as follows.

Insertion of article 58A

22. After article 58 (restraint orders) insert—

"**Restraint orders: power to retain seized property etc.**

58A.—(1) A restraint order may include provision authorising the detention of any property to which it applies if the property—

(a) is seized by an appropriate officer under a relevant seizure power; or

(b) is produced to an appropriate officer in compliance with a production order under—

(i) article 40 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**b**); or

(ii) article 6 of the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015(**c**).

(2) Provision under paragraph (1) may, in particular—

(a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;

(b) relate to property that has already been seized or produced or to property that may be seized or produced in future.".

Insertion of article 60A

23. After article 60 (appeals) insert—

"Detention of property pending appeal

60A.—(1) This article applies where—

(a) a restraint order includes provision under article 58A authorising the detention of property; and

(b) the restraint order is recalled under article 59(6)(a).

(2) This article also applies where—

(a) a restraint order includes provision under article 58A authorising the detention of property; and

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(**a**) 2003 c. 32.
(**b**) S.I. 2013/2605.
(**c**) S.I. 2015/206.

(b) the restraint order is varied under article 59(6)(b) so as to omit any such provision.

(3) The property may be detained until there is no further possibility of an appeal against (or review of)—

(a) the decision to recall or vary the restraint order; or

(b) any decision made on an appeal against (or review of) that decision.".

Omission of article 64 (seizure in pursuance of restraint order)

24. Article 64 (seizure in pursuance of restraint order) is omitted.

Insertion of Chapter 1A

25. After Chapter 1 (external requests) insert—

"CHAPTER 1A

External requests: search and seizure powers

Conditions for exercise of powers

65A.—(1) An appropriate officer may exercise the power conferred by article 65B if satisfied that either of the following conditions is met.

(2) The first condition is that—

(a) a criminal investigation has been started in the country from which the external request was made with regard to an offence;

(b) a person has been arrested for the offence;

(c) proceedings for the offence have not yet been started against the person in that country; and

(d) a restraint order is in force in respect of any realisable property.

(3) The second condition is that—

(a) proceedings for an offence have been started in the country from which the external request was made; and

(b) a restraint order is in force in respect of any realisable property.

(4) In relation to the first condition in this article, subject to article 65B(4), references in this Chapter to the accused are to the person mentioned in that condition.

Power to seize property

65B.—(1) On being satisfied that either condition in article 65A is met, an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—

(a) the property may otherwise be made unavailable for satisfying any external order that has been or may be made against the accused; or

(b) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.

(2) But the officer may not seize exempt property.

(3) "Exempt property" means—

(a) such tools, books, vehicles and other items of equipment as are necessary to the accused for use personally in the accused's employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the accused and the accused's family.

(4) In relation to realisable property which is free property held by the recipient of a tainted gift, references in paragraph (3) to the accused are to be read as references to the recipient of that gift.

(5) "Free property" has the same meaning as in section 148 of the Act.

(6) "Tainted gift" has the same meaning as in section 144 of the Act.

(7) The power conferred by this article may be exercised only with the appropriate approval under article 65F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

Search power: premises

65C.—(1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—

(a) the officer has reasonable grounds for suspecting may be found there; and

(b) if found there, the officer intends to seize under article 65B.

(2) The power conferred by this article may be exercised only with the appropriate approval under article 65F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) "Premises" has the meaning given by section 23 of the Police and Criminal Evidence Act 1984(**a**).

Search power: people

65D.—(1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under article 65B.

(2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that article, require the person—

(a) to permit a search of any property with the person;

(b) to permit a search of the person.

(3) An officer exercising a power under paragraph (2) may detain the person for so long as is necessary for its exercise.

(4) A power conferred by this article may be exercised only with the appropriate approval under article 65F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(5) This article does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979(**b**)).

Search power: vehicles

65E.—(1) The powers specified in paragraph (4) are exercisable if—

(a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under article 65B; and

(b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.

(2) The powers are exercisable only if the vehicle is—

(**a**) 1984 c. 60.
(**b**) 1979 c. 2.

(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under paragraph (4) only if the officer has reasonable grounds for believing—

(a) that the person does not reside in the dwelling; and

(b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.

(4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under article 65B, require the person to—

(a) permit entry to the vehicle;

(b) permit a search of the vehicle.

(5) An officer exercising a power under paragraph (4) may detain the vehicle for so long as is necessary for its exercise.

(6) A power conferred by this article may be exercised only with the appropriate approval under article 65F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

"**Appropriate approval**"

65F.—(1) This article has effect for the purposes of articles 65B, 65C, 65D and 65E.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of the sheriff or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means—

(a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer;

(b) in relation to the exercise of a power by a constable, a senior police officer.

(4) A senior police officer means a police officer of at least the rank of inspector.

Exercise of powers without judicial approval

65G.—(1) An appropriate officer must give a written report to the appointed person in any case where—

(a) the officer seizes property under article 65B without the approval of the sheriff; and

(b) any of the property seized is not detained for more than 48 hours.

(2) An appropriate officer must also give a written report to the appointed person in any case where—

(a) the officer exercises any of the powers conferred by articles 65C to 65E without the approval of the sheriff; and

(b) no property is seized under article 65B.

(3) A report under this article must give particulars of the circumstances which led the officer to believe that—

(a) the powers were exercisable; and

(b) it was not practicable to obtain the approval of the sheriff.

(4) The appointed person means a person appointed for the purposes of this article by the Scottish Ministers.

(5) The appointed person must not be a person employed under or for the purposes of the Scottish Administration; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Scottish Ministers.

(6) The period of 48 hours mentioned in paragraph (1)(b) is to be calculated in accordance with paragraph (7).

(7) In calculating a period of 48 hours in accordance with this paragraph, no account is to be taken of—

(a) any Saturday or Sunday;

(b) Christmas Day;

(c) Good Friday;

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971(**a**) in Scotland; or

(e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995(**b**) as a court holiday in a sheriff court in the sheriff court district within which the power is exercised.

Report by appointed person on exercise of powers

65H.—(1) As soon as possible after the end of each financial year, the person appointed under article 65G(4) must prepare a report for that year.

(2) "Financial year" means—

(a) the period beginning with the day on which this article comes into force and ending with the next 31st March (which is the first financial year); and

(b) each subsequent period of twelve months beginning with 1st April.

(3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by articles 65B to 65E are being exercised in cases where the officer who exercised them is required to give a report under article 65G.

(4) The report may make any recommendations the appointed person considers appropriate.

(5) The appointed person must send a copy of the report to the Scottish Ministers.

(6) The Scottish Ministers must—

(a) publish any report received under paragraph (5); and

(b) lay a copy before the Scottish Parliament.

(7) Before acting under paragraph (6) the Scottish Ministers must exclude from the report any matter which the Scottish Ministers think is likely to prejudice any criminal investigation or criminal proceedings either in the United Kingdom or abroad (including the country from which the external request was made).

(8) If the Scottish Ministers exclude any matter from the report they must comply with paragraph (6) in relation to the whole of the report as soon as they think that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

(**a**) 1971 c. 80.

(**b**) 1995 c. 46. Section 8(2) was amended by s. 59 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) and S.S.I. 2015/150, paragraph 5 of Part 1 of the Schedule.

Initial detention of seized property

65I.—(1) This article applies if an appropriate officer seizes property under article 65B.

(2) The property may be detained initially for a period of 48 hours.

(3) The period of 48 hours is to be calculated in accordance with article 65G(7).

Further detention pending variation of restraint order

65J.—(1) This article applies if—

(a) property is detained under article 65I;

(b) a restraint order is in force in respect of the property; and

(c) the restraint order does not include provision under article 58A authorising the detention of the property.

(2) If within the period mentioned in article 65I an application is made for the restraint order to be varied so as to include provision under article 58A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

(3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—

(a) the decision to refuse the application; or

(b) any decision made on an appeal against (or review of) that decision.

Release of property

65K.—(1) This article applies in relation to property which—

(a) has been seized by an appropriate officer under article 65B; and

(b) is detained under or by virtue of article 65I or 65J.

(2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.

(3) The detention condition is met for so long as—

(a) either condition in article 65A is met; and

(b) there are reasonable grounds for the suspicion mentioned in article 65B(1).

(4) Nothing in this article requires property to be released if there is a power to detain it otherwise than under or by virtue of article 65I or 65J.

(5) Nothing in this article affects the operation of any power or duty to release property that arises apart from this article.

Guidance by Lord Advocate

65L.—(1) The Lord Advocate may issue guidance in connection with—

(a) the carrying out by appropriate officers of the functions conferred by articles 65B to 65G;

(b) the carrying out by senior officers of their functions under article 65F; and

(c) the detention of property under or by virtue of articles 58A, 60A, 65I and 65J.

(2) The Lord Advocate must publish any guidance issued under this article.".

Amendment of article 69 (registration of external orders)

26. In paragraph (1)(c) of article 69 (registration of external orders), for "and 77(6)" substitute ", 77(6) and 86D(2)".

Amendment of article 78 (sums received by clerk of court)

27.—(1) Article 78 (sums received by clerk of court) is amended as follows.

(2) In paragraph (3)(b), after "article 77(2)(a)" insert "or 86D(2)(a)".

(3) After paragraph (5) insert—

"(5A) If the clerk of court received the sums from an appropriate officer under article 77 or 86D, the clerk of court must next apply them in payment to an appropriate officer of any amount to which the officer is entitled by virtue of article 86B.".

Insertion of Chapter 3A

28. After Chapter 3 (administrators and procedure) insert—

"CHAPTER 3A

Seized personal property

Seized personal property

86A.—(1) This article applies to moveable property which is held by a person and which—

(a) has been seized by an appropriate officer under a relevant seizure power; or

(b) has been produced to an appropriate officer in compliance with a production order under—

(i) article 40 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**a**); or

(ii) article 6 of the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015(**b**).

(2) The sheriff may by order authorise an appropriate officer to realise the property if—

(a) an external order is made against the person by whom the property is held;

(b) an administrator has not been appointed under article 73 (appointment of enforcement administrators) in relation to the property; and

(c) any period allowed under article 72 (time for payment) for payment of the amount ordered to be paid under the external order has ended.

Costs of storage and realisation

86B.—(1) This article applies if the sheriff makes an order under article 86A.

(2) The sheriff may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—

(a) storing or insuring the property since it was seized or produced as mentioned in paragraph (1) of that article;

(b) realising the property.

(3) If the sheriff makes a determination under this article the appropriate officer is entitled to payment of the amount under article 78(5A).

(4) A determination under this article may be made on the same occasion as the article 86A order or on any later occasion; and more than one determination may be made in relation to any case.

(**a**) S.I. 2013/2605.
(**b**) S.I. 2015/206.

Articles 86A and 86B: appeals

86C.—(1) If a sheriff decides not to make an order under article 86A, an appropriate officer may appeal to the Court of Session.

(2) If a sheriff makes an order under article 86A, a person affected by the order may appeal to the Court of Session.

(3) But the person mentioned in article 86A(2)(a) may not appeal.

(4) An appropriate officer may appeal to the Court of Session against—

(a) a determination made by a sheriff under article 86B;

(b) a decision by a sheriff not to make a determination under that article.

(5) An appeal under this article must be made before the end of the period of 21 days starting with the day on which the decision or (as the case may be) the order was made.

(6) On an appeal under this article, the Court of Session may—

(a) confirm, quash or vary the decision or (as the case may be) the order; or

(b) make such order as the Court of Session believes is appropriate.

Proceeds of realisation

86D.—(1) This article applies to sums which—

(a) are in the hands of an appropriate officer; and

(b) are the proceeds of the realisation of property under article 86A.

(2) The sums must be applied as follows—

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this paragraph by virtue of article 3;

(b) second, they must be applied in making any payments directed by the sheriff;

(c) third, they must be paid to the appropriate clerk of court on account of the amount payable under the external order.

(3) If the amount payable under the external order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—

(a) among such persons who held (or hold) interests in the property represented by the proceeds as the sheriff directs; and

(b) in such proportions as the sheriff directs.

(4) Before making a direction under paragraph (3) the sheriff must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to the sheriff.

(5) The appropriate clerk of court is the sheriff clerk appointed under article 69(1).".

Amendment of article 91 (meaning of "accused" and "offender")

29. In article 91 (meaning of "accused" and "offender") for the definition of "accused" substitute—

""accused"—

(a) in relation to a restraint order, means—

(i) in a case in which the first condition in article 57 is satisfied, the alleged offender;

(ii) in a case in which the second condition in article 57 is satisfied, the person against whom proceedings for an offence have been instituted in a country outside the United Kingdom (whether or not the person has been convicted);

(b) for the purpose of Chapter 1A—

(i) in the case mentioned in paragraph (4) of article 65B, has the meaning given in that paragraph;

(ii) subject to article 65B(4), in the case mentioned in paragraph (4) of article 65A, has the meaning given in that paragraph;

(iii) otherwise, means the person against whom proceedings for an offence have been instituted in a country outside the United Kingdom (whether or not the person has been convicted);".

Insertion of article 91A

30. After article 91 (meaning of "accused" and "offender") insert—

"No further possibility of appeal

91A.—(1) The following rule applies for the purposes of construing any provision of this Part which refers to there being no further possibility of—

(a) an appeal against (or review of) a decision of a court; or

(b) an appeal on which an order of a court could be varied or quashed.

(2) Any power—

(a) to allow an appeal (or review) out of time, or

(b) to extend the time for applying for leave to appeal,

must be ignored.".

Amendment of article 92 (other interpretation)

31. In article 92 (other interpretation) at the appropriate place insert—

""appropriate officer" means—

(a) an officer of Revenue and Customs; or

(b) a constable;

"relevant seizure power" means a power to seize property which is conferred by or by virtue of—

(a) article 65B (power to seize property);

(b) article 47 (search warrants) of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**a**);

(c) article 13 (search warrants) of the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015(**b**); or

(d) section 18 (warrants in Scotland) of the Crime (International Co-operation) Act 2003(**c**).".

(**a**) S.I. 2013/2605.
(**b**) S.I. 2015/206.
(**c**) 2003 c. 32. Section 18 was amended by S.I. 2013/602, article 26 and Schedule 2, Part 1, paragraph 42(2).

PART 5

Amendment of Part 4A of the 2005 Order

Amendment of Part 4A of the 2005 Order

32. Part 4A of the 2005 Order(**a**) (giving effect in England and Wales and Northern Ireland to external requests by means of civil proceedings) is amended as follows.

Amendment of article 141G (exclusions)

33. In article 141G (exclusions)(**b**), after paragraph (4) insert—

"(4A) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs;

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and

(c) is made subject to the required conditions (see article 198) in addition to any conditions imposed under paragraph (4).

(4B) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet their legal expenses in respect of proceedings under this Part—

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which the person is a participant; and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.".

Insertion of articles 141NA and 141NB

34. After article 141N (compensation)(**c**) insert—

"**Legal expenses excluded from prohibition: required conditions**

141NA.—(1) The Lord Chancellor may by regulations specify the required conditions for the purposes of article 141G(4A).

(2) A required condition may (in particular)—

(a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers), or

(b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.

(3) A required condition made for the purpose mentioned in paragraph (2)(b) may (for example)—

(a) provide for sums to be released only with the agreement of the enforcement authority;

(**a**) Part 4A was inserted by S.I. 2013/2604.
(**b**) Article 141G was inserted by S.I. 2013/2604.
(**c**) Article 141N was inserted by S.I. 2013/2604.

(b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under article 141NB in respect of that item and the sum is released for payment of the assessed amount;

(c) provide for a sum to be released in respect of an item of expenditure only if—

(i) the enforcement authority agrees to its release, or

(ii) the court has assessed the amount allowed by regulations under article 141NB in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this article, the Lord Chancellor must consult such persons as the Lord Chancellor considers appropriate.

Legal expenses: regulations for purposes of article 141G(4A)

141NB.—(1) The Lord Chancellor may by regulations make provision for the purposes of required conditions that make provision of the kind mentioned in article 141NA(3)(b) or (c).

(2) Regulations under this article may (in particular)—

(a) limit the amount of remuneration allowable to representatives for a unit of time worked;

(b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;

(c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.

(3) Before making regulations under this article, the Lord Chancellor must consult such persons as the Lord Chancellor considers appropriate.".

Amendment of article 149 (property freezing orders: exclusions)

35. In article 149 (property freezing orders: exclusions), for paragraph (3)(a) substitute—

"(a) to meet their reasonable living expenses;

(aa) to meet their reasonable legal expenses in connection with the property freezing order; or".

Amendment of article 157 (interim receiving orders: restrictions on dealing etc with property)

36. In article 157 (interim receiving orders: restrictions on dealing etc with property), for paragraph (3) substitute—

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

(a) to meet their reasonable living expenses;

(b) to meet their reasonable legal expenses in connection with the interim receiving order; or

(c) to carry on any trade, business, profession or occupation.

(3A) An exclusion may be made subject to conditions.".

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (S.I. 2005/3181) ("the 2005 Order") in relation to giving effect in England and Wales and Scotland to external requests within the meaning of section 447 of the Proceeds of Crime Act 2002 (c. 29) ("the Act").

The provisions in the 2005 Order for giving effect to external requests broadly correspond with provisions in the Act for giving effect to confiscation orders under the Act ("the domestic provisions"). The amendments made by this Order are consequential on the amendments made to the domestic provisions by the Policing and Crime Act 2009 (c. 26) and the Serious Crime Act 2015 (c. 9) which came into force on 1st June 2015 (see commencement orders S.I. 2015/983 (C. 64) and S.I. 2015/820 (C. 52)).

An impact assessment has not been produced for this instrument as it has no direct impact on business, the public sector, charities or voluntary bodies.

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