STATUTORY INSTRUMENTS

2016 No. 662

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2016

Made - - - -	*13th July 2016*
Laid before Parliament	*20th July 2016*
Coming into force - -	*11th August 2016*

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At the Court at Buckingham Palace, the 13th day of July 2016

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 and commencement

1. This Order may be cited as the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2016 and comes into force on 11th August 2016.

Interpretation

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

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 2 (interpretation)

4. In article 2 (interpretation) in the appropriate places insert—

""The 2014 Regulations" means the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(**c**);

"overseas confiscation order" has the same meaning as in the 2014 Regulations;".

Amendment of Article 3 (insolvency practitioners)

5. In article 3 (insolvency practitioners)—

(a) In paragraph (6A)(a), for "or 65J" substitute ", 65J, 98A, 103I or 103J";

(b) After paragraph (7)(b), insert—

"(c) article 119(2), 120(3) or 134D(2) if the restraint order was made under article 95 or the property was detained under or by virtue of article 98A, 103I or 103J.".

(**a**) 2002 c. 29. Section 444 was amended by section 108 of the Serious Organised Crime and Police Act 2005 (c. 15), by S.I. 2010/976, by section 15 of, and Part 2 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and by S.I. 2014/834.

(**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, 2014/3141 and 2015/1750.

(**c**) S.I. 2014/3141, which is amended by S.I. 2014/3191.

PART 3

Amendment of Part 2 of the 2005 Order

Amendment of Part 2 of the 2005 Order

6. 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 9 (application, discharge and variation of restraint orders)

7. In article 9 (application, discharge and variation of restraint orders), for paragraph 6 substitute—

"(6) If the condition in article 7 which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time—

(a) an external order has not been registered under Chapter 2 of this Part, or

(b) there has been no direction by the Crown Court in accordance with Article 15 of the 2014 Regulations to register an overseas confiscation order which applies to property specified in the restraint order.".

Amendment of Article 11A (detention of property pending appeal)

8. In article 11A (detention of property pending appeal), in paragraph (2)(b), for "9(4)(a)" substitute "9(4)(b)".

Amendment of Article 55 (other interpretation)

9. In article 55 (other interpretation), in the definition of "appropriate officer" in paragraph (c), for "accredited financial investigator" substitute "an accredited financial investigator who is under the direction of a relevant Director as defined in section 352(5A) of the Act.".

PART 4

Amendment of Part 3 of the 2005 Order

Amendment of Part 3 of the 2005 Order

10. 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.

Amendment of article 57 (conditions for court to give effect to external request)

11. In article 57 (conditions for 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 58 (restraint orders)

12. After paragraph (4) of article 58 (restraint orders) insert—

"(4A) Paragraphs (4B) and (4C) apply where the court makes a restraint order (by virtue of the first condition in article 57) as a result of a criminal investigation having been instituted 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 recall the restraint order if proceedings for the offence are not instituted within a reasonable time (and this duty applies whether or not an application to recall the restraint order is made under article 59(4)).

(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 59(4)).".

Amendment of article 59 (application, recall and variation)

13. In article 59 (application, recall and variation)—

(a) in paragraph (4), for "(7)" substitute "(9)"; and

(b) For paragraph (8) substitute—

"(8) If the condition in article 57 which was satisfied was that proceedings were instituted, the court must recall the order if within a reasonable time—

(a) an external order has not been registered under Chapter 2 of this Part, or

(b) there has been no direction by the Court of Session in accordance with paragraph 11 of Schedule 1 to the 2014 Regulations to register an overseas confiscation order which applies to property specified in the restraint order.".

Insertion of articles 70A and 70B

14. After article 70 (appeal about external orders), insert—

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

70A.—(1) This article applies where the court registers an external order.

(2) The court may make such order in relation to the registered person 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 Lord Advocate.

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

(a) the Lord Advocate;

(b) the registered person.

(5) In this article and article 70B "registered person" means the person named in the external order which has been registered by the court.

Appeal against orders under article 70A

70B.—(1) If on an application under article 70A(3)(b) the court decides not to make a compliance order, the Lord Advocate may reclaim against the decision.

(2) The following persons may reclaim in respect of the court's decision to make, recall or vary a compliance order—

(a) the Lord Advocate;

(b) the registered person.

(3) On a reclaiming motion under paragraph (1) or (2) the court may—

(a) confirm or set aside the decision; or

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

(4) In this article "compliance order" means an order made under article 70A.".

Amendment of article 74 (powers of enforcement administrators in respect of monetary external orders)

15. In article 74 (powers of enforcement administrators in respect of monetary external orders), in paragraph (8)(b), after "are" insert "or are".

Amendment of article 75 (powers of enforcement administrators in respect of external orders for the recovery of specified property)

16. In article 75 (powers of enforcement administrators in respect of external orders for the recovery of specified property), in paragraph (5), for "the person" substitute "the offender or, as the case may be, that person".

Amendment of Article 76 (disposal of family home)

17. In article 76 (disposal of family home), for the definition of "child of the family" in paragraph (5), substitute—

> ""child of the family" includes any child or grandchild of either the offender or the offender's spouse or former spouse, and any person who has been treated by either the offender or the offender's spouse or former spouse as if he or she were a child of the offender, spouse or former spouse, whatever the age of such a child, grandchild or person may be;".

Amendment of article 77 (application of sums by enforcement administrator)

18. In article 77 (application of sums by enforcement administrator), in paragraph (7), after "appointed" insert "under".

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

19. In article 78 (sums received by clerk of court), in paragraph (6)—

(a) for "section 211(5)" substitute "section 211(6)"; and

(b) for "in the High Court" substitute "under that Act".

PART 5

Amendment of Part 4 of the 2005 Order

Amendment of Part 4 of the 2005 Order

20. Part 4 of the 2005 Order (giving effect in Northern Ireland 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 94 (conditions for High Court to give effect to external request)

21. In article 94 (conditions for High 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 95 (restraint orders)

22. After paragraph (4) of article 95 (restraint orders) insert—

"(4A) Paragraphs (4B) and (4C) apply where the High Court makes a restraint order (by virtue of the first condition in article 94) 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 96(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 96(2)).".

Insertion of article 95A

23. After article 95 (restraint orders) insert—

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

95A.—(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.".

(**a**) S.I. 2013/2605, which is amended by S.I. 2014/834 and 2015/1751.
(**b**) S.I. 2014/1893, which is amended by S.I. 2015/1751.

Amendment of article 96

24. In article 96 (application, discharge and variation of restraint orders), for paragraph (6) substitute—

"(6) If the condition in article 94 which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time—

(a) an external order has not been registered under Chapter 2 of this part, or

(b) there has been no direction by the Crown Court in accordance with paragraph 11 of Schedule 2 to the 2014 Regulations to register an overseas confiscation order which applies to property specified in the restraint order.".

Insertion of article 98A

25. After article 98 (appeal to Supreme Court about restraint orders) insert—

"Detention of property pending appeal

98A.—(1) This article applies where—

(a) a restraint order includes provision under article 95A authorising the detention of property; and

(b) the restraint order is discharged under article 96(4)(a) or 97(3)(b).

(2) This article also applies where—

(a) a restraint order includes provision under article 95A authorising the detention of property; and

(b) the restraint order is varied under article 96(4)(b) or 97(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) the decision to discharge or vary the restraint order; or

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

Omission of article 99 (seizure in pursuance of restraint order)

26. Article 99 (seizure in pursuance of restraint order) is omitted.

Insertion of Chapter 1A

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

"CHAPTER 1A

External Requests: Search and Seizure Powers

Conditions for exercise of powers

103A.—(1) An appropriate officer may exercise the power conferred by article 103B 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 103B(4), references in this Chapter to the defendant are to the person mentioned in that condition.

Power to seize property

103B.—(1) On being satisfied that either condition in article 103A 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 230 of the Act.

(6) "Tainted gift" has the same meaning as in section 225 of the Act.

(7) The power conferred by this article may be exercised only with the appropriate approval under article 103F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

Search power: premises

103C.—(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 103B.

(2) The power conferred by this article may be exercised only with the appropriate approval under article 103F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) "Premises" has the meaning given by Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989(**a**).

(**a**) 1989 No 1341 (N.I. 12).

Search power: people

103D.—(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 103B.

(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 103F 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(**a**)).

Search power: vehicles

103E.—(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 103B; 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.

(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 103B, 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 103F unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(**a**) 1979 c. 2.

Appropriate approval

103F.—(1) This article has effect for the purposes of articles 103B to 103E.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a lay magistrate 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

103G.—(1) An appropriate officer must give a written report to the appointed person in any case where—

(a) the officer seizes property under article 103B without the approval of a lay magistrate; 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 103C to 103E without the approval of a lay magistrate; and

(b) no property is seized under article 103B.

(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 Department of Justice.

(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 Department of Justice.

(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;

(**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) Christmas Day;

(c) Good Friday; or

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

Report by appointed person on exercise of powers

103H.—(1) As soon as possible after the end of each financial year, the person appointed under article 103G(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 103B to 103E are being exercised in cases where the officer who exercised them is required to give a report under article 103G.

(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 Department of Justice.

(6) The Department of Justice must—

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

(b) lay a copy before the Northern Ireland Assembly.

(7) Before acting under paragraph (6) the Department of Justice must exclude from the report any matter which the Department of Justice 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 Department of Justice excludes any matter from the report the Department of Justice must comply with paragraph (6) in relation to the whole of the report as soon as the Department of Justice thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

Initial detention of seized property

103I.—(1) This article applies if an appropriate officer seizes property under article 103B .

(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 103G(7).

Further detention pending variation of restraint order

103J.—(1) This article applies if—

(a) property is detained under article 103I;

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

(c) the restraint order does not include provision under article 95A authorising the detention of the property.

(2) If within the period mentioned in article 103I an application is made for the restraint order to be varied so as to include provision under article 95A authorising detention of the

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

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

103K.—(1) This article applies in relation to property which—

(a) has been seized by an appropriate officer under article 103B; and

(b) is detained under or by virtue of article 103I or 103J.

(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 103A is met; and

(b) there are reasonable grounds for the suspicion mentioned in article 103B(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 103I or 103J.

(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

103L. A Code of Practice made under section 195S of the Act (codes of practice: Secretary of State), or a Code of Practice made under section 195T of the Act (codes of practice: Department of Justice), applies to the powers conferred by this Chapter as it applies to the powers conferred by Part 4 of the Act in relation to search and seizure and detention of property.".

Insertion of articles 110A, 110B and 110C

28. After article 110 (appeal to Supreme Court about external orders), insert—

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

110A.—(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 110A

110B.—(1) If on an application under article 110A(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 110A.

Appeal to Supreme Court against orders under article 110B

110C.—(1) An appeal lies to the Supreme Court against a decision of the Court of Appeal under article 110B.

(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 112 (time for payment)

29.—(1) Article 112 (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 120 (sums received by appropriate chief clerk)

30. In article 120, after paragraph (4)(b) insert—

"(c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of article 134B(3)."

Amendment of article 132 (powers of court and receiver)

31. In article 132(1), after paragraph (b) insert—

"(c) the powers conferred on appropriate officers by articles 103B to 103E, 103G and 103I to 103K;

(d) the powers conferred on senior officers by article 103F.".

Amendment of article 133 (procedure on appeal to Court of Appeal under Part 4)

32. In article 133(3), after "109" insert ", 110B".

Insertion of Chapter 3A

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

"CHAPTER 3A

Seized Personal Property

Seized personal property

134A.—(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

(**a**) S.I. 2013/2605, which is amended by S.I. 2014/834 and 2015/1751.
(**b**) S.I. 2014/1893, which is amended by S.I. 2015/1751.

(b) a receiver has not been appointed under article 113 (appointment of enforcement receivers) in relation to the property.

Costs of storage and realisation

134B.—(1) This article applies if a magistrates' court makes an order under article 134A.

(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 120(4)(c).

(4) A determination under this article may be made on the same occasion as the article 134A order or on any later occasion; and more than one determination may be made in relation to any case.

Articles 134A and 134B: appeals

134C.—(1) If a magistrates' court decides not to make an order under article 134A, an appropriate officer may appeal to the Crown Court.

(2) If a magistrates' court makes an order under article 134A, a person affected by the order may appeal to the Crown Court.

(3) But the person mentioned in article 134A(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 134B;

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

Proceeds of realisation

134D.—(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 134A.

(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 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 140 (meaning of "defendant")

34. In article 140, in the definition of "defendant", after paragraph (b) insert—

"(c) for the purpose of Chapter 1A, has the meaning given in article 103A(4).".

Insertion of Article 140A

35. After article 140 insert—

"140A No further possibility of appeal

(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 141 (other interpretation)

36. In article 141 (other interpretation) at the appropriate places insert—

""appropriate officer" means—

(a) an officer of Revenue and Customs;

(b) a constable; or

(c) an accredited financial investigator who is under the direction of a relevant Director as defined in section 352(5A) of the Act;

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

(a) article 103B (power to seize property);

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

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

(d) Part 3 or 4 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (including as applied by order under Article 85(1) of that Order."

Amendment of article 141G (exclusions)

37. In article 141G, in paragraph (4A)(c), for "198" substitute "141NA".

PART 6

Amendment of Part 5 of the 2005 Order

Amendment of Part 5 of the 2005 Order

38. Part 5 of the 2005 Order (giving effect in the United Kingdom to external orders by means of civil recovery) is amended as follows.

Amendment of Article 177 (recovery orders)

39. In article 177, in paragraph (10)(b), after "Part" insert "or Part 4A".

PART 7

Amendment of Schedule 1 to the 2005 Order

Amendment of Schedule 1 to the 2005 Order

40. Schedule 1 to the 2005 Order (Administrators (Scotland): Further Provision) is amended as follows.

Amendment of paragraph 3 (functions)

41. In paragraph 3 (functions)—

(a) in sub-paragraph (11), for "for" in the first place where it occurs substitute "(or";

(b) in sub-paragraph (12), for "which" substitute "such".

Amendment of paragraph 7 (effect of appointment of administrator on diligence)

42. In paragraph 7 (effect of appointment of administrator on diligence)—

(a) in sub-paragraph (1), for "poinding" substitute "attachment", and for "poinder" substitute "attacher";

(b) in sub-paragraph (2), for "poinded" substitute "attached".

Ceri King
Deputy 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 Northern Ireland 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 in Northern Ireland and Scotland on 1st March 2016 (see commencement orders S.I. 2016/147 (C. 11) and S.I. 2016/148 (C. 12)).

Part 2 of this Order makes minor and consequential amendments to Part 1 of the 2005 Order (general provisions).

Part 3 of this Order makes amendments to 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). Article 9(6) of the 2005 Order requires the court to discharge a restraint order if (within a reasonable time) an external order has not been registered under Part 2 of the 2005 Order. A member state of the EU might make a confiscation order in respect of property which is subject to such a restraint order, which the member state may then

register as an overseas confiscation order under the Criminal Justice and Data Protection (Protocol No 36) Regulations 2014 (S.I. 2014/3141) ("the 2014 Regulations"). Article 7 of this Order makes an amendment to Article 9(6) of the 2005 Order to the effect that, where there is no registration of an external order under the procedure in the 2005 Order, the court is not required to discharge the restraint order if an overseas confiscation order in respect of the same property has been registered in accordance with the 2014 Regulations.

In addition, article 9 of this Order amends the definition of an "accredited financial investigator" in Article 55 (which applies for the purposes of Part 2 of the 2005 Order), to clarify that it refers to accredited financial investigators under the direction of a relevant Director as defined in section 352(5A) of the Act.

Part 4 of this Order makes amendments to 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). Article 11 amends paragraph 2(c) of Article 57 of the 2005 Order (conditions for court to give effect to external request) to state that, for the court to give effect to an external request where a criminal investigation has started but criminal proceedings have not commenced, there must be reasonable grounds to suspect that the accused has benefited from his conduct. Article 12 of this Order amends article 58 of the 2005 Order to include a requirement for the applicant for a restraint order to report to the court on the progress of an investigation, and a requirement for the court to recall the restraint order if proceedings are not started within a reasonable time. Article 13(b) of this Order makes a similar amendment to Article 7, in respect of the recall of restraint orders made in Scotland where an overseas confiscation order has been registered in accordance with the 2014 Regulations.

Article 14 of this Order inserts new articles 70A and 70B into the 2005 Order, which provide the court with a power to make compliance orders for the purpose of ensuring that an external order is effective. These provisions are equivalent to articles 24A, 24B and 24C of the 2005 Order, which apply in respect of England and Wales, and they reflect the equivalent domestic provisions in Scotland at sections 97B and 97D of the Act.

The remaining provisions in Part 4 of this Order, and the provisions in Part 7 of this Order, make minor amendments to Part 3 of, and Schedule 1 to, the 2005 Order in order to correct or clarify certain provisions. In addition, consequential amendments are made to Schedule 1 to the 2005 Order, further to the amendments made by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) to Schedule 3 to the Act.

Part 5 of this Order makes amendments to Part 4 of the 2005 Order (giving effect in Northern Ireland to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings). Article 21 amends paragraph 2(c) of Article 94 of the 2005 Order (conditions for court to give effect to external request) to state that, for the court to give effect to an external request where a criminal investigation has started but criminal proceedings have not commenced, there must be reasonable grounds to suspect that the accused has benefited from his conduct. Article 22 of this Order amends article 95 of the 2005 Order to include a requirement for the applicant for a restraint order to report to the court on the progress of an investigation, and a requirement for the court to recall the restraint order if proceedings are not started within a reasonable time.

Article 23 of this Order inserts article 95A into the 2005 Order, which allows the court to authorise the detention of property which has been seized under a relevant seizure power. Article 25 inserts Article 98A into the 2005 Order, which provides that property may continue to be detained pending any appeal against a decision to discharge or vary a restraint order, or any subsequent further appeal. Equivalent provisions for the rest of the United Kingdom can be found at Articles 8A and 11A (for England and Wales) and 58A and 60A (for Scotland).

Article 27 of this Order inserts a new Chapter 1A into Part 4 of the 2005 Order. This provides search and seizure powers for officers who are dealing with external requests, and specifies the conditions which must be met, and the approval which must be obtained, for the powers to be exercised. Equivalent provisions for the rest of the United Kingdom are made by articles 17A-17L

for England and Wales, and articles 65A-65L for Scotland. Articles 34 and 36 of this Order make consequential amendments to article 140 and 141 of the 2005 Order in this respect.

Article 28 of this Order inserts new articles 110A, 110B and 110C into the 2005 Order, which provide the court with a power to make compliance orders for the purpose of ensuring that an external order is effective. These provisions are equivalent to articles 24A, 24B and 24C of the 2005 Order, which apply in respect of England and Wales, and they reflect the equivalent domestic provisions in Northern Ireland at sections 163A and 163B of the Act. Article 29 of this Order amends article 112 of the 2005 Order (time for payment). These amendments provide that the court can make an order for payment of a confiscation order in specified periods, if it is satisfied that the Defendant cannot repay the full amount on the date the order is made. Equivalent provisions for England and Wales are made by article 26 of the 2005 Order.

Article 33 of this Order inserts a new chapter 3A into Part 4 of the 2005 Order, relating to seized personal property. This includes (at new Articles 134A and 134B) a power to allow the court to make an order authorising an appropriate officer to realise any seized property if an external order against the property holder is made and a receiver has not been appointed, and to recover costs of storing and realising the property. Article 30 of this Order makes a consequential amendment to article 120 of the 2005 Order in this respect. Equivalent provisions are made for the rest of the United Kingdom in the 2005 Order, by articles 48A-48D for England and Wales, and 86A-86D for Scotland.

Part 6 of this Order amends Part 5 of the 2005 Order (giving effect in the United Kingdom to external orders by means of civil recovery). Article 39 of this Order amends article 177 of the 2005 Order, which provides that a recovery order can make provision for the payment of reasonable legal expenses in respect of related proceedings under Part 5 of the 2005 Order. This provision is now amended to include related proceedings under Part 4A of the 2005 Order, ensuring that reasonable legal expenses incurred in proceedings involving related prohibition orders can also be paid.

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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