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*

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(**1**), 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(**2**).

(**1**) 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.

(**2**) 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.

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(**3**);

"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.".

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.".

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

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—