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

(**1**) 2002 c. 29.
(**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 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(**3**); or

(ii) article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**4**).

(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—

(**3**) S.I. 2013/2605.
(**4**) S.I. 2014/1893.

(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) 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(**5**).

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(**6**)).

(**5**) 1984 c. 60.
(**6**) 1979 c. 2.