
STATUTORY INSTRUMENTS

1991 No. 1463

CRIMINAL LAW, ENGLAND AND WALES

**The Criminal Justice (International Co-operation) Act 1990
(Enforcement of Overseas Forfeiture Orders) Order 1991**

Made - - - - 26th June 1991
Coming into force - - 1st July 1991

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:
Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 9 of the Criminal Justice (International Co-operation) Act 1990⁽¹⁾, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Title, commencement and extent

1.—(1) This Order may be cited as the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991 and shall come into force on 1st July 1991.

(2) This Order extends to England and Wales only.

Interpretation

2.—(1) In this Order—

“a court of a designated country” includes a court of any state or territory of a designated country;

“appropriate authority of a designated country” means—

- (a) the authority specified opposite that country in Schedule 2 to this Order, or
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“designated country” means a country or territory designated under article 4 of this Order;

“drug trafficking offence” means any offence corresponding to or similar to—

- (a) an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971⁽²⁾ (production, supply and possession for supply of controlled drugs);

(1) 1990 c. 5.
(2) 1971 c. 38.

- (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
- (c) an offence under—
 - (i) section 50(2) or (3) of the Customs and Excise Management Act 1979⁽³⁾ (improper importation),
 - (ii) section 68(2) of that Act (exportation), or
 - (iii) section 170 of that Act (fraudulent evasion),
 in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;
- (d) an offence under section 24 of the Drug Trafficking Offences Act 1986⁽⁴⁾;
- (e) an offence under section 12, 14 or 19 of the 1990 Act;
- (f) an offence under section 1 of the Criminal Law Act 1977⁽⁵⁾ of conspiracy to commit any of the offences in paragraphs (a) to (e) above;
- (g) an offence under section 1 of the Criminal Attempts Act 1981⁽⁶⁾ of attempting to commit any of those offences;
- (h) an offence of inciting another to commit any of those offences, whether under section 19 of the Misuse of Drugs Act 1971 or at common law; and
- (i) aiding, abetting, counselling or procuring the commission of any of those offences;

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property;

“the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990.
- (2) This Order applies to property whether it is situated in England or Wales or elsewhere.
- (3) The following provisions shall have effect for the interpretation of this Order.
- (4) Property is held by any person if he holds any interest in it.
- (5) Proceedings are instituted in a designated country when—
 - (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 to this Order has been taken there in respect of an alleged drug trafficking offence; or
 - (b) an application has been made to a court in a designated country for an external forfeiture order,
 and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (6) Proceedings are concluded—
 - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;
 - (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered, or otherwise).
- (7) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

⁽³⁾ 1979 c. 2.

⁽⁴⁾ 1986 c. 32, amended by the Criminal Justice (Scotland) Act 1987 (c. 41), section 70 and Schedule 2, the Criminal Justice Act 1988 (c. 33), section 103 and Schedule 5, the Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4), section 25(1) and Schedule 8, and the Criminal Justice (International Cooperation) Act 1990 (c. 5), section 31 and Schedule 4.

⁽⁵⁾ 1977 c. 45.

⁽⁶⁾ 1981 c. 47.

External forfeiture orders

3.—(1) An order made by a court in a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence is referred to in this Order as an “external forfeiture order”.

(2) In paragraph (1) above the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture order being made have been, or are to be, instituted in a court in a designated country, is referred to as “the defendant”.

Designation of countries and territories

4. Each of the countries and territories specified in Schedule 2 to this Order is hereby designated for the purposes of section 9 of the 1990 Act.

Restraint Orders

5.—(1) The High Court may in accordance with this paragraph by an order (referred to in this Order as a “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any property liable to forfeiture, that is to say, any property in respect of which an external forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in paragraphs (2) or (3) below.

(2) A restraint order may be made where—

- (a) proceedings have been instituted against the defendant in a designated country,
- (b) the proceedings have not been concluded, and
- (c) either an external forfeiture order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them.

(3) A restraint order may also be made where—

- (a) it appears to the High Court that proceedings are to be instituted against the defendant in a designated country; and
- (b) it appears to the court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

(4) Where the court has made an order under paragraph (1) above by virtue of paragraph (3) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

(5) A restraint order—

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external forfeiture order has been registered under article 10 of this Order, by a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise,
- (b) may be made on an ex parte application to a judge in chambers, and
- (c) notwithstanding anything in Order 11 of the Rules of the Supreme Court⁽⁷⁾ may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.

(7) S.I.1965/1776.

(6) A restraint order—

- (a) may be discharged or varied in relation to any property, and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—

- (a) to take possession of any property specified in the restraint order, and
- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court, and may require any person having possession of property in respect of which a receiver is appointed under this article to give possession of it to the receiver.

(9) For the purposes of this article, dealing with property held by any person includes (without prejudice to the generality of the expression) removing the property from England and Wales.

(10) Where a restraint order has been made, a constable may for the purpose of preventing any property specified in the restraint order being removed from England and Wales seize the property.

(11) Property seized under paragraph (10) above shall be dealt with in accordance with the directions of the court which made the order.

Applications for restraint orders

6. An application under article 5(5) of this Order shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for believing that an external forfeiture order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent's ability, give particulars of the property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which article 5(3) of this Order applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

Disposal of forfeited property

7.—(1) Where an external forfeiture order has been registered in the High Court under article 10 of this Order, the High Court may, on the application of a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise, order the forfeiture of the property specified in the external forfeiture order.

(2) Property forfeited under paragraph (1) above shall be disposed of in accordance with the court's directions.

(3) The court shall not in respect of any property exercise the powers conferred by paragraphs (1) and (2) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Exercise of powers by High Court or receiver

8.—(1) This article applies to the powers conferred on the High Court by articles 5 and 7 above or on a receiver appointed under article 5 of this Order.

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an external forfeiture order registered in the High Court under article 10 of this Order or, as the case may be, with a view to recovering property which may become liable to be recovered under any external forfeiture order which may be made in the defendant's case.

Receivers: Supplementary provisions

9.—(1) Where a receiver appointed under article 5 of this Order takes any action—

- (a) in relation to property which is not liable to recovery under an external forfeiture order, being action which he would be entitled to take if it were such property,
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

Registration of external forfeiture orders

10.—(1) On an application made by or on behalf of the government of a designated country, the High Court may register an external forfeiture order made there if—

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.

(2) In paragraph (1) above “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Proof of orders and judgment of court in a designated country

11.—(1) For the purposes of this Order—

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purposes of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

12.—(1) For the purposes of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) that an external forfeiture order is in force and is not subject to appeal;
- (c) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) that an order (however described) made by a court of the designated country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence,

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this article shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this article.

Certificate of appropriate authority

13. Where in relation to any designated country no authority is specified in Schedule 2 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

Representation of government of a designated country

14. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Crown Prosecution Service or the Commissioners of Customs and Excise to act on its behalf in any proceedings in the High Court under article 10 or any other provision of this Order.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

Article 2(5)

INSTITUTION OF PROCEEDINGS

Designated country	Point at which proceedings are instituted
Anguilla	(a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred
Australia	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred
the Bahamas	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	(a) when an information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred
Bermuda	when an information is laid charging a person with an offence
the Cayman Islands	(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; or (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Guernsey	when a person is charged with an offence

Designated country	Point at which proceedings are instituted
Hong Kong	<ul style="list-style-type: none"> (a) when a magistrate issues a warrant or summons; (b) when a person is charged with an offence; (c) when an indictment is preferred
Isle of Man	<ul style="list-style-type: none"> (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; (d) where an information is preferred by the Attorney General in a case where there have been no comittal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917
Italy	<ul style="list-style-type: none"> (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress; (b) when a proposal for the application of a preventative measure (“misura di prevenzione”) is laid before a court
Jersey	<ul style="list-style-type: none"> (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island; (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General; (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court

Designated country	Point at which proceedings are instituted (Miscellaneous Provisions) (Jersey) Law, 1949
Malaysia	when a person is charged with an offence
Montserrat	(a) when a judge issues a summons or warrant in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant
Saudi Arabia	when an information has been laid before a judicial authority
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
Switzerland	when proceedings for an offence are brought before an examining magistrate
United Mexican States	when criminal proceedings are instituted by a judicial authority
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence

SCHEDULE 2

Article 4

Designated country	Appropriate authority
Anguilla	the Attorney General of Anguilla
Australia	the Attorney General's Department
the Bahamas	the Attorney General of the Bahamas
Bahrain	the Ministry of the Interior
Bangladesh	
Barbados	the Attorney General
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	

Designated country	Appropriate authority
Canada	the Minister of Justice or officials designated by that Minister
the Cayman Islands	the Attorney General of the Cayman Islands
Chile	
China	
Costa Rica	
Cyprus	
Ecuador	
Egypt	
France	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Hong Kong	the Attorney General of Hong Kong
India	the Ministry of Home Affairs
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Madagascar	
Malaysia	the Inspector General of Police, Malaysia
Montserrat	the Attorney General of Montserrat
Nicaragua	
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Oman	
Paraguay	
Qatar	
Saudi Arabia	the Ministry of the Interior
Senegal	

Designated country	Appropriate authority
Spain	the Ministerio de Justicia, Madrid
Sweden	the Ministry for Foreign Affairs
Switzerland	the Eidgenössisches Justiz und Polizeidepartement
Togo	
Tunisia	
Uganda	
Union of Soviet Socialist Republics (including the Byelorussian Soviet Socialist Republic)	
United Arab Emirates	
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America
Yugoslavia	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement in England and Wales of orders made by a court in a designated country or territory for the forfeiture and destruction or other disposal of property used in connection with the commission of a drug trafficking offence. These powers will also apply to proceedings which have been or are to be instituted in a designated country or territory and may result in such an order being made there.

Article 4 of and Schedule 2 to the Order designate countries and territories for the purposes of enforcement of forfeiture orders of courts in those countries and territories and proceedings which may lead to such an order being made. Schedule 2 includes those countries and territories to which the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20th December 1988, applies. This Order by virtue of article 1(1) comes into force on 1st July 1991.