

Subsidiary Legislation made under ss.184 & 184A.

## **Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019**

**LN.2019/069**

	<i>Commencement</i>	<b>28.3.2019</b>
Amending enactments	Relevant current provisions	Commencement date
LN. 2019/226	Art. 2	7.11.2019

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**SCHEDULE 2**  
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*In exercise of the powers conferred on him by sections 184 and 184A of the Proceeds of Crime Act 2015, the Government, has made this Order-*

**PART 1**

**GENERAL PROVISIONS**

**Title and commencement.**

1.(1) This Order may be cited as the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019.

(2) This Order comes into operation on the day of publication.

**Interpretation.**

2. In this Order-

“the Act” means the Proceeds of Crime Act 2015;

“Competent Authority” means the Attorney General or any other person or body as may be determined by the Minister for Justice;

“Central Authority” means the Minister with responsibility for Justice or any other person or body as may be determined by the Minister for Justice;

“country” includes territory;

“external order” and “external request” have the meanings set out in section 184D of the Act;

“relevant property” means property which satisfies the test in section 184D(6) of the Act; and

“specified property” means property specified in an external order (other than an order that specifies a sum of money).

**Persons acting as insolvency practitioners.**

3.(1) Without prejudice to the generality of a provision in the Insolvency Act 2011 or in any other Act, where-



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- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

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

(2) A person acting as an insolvency practitioner shall, in the circumstances mentioned in subsection (1)(a) and (b), have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, voluntary liquidation, administration, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (3) Where a person acting as an insolvency practitioner—
  - (a) incurs expenses in respect of such property as is mentioned in paragraph (a) of subsection (1) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order, or
  - (b) incurs expenses other than expenses in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order might have been met by taking possession and realising the property,

that person shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under subsection (2)) to payment of those expenses under article 44.

**Scope.**

4. The provisions of this Order apply to external orders and external requests received in Gibraltar.

**Central Authority.**

5.(1) The Minister with responsibility for Justice is designated as the Central Authority for the purposes of this Order.

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(2) Without prejudice to subsection (1) the Central Authority shall undertake such other function or duty as the Government notifies to it in writing.

## **PART 2**

### **GIVING EFFECT IN GIBRALTAR TO EXTERNAL REQUESTS IN CONNECTION WITH CRIMINAL INVESTIGATIONS OR PROCEEDINGS AND TO EXTERNAL ORDERS ARISING FROM SUCH PROCEEDINGS**

#### **CHAPTER 1**

#### **EXTERNAL REQUESTS**

##### **Action on receipt of external request in connection with criminal investigations or proceedings**

6.(1) The Central Authority may refer an external request in connection with criminal investigations or proceedings in the country from which the request was made and concerning relevant property in Gibraltar to a Competent Authority to process it.

(2) The Competent Authority may ask the overseas authority which made the request for such further information as may be necessary to determine whether the request is likely to satisfy either of the conditions in article 7.

(3) A request under paragraph (2) may include a request for statements which may be used as evidence.

##### **Conditions for Supreme Court to give effect to external request**

7.(1) The Supreme Court may exercise the powers conferred by article 8 if either of the following conditions is satisfied.

(2) The first condition is that—

- (a) relevant property in Gibraltar is identified in the external request;
- (b) a criminal investigation has been started in the country from which the external request was made with regard to an offence, and

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- (c) there is reasonable cause to believe that the alleged offender named in the request has benefited from his criminal conduct.

(3) The second condition is that—

- (a) relevant property in Gibraltar is identified in the external request;
- (b) proceedings for an offence have been started in the country from which the external request was made and not concluded, and
- (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct.

(4) In determining whether the conditions are satisfied and whether the request is an external request within the meaning of the Act, the Court must have regard to the definitions in section 184D of the Act.

(5) If the first condition is satisfied, references in this Chapter to the defendant are to the alleged offender.

### **Restraint orders**

8.(1) If either condition set out in article 7 is satisfied, the Supreme Court may by order (“a restraint order”) prohibit any person from dealing with any realisable property which is identified in the external request and specified in the order.

(2) A restraint order may be made subject to exceptions, and an exception may in particular—

- (a) make provision for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order;
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;
- (c) be made subject to conditions.

(3) Paragraph (4) applies if—

- (a) a court makes a restraint order, and

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- (b) the applicant for the order applies to the court to proceed under paragraph (4) (whether as part of the application for the restraint order or at any time afterwards).
- (4) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- (5) A restraint order does not affect property for the time being subject to a charge under section 60 of the Act or under section 28 of the Drug Trafficking Offences Act 1995.
- (6) Dealing with property includes removing it from Gibraltar.
- (7) 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 2015 (External Investigations in a Civil Context) Order 2019; or
    - (ii) article 6 of the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019.
- (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.

#### **Application, discharge and variation of restraint orders**

9.(1) A restraint order—

- (a) may be made only on an application by the Attorney General;
- (b) may be made on an ex parte application to a judge in chambers.

(2) An application to discharge or vary a restraint order or an order under article 8(4) may be made to the Supreme Court by—

- (a) the Attorney General;
- (b) any person affected by the order.

(3) Paragraphs (4) to (7) apply to an application under paragraph (2).

(4) The court—

- (a) may discharge the order;
- (b) may vary the order.

(5) If the condition in article 7 which was satisfied was that proceedings were started, the court must discharge the order if, at the conclusion of the proceedings, no external order has been made.

(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 an external order has not been registered under Chapter 2 of this Part.

(7) If the condition in article 7 which was satisfied was that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

#### **Appeal to Court of Appeal about restraint orders**

10.(1) If on an application for a restraint order the Supreme Court decides not to make one, the Attorney General may appeal to the Court of Appeal against the decision.

(2) If an application is made under article 9(2) in relation to a restraint order or an order under article 8(4), the following persons may appeal to the Court of Appeal in respect of the Supreme Court's decision on the application—

- (a) the Attorney General;
- (b) any person affected by the order.

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- (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.

#### **Appeal to Privy Council about restraint orders**

11.(1) An appeal lies to the Privy Council from a decision of the Court of Appeal on an appeal under article 10.

(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 Privy Council may—
  - (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.

#### **Detention of property pending appeal**

12. (1) This article applies where—

- (a) a restraint order includes provision under article 8 authorising the detention of property; and
  - (b) the restraint order is discharged under article 9(4)(a) or 10(3)(b).
- (2) This article also applies where—
- (a) a restraint order includes provision under article 8 authorising the detention of property; and
  - (b) the restraint order is varied under article 9(4)(b) 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

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

#### **Seizure in pursuance of restraint order**

13. (1) If a restraint order is in force a police or customs officer may seize any property which is specified in it to prevent its removal from Gibraltar.

(2) Property seized under sub-regulation (1) must be dealt with in accordance with the directions of the court which made the order.

#### **Hearsay evidence in restraint proceedings**

14.(1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) Rules of Court may make provision for the giving of notice of proposal to adduce hearsay evidence, the calling of witnesses of cross examination on hearsay statement and as to considerations relevant to the weighing of hearsay statement.

(3) Restraint proceedings are proceedings—

- (a) for a restraint order;
- (b) for the discharge or variation of a restraint order;
- (c) on an appeal under article 10 or 11.

(4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is rendered as evidence of the matters stated

(5) Nothing in this article affects the admissibility of evidence which is admissible apart from this article.

#### **Registration.**

15. The Gibraltar Land Titles Act 2011—

- (a) shall apply as appropriate in relation to restraint orders as it applies in relation to orders which affect land and are made by the court for the purpose of enforcing judgements or recognisances,

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- (b) shall apply as appropriate in relation to applications for restraint orders as it applies in relation to other pending land actions.

**Restrictions relating to restraint orders**

16.(1) Paragraphs (2) to (4) apply if a court makes a restraint order.

(2) No distress may be levied against the property except with the leave of the Supreme Court and subject to any terms the Supreme Court may impose.

(3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within paragraph (4) except with the leave of the Supreme Court and subject to any terms the Supreme Court may impose.

(4) A right is within this paragraph if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(5) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(6) Before exercising any power conferred by paragraph (5), the court must give an opportunity to be heard to—

- (a) the Competent Authority, and
- (b) any receiver appointed in respect of the property.

**Appointment of receivers**

17. Where the court has made a restraint order under this Part, the court—

- (a) may at any time appoint a receiver—
  - (i) to take possession of any realisable property, and
  - (ii) 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



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- (b) may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (3) If the court appoints a receiver under this article it may act under paragraphs (4) to (13) on the application of the Competent Authority.
- (4) The court may by order confer on the receiver the following powers in relation to any property which is specified in the restraint order—
- (a) power to take possession of the property;
  - (b) power to manage or otherwise deal with the property;
  - (c) power to start, carry on or defend any legal proceedings in respect of the property;
  - (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.
- (5) The court may by order confer on the receiver power to enter any premises in Gibraltar and to do any of the following—
- (a) search for or inspect anything authorised by the court;
  - (b) make or obtain a copy, photograph or other record of anything so authorised;
  - (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.
- (6) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—
- (a) hold property;
  - (b) enter into contracts;
  - (c) sue and be sued;
  - (d) employ agents;
  - (e) execute powers of attorney, deeds or other instruments;

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- (f) take any other steps the court thinks appropriate.
- (7) The court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.
- (8) The court—
  - (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
  - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (9) Paragraphs (4), (7) and (8) do not apply to property for the time being subject to a charge under any of these provisions—
- (10) The court must not—
  - (a) confer the power mentioned in paragraph (4)(b) or (d) in respect of property, or
  - (b) exercise the power conferred on it by paragraph (8) in respect of property,unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (11) Paragraph (10), so far as relating to the power mentioned in paragraph (4)(b), does not apply to property which—
  - (a) is perishable; or
  - (b) ought to be disposed of before its value diminishes.
- (12) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.
- (13) Managing or otherwise dealing with property includes—
  - (a) selling the property or any part of it or interest in it;

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- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
- (c) incurring capital expenditure in respect of the property.

## CHAPTER 1A

### EXTERNAL REQUESTS: SEARCH AND SEIZURE POWERS

#### Conditions for exercise of powers

18.(1) An appropriate officer may exercise the power conferred by article 19 if satisfied that either of the following conditions is met.

- (2) The first condition is that—
  - (a) a criminal investigation has been started in the country from which the external request was made with regard to an offence;
  - (b) a person has been arrested for the offence;
  - (c) proceedings for the offence have not yet been started against the person in that country; and
  - (d) a restraint order is in force in respect of any realisable property.
- (3) The second condition is that—
  - (a) proceedings for an offence have been started in the country from which the external request was made; and
  - (b) a restraint order is in force in respect of any realisable property.

(4) In relation to the first condition in this article, subject to article 19(4), references in this Chapter to the defendant are to the person mentioned in that condition.

#### Power to seize property

19.(1) On being satisfied that either condition in article 18 is met, an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—

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- (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) The power conferred by this article may be exercised only with the appropriate approval under article 23 unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

**Search power: premises**

20.(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 19.
- (2) The power conferred by this article may be exercised only with the appropriate approval under article 23 unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (3) “Premises” has the same meaning as in section 2 of the Crimes Act 2011.

**Search power: people**

21. (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 19.

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(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 23 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.

**Search power: vehicles**

22.(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 19; 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

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- (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 19, 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 23 unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

**“Appropriate approval”**

23.(1) This article has effect for the purposes of articles 19 to 22.

- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.
  
- (3) A senior officer means-
  - (a) in relation to the exercise of a power by an officer of HM Customs an officer of at least the grade of HM Customs Higher Executive Officer;
  - (b) in relation to the exercise of a power by a police officer, a police officer of at least the rank of Chief Inspector.

**Exercise of powers without judicial approval**

- 24.(1) An appropriate officer must give a written report to the appointed person in any case where—
  - (a) the officer seizes property under article 19 without the approval of a justice of the peace; and

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- (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 20 to 22 without the approval of a justice of the peace; and
  - (b) no property is seized under article 19.
- (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 Minister.
- (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 Minister.
- (6) The period of 48 hours mentioned in paragraph (1)(b) is to be calculated in accordance with paragraph (7).
- (7) In calculating a period of 48 hours in accordance with this paragraph, no account is to be taken of—
- (a) any Saturday or Sunday;
  - (b) Christmas Day;
  - (c) Good Friday; or
  - (d) any day that is a bank and public holiday in Gibraltar under the Banking and Financial Dealings Act.

**Report by appointed person on exercise of powers**

25.(1) As soon as possible after the end of each financial year, the person appointed under article 24(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 19 to 22 are being exercised in cases where the officer who exercised them is required to give a report under article 24.
- (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 Minister.
- (6) The Minister must—
- (a) publish any report received under paragraph (5); and
  - (b) lay a copy before Parliament.
- (7) Before acting under paragraph (6) the Minister must exclude from the report any matter which he thinks is likely to prejudice any criminal investigation or criminal proceedings either in Gibraltar or abroad (including the country from which the external request was made).
- (8) If the Minister excludes any matter from the report the Minister must comply with paragraph (6) in relation to the whole of the report as soon as the Minister thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

### **Initial detention of seized property**

26.(1) This article applies if an appropriate officer seizes property under article 19.

- (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 24(7).



**Further detention pending variation of restraint order**

27.(1) This article applies if—

- (a) property is detained under article 26;
- (b) a restraint order is in force in respect of the property; and
- (c) the restraint order does not include provision under article 8 authorising the detention of the property.

(2) If within the period mentioned in article 26 an application is made for the restraint order to be varied so as to include provision under article 8 authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.

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

- (a) the decision to refuse the application; or
- (b) any decision made on an appeal against that decision.

**Release of property**

28. This article applies in relation to property which—

- (a) has been seized by an appropriate officer under article 19; and
- (b) is detained under or by virtue of article 26 or 27.

(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 18 is met; and
- (b) there are reasonable grounds for the suspicion mentioned in article 19(1).

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(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 26 or 27.

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

## **CHAPTER 2**

### **EXTERNAL ORDERS**

#### **Action on receipt of external order in connection with criminal convictions**

29. The Central Authority may refer an external order arising from a criminal conviction in the country from which the order was sent and concerning relevant property in Gibraltar to a Competent Authority to process it.

#### **Authentication by the overseas court**

30.(1) Paragraph (2) applies where an overseas court has authenticated its involvement in—

- (a) any judgment,
- (b) any order,
- (c) any other document concerned with such a judgment or order or proceedings relating to it.

(2) Where this paragraph applies, any statement in the judgment, order or document is admissible in evidence in proceedings under this Chapter.

#### **Applications to give effect to external orders**

31.(1) An application may be made by the Competent Authority to the Supreme Court to give effect to an external order.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1)—

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- (a) shall include a request to appoint the Competent Authority as the enforcement authority for the order;
- (b) may be made on an ex parte application to a judge in chambers.

#### **Conditions for Supreme Court to give effect to external orders**

32.(1) The Supreme Court must decide to give effect to an external order by registering it where all of the following conditions are satisfied.

(2) The first condition is that the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external order would not be incompatible with any of the Constitutional rights of any person affected by it.

(5) The fourth condition applies only in respect of an external order which authorises the confiscation of property other than money that is specified in the order.

(6) That condition is that the specified property must not be subject to a charge under section 60 of the Act or under section 28 of the Drug Trafficking Offences Act 1995.

(7) In determining whether the order is an external order within the meaning of the Act, the Court must have regard to the definitions in section 184D of the Act.

(8) In paragraph (3) “appeal” includes—

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

#### **Registration of external orders**

33.(1) Where the Supreme Court decides to give effect to an external order, it must—

- (a) register the order in that court;
- (b) provide for notice of the registration to be given to any person affected by it; and

- (c) appoint the Competent Authority as the enforcement authority for the order.
- (2) Only an external order registered by the Supreme Court may be implemented under this Chapter.
- (3) The Supreme Court may cancel the registration of the external order, or vary the property to which it applies, on an application by the Competent Authority or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in article 32 is not satisfied.
- (4) The Supreme Court must cancel the registration of the external order, on an application by the Competent Authority or any person affected by it, if it appears to the court that the order has been satisfied—
- (a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it, or
  - (b) in the case of an order for the recovery of specified property, by the surrender of the property, or
  - (c) by any other means.
- (5) Where the registration of an external order is cancelled or varied under paragraph (3) or (4), the Supreme Court must provide for notice of this to be given to the Competent Authority and any person affected by it.

#### **Appeal to Court of Appeal about external orders**

34.(1) If on an application for the Supreme Court to give effect to an external order by registering it, the court decides not to do so, the Competent Authority may appeal to the Court of Appeal against the decision.

- (2) If an application is made under article 33(3) or (4) in relation to the registration of an external order, the following persons may appeal to the Court of Appeal in respect of the Supreme Court's decision on the application—
- (a) the Competent Authority;
  - (b) any person affected by the registration.

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- (3) On an appeal under paragraph (1) or (2) the Court of Appeal may—
  - (a) confirm or set aside the decision to register; or
  - (b) direct the Supreme Court to register the external order (or so much of it as relates to property other than to which article 32(6) applies).

**Appeal to Privy Council about external orders**

35.(1) An appeal lies to the Privy from a decision of the Court of Appeal on an appeal under article 34.

(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 Privy Council may—
  - (a) confirm or set aside the decision of the Court of Appeal, or
  - (b) direct the Supreme Court to register the external order (or so much of it as relates to property other than property to which article 32(6) applies).

**Orders for securing compliance with external order**

36.(1) This article applies where the Supreme 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 Competent Authority.
- (4) The court may discharge or vary a compliance order on an application made by—
  - (a) the Competent Authority;

- (b) any person affected by the compliance order.

**Appeal to Court of Appeal against orders under article 36**

37.(1) If on an application under article 36(3)(b) the Supreme Court decides not to make a compliance order, the Competent Authority 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 Supreme Court's decision to make, discharge or vary a compliance order—

- (a) the Competent Authority;
  - (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 36.

**Appeal to Privy Council against orders under article 37**

38.(1) An appeal lies to the Privy Council against a decision of the Court of Appeal under article 20B.

(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 Privy Council may—
- (a) confirm the decision of the Court of Appeal; or
  - (b) make such order as it believes is appropriate.

**Sums in currency other than sterling**

39.(1) This article applies where the external order which is registered under article 33 specifies a sum of money.

(2) If the sum of money which is specified is expressed in a currency other than sterling, the sum of money to be recovered is to be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the Supreme Court registered the external order under article 18.

(3) The sterling equivalent must be calculated by the Competent Authority.

(4) The notice referred to in article 33(1)(b) and (5) must set out the amount in sterling which is to be paid.

(5) In this article “working day” means any day other than—

(a) a Saturday or Sunday;

(b) Christmas Day;

(c) Good Friday;

(d) any day that is a bank and public holiday in Gibraltar under the Banking and Financial Dealings Act.

### **Time for payment**

40.(1) This article applies where the external order is for the recovery of a specified sum of money.

(2) Subject to paragraphs (3) to (6), the amount ordered to be paid under—

(a) an external order that has been registered under article 33, or

(b) where article 39(2) applies, the notice under article 33(1)(b),

must be paid on the date on which the notice under article 33(1)(b) is delivered to the person affected by it.

(3) Where there is an appeal under article 34 or 35 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.

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(4) If the person affected by an external order which has been registered shows that he needs time to pay the amount ordered to be paid, the Supreme Court which registered the order may make an order allowing payment to be made in a specified period.

(5) The specified period—

(a) must start with the day on which the notice under article 33(1)(b) was delivered to the person affected by the order or the day referred to in paragraph (3), as the case may be, and

(b) must not exceed six months.

(6) If within the specified period the person affected by an external order applies to the Supreme Court which registered the order for the period to be extended and the court believes that there are exceptional circumstances, it may make an order extending the period.

(7) The extended period—

(a) must start with the day on which the notice under article 33(1)(b) was delivered to the person affected by it or the day referred to in paragraph (3), as the case may be, and

(b) must not exceed 12 months.

(8) An order under paragraph (6)—

(a) may be made after the end of the specified period, but

(b) must not be made after the end of the extended period.

(9) The court must not make an order under paragraph (4) or (6) unless it gives the Competent Authority an opportunity to make representations.

### **Appointment of enforcement receivers**

41.(1) This article applies if—

(a) an external order is registered,

(b) it is not satisfied, and



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- (c) in the case of an external order for the recovery of a specified sum of money, any period specified by order under article 40 has expired.

(2) On the application of the Competent Authority the Supreme Court may by order appoint a receiver in respect of—

- (a) where the external order is for the recovery of a specified sum of money, realisable property;
- (b) where the external order is for the recovery of specified property, that property.

**Powers of enforcement receivers in respect of monetary external orders**

42.(1) If the court appoints a receiver under article 41, it may act under this article on the application of the Competent Authority where the external order is for the recovery of a specified sum of money.

(2) The court may by order confer on the receiver the following powers in relation to any realisable property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the court may specify;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The court may by order confer on the receiver power to enter any premises in Gibraltar and to do any of the following—

- (a) search for or inspect anything authorised by the court;
- (b) make or obtain a copy, photograph or other record, of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

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- (a) hold property;
  - (b) enter into contracts;
  - (c) sue and be sued;
  - (d) employ agents;
  - (e) execute powers of attorney, deeds or other instruments;
  - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of realisable property to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
  - (b) may (on payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under section 60 of the Act or under section 28 of the Drug Trafficking Offences Act 1995.
- (8) The court must not—
- (a) confer the power mentioned in paragraph (2)(b) or (c) in respect of property, or
  - (b) exercise the power conferred on it by paragraph (6) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (9) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.
- (10) Managing or otherwise dealing with property includes—

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- (a) selling the property or any part of it or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
- (c) incurring capital expenditure in respect of the property.

**Powers of enforcement receivers in respect of external orders for the recovery of specified property**

43.(1) If the court appoints a receiver under article 41, it may act under this article on the application of the Competent Authority where the external order is for the recovery of property specified in the order (“the specified property”).

(2) The court may by order confer on the receiver the following powers in relation to the specified property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the court may specify;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The court may by order confer on the receiver power to enter any premises in Gibraltar and to do any of the following—

- (a) search for or inspect anything authorised by the court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

- (a) hold property;

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- (b) enter into contracts;
  - (c) sue and be sued;
  - (d) employ agents;
  - (e) execute powers of attorney, deeds or other instruments;
  - (f) take any other steps the court thinks appropriate.
- (5) The court may order any person who has possession of the specified property to give possession of it to the receiver.
- (6) The court—
- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
  - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) The court must not—
- (a) confer the power mentioned in paragraph (2)(b) or (c) in respect of property, or
  - (b) exercise the power conferred on it by paragraph (6) in respect of property,
- unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (8) The court may order that a power conferred by an order under this article is subject to such conditions and exceptions as it specifies.
- (9) Managing or otherwise dealing with property includes—
- (a) selling the property or any part of it or interest in it;
  - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

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- (c) incurring capital expenditure in respect of the property.

**Application of sums by enforcement receivers**

44.(1) This article applies to sums which are in the hands of a receiver appointed under article 41 if they are—

- (a) the proceeds of the realisation of property under article 42 or 43;
- (b) where article 42 applies, sums (other than those mentioned in sub-paragraph (a)) in which the defendant holds an interest.

(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 Supreme Court;
- (c) third, they must be applied on the defendant's behalf towards satisfaction of the external order.

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

- (a) among such persons who held (or hold) interests in the property concerned as the Supreme 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 concerned a reasonable opportunity to make representations to it.

(5) For the purposes of paragraphs (3) and (4) the property concerned is—

- (a) the property represented by the proceeds mentioned in paragraph (1)(a);
- (b) the sums mentioned in paragraph (1)(b).

(6) The receiver applies sums as mentioned in paragraph (2)(c) by paying them to the Competent Authority on account of the amount payable under the order.

#### **Sums received by Competent Authority**

45.(1) This article applies if the Competent Authority receives sums on account of the amount payable under a registered external order or the value of the property specified in the order.

(2) The Competent Authority's receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows.

(3) First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as—

(a) are payable under this paragraph by virtue of article 3, but

(b) are not already paid under article 44(2)(a).

(4) He must next apply them—

(a) first, in payment of the remuneration and expenses of a receiver appointed under article 17 to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under article 17(4)(d);

(b) second, in payment of the remuneration and expenses of the receiver appointed under article 41;

(c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of article 57(3).

(5) Any sums which remain after the Competent Authority has made any payments required by the preceding provisions of this article must be paid into the Consolidated Fund.

(6) Paragraph (4) does not apply if the receiver is a member of the staff of the Attorney General and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere.

#### **Satisfaction of external order**

46.(1) A registered external order is satisfied when no amount is due under it.

(2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been sold.

**Restrictions relating to enforcement receivers**

47.(1) Paragraphs (2) to (4) apply if a court makes an order under article 41 appointing a receiver in respect of any realisable property or specified property.

(2) No distress may be levied against the property except with the leave of the Supreme Court and subject to any terms the Supreme Court may impose.

(3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within paragraph (4) except with the leave of the Supreme Court and subject to any terms the Supreme Court may impose.

(4) A right is within this paragraph if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(5) If a court in which proceedings are pending in respect of any property is satisfied that an order under article 41 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(6) Before exercising any power conferred by paragraph (5), the court must give an opportunity to be heard to—

- (a) the Competent Authority, and
- (b) the receiver (if the order under article 41 has been made).

**CHAPTER 2A**

**RECEIVERS AND PROCEDURE**

**Protection of receiver appointed under articles 17 or 41**

48. If a receiver appointed under article 17 or 41-

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- (a) takes action in relation to property which is not realisable property or, as the case may be, the specified property,
- (b) would be entitled to take the action if it were realisable property or, as the case may be, the specified property, and
- (c) believes on reasonable grounds that he is entitled to take the action,

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

#### **Further applications by receivers**

49.(1) This article applies to a receiver appointed under article 17 or 41.

(2) The receiver may apply to the Supreme Court for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the Supreme Court—

- (a) any person affected by action taken by the receiver;
- (b) any person who may be affected by action the receiver proposes to take.

(4) On an application under this article the court may make such order as it believes is appropriate.

#### **Discharge and variation of receiver orders**

50.(1) The following persons may apply to the Supreme Court to vary or discharge an order made under article 17 or 41 to 43-

- (a) the receiver;
- (b) the Competent Authority;
- (c) any person affected by the order.

(2) On an application under this article the court—

- (a) may discharge the order;



- (b) may vary the order.
- (3) But in the case of an order under article 17—
  - (a) if the condition in article 7 which was satisfied was that proceedings were started, the court must discharge the order if at the conclusion of the proceedings no external order has been made;
  - (b) if the condition which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time an external order has not been registered under Chapter 2 of this Part;
  - (c) if the condition which was satisfied was that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

**Management receivers: discharge**

51.(1) This article applies if—

- (a) a receiver stands appointed under article 17 in respect of property which is identified in the restraint order (the management receiver), and
  - (b) the court appoints a receiver under article 41.
- (2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by article 13.
- (3) Paragraph (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under article 17(4)(d).
- (4) If the management receiver complies with an order under paragraph (2) he is discharged—
- (a) from his appointment under article 17;
  - (b) from any obligation under this Order arising from his appointment.

(5) If this article applies the court may make such a consequential or incidental order as it believes is appropriate.

#### **Appeal to Court of Appeal about receivers**

52.(1) If on an application for an order under any of articles 17 or 41 to 43 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the court makes an order under any of articles 17 or 41 to 43 the following persons may appeal to the Court of Appeal in respect of the court's decision—

- (a) the person who applied for the order;
- (b) any person affected by the order.

(3) If on an application for an order under article 49 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the court makes an order under article 49 the following persons may appeal to the Court of Appeal in respect of the court's decision—

- (a) the person who applied for the order;
- (b) any person affected by the order;
- (c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under article 50—

- (a) the person who applied for the order in respect of which the application was made;
- (b) any person affected by the court's decision;
- (c) the receiver.

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

- (a) confirm the decision, or

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

#### **Appeal to the Privy Council about receivers**

53.(1) An appeal lies to the Privy Council from a decision of the Court of Appeal on an appeal under article 52.

(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 Privy Council may—

- (a) confirm the decision of the Court Appeal, or
- (b) make such order as it believes is appropriate.

#### **Powers of court and receiver**

54.(1) This article applies to—

- (a) the powers conferred on a court by this Part;
- (b) the powers of a receiver appointed under article 17 or 41;
- (c) the powers conferred on appropriate officers by articles 19 to 22, 24 and 26 to 28;
- (d) the powers conferred on senior officers by article 23.

(2) The powers—

- (a) must be exercised with a view to the value for the time being of realisable property or specified property being made available (by the property's realisation) for satisfying an external order that has been or may be made against the defendant;
- (b) must be exercised, in a case where an external order has not been made, with a view to securing that there is no diminution in the value of the property identified in the external request;
- (c) must be exercised without taking account of any obligation of a defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying

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any external order against the defendant that has been or may be registered under article 33;

- (d) may be exercised in respect of a debt owed by the Crown.
- (3) Paragraph (2) has effect subject to the following rules—
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
  - (b) in the case of realisable property or specified property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;
  - (c) in a case where an external order has not been made against the defendant, property must not be sold if the court so orders under paragraph (4).
- (4) If on an application by the defendant or the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under paragraph (4) may be revoked or varied.

#### **Procedure on appeal to Court of Appeal under this Part**

55.(1) An appeal to the Court of Appeal under this Part lies only with the leave of that Court and shall in so far as practicable and subject to such modifications as necessary be deemed an appeal in a criminal case.

- (4) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Court of Appeal under article 10, 34, 37 or 52 are in the discretion of the court.
- (5) The court shall have full power to determine by whom and to what extent the costs are to be paid.
- (6) In any proceedings mentioned in paragraph (4), the court may—
  - (a) disallow, or
  - (b) (as the case may be) order the legal or other representative concerned to meet,

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the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

- (7) In paragraph (6) “wasted costs” means any costs incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.
- (8) “Legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

## CHAPTER 2B

### SEIZED PERSONAL PROPERTY

#### Seized personal property

56.(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 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019; or
  - (ii) article 6 of the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019.

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

- (a) an external order is made against the person by whom the property is held; and
- (b) a receiver has not been appointed under article 41 (appointment of enforcement receivers) in relation to the property.

**Costs of storage and realisation**

57.(1) This article applies if a magistrates' court makes an order under article 56.

(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 45(4)(c).

(4) A determination under this article may be made on the same occasion as the article 56 order or on any later occasion; and more than one determination may be made in relation to any case.

**Articles 56 and 57: appeals**

58.(1) If a magistrates' court decides not to make an order under article 56, an appropriate officer may appeal to the Supreme Court.

(2) If a magistrates' court makes an order under article 56, a person affected by the order may appeal to the Supreme Court.

(3) But the person mentioned in article 56(2)(a) may not appeal.

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

- (a) a determination made by a magistrates' court under article 57;
- (b) a decision by a magistrates' court not to make a determination under that article.

**Proceeds of realisation**

59.(1) This article applies to sums which—

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

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- (b) are the proceeds of the realisation of property under article 56.
- (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 Supreme Court;
  - (c) third, they must be paid to the Competent Authority 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 Supreme 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 Supreme Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.

## CHAPTER 2C

### INTERPRETATION

#### **Property**

60. In this Part, “realisable property” means in a case where the external order specifies a sum of money, any property held by the defendant or by the recipient of a tainted gift.

#### **Tainted gifts**

61.(1) In this Part, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external order or external request relates was committed, or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before or after the coming into force of this Order.

#### **Gifts and their recipients**

62.(1) In this Part, a defendant is to be treated as making a gift if he transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer.

(2) If paragraph (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—

- (a) whose numerator is the difference between the two values mentioned in paragraph (1), and
- (b) whose denominator is the value of the property at the time of the transfer.

(3) In this Part references to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

#### **Value: the basic rule**

63.(1) Subject to article 64, this article applies where it is necessary under this Part to decide the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in paragraph (1), is the market value of his interest at that time, ignoring any charging order under section 28 of the Drug Trafficking Offences Act 1995.



**Value of tainted gifts**

64.(1) The value at any time (the material time) of a tainted gift is the greater of the following—

- (a) the value (at time of the gift) of the property given, adjusted to take account of later changes in the value of money;
- (b) the value (at the material time) of the property found under paragraph (2).

(2) The property found under this paragraph is as follows—

- (a) if the recipient holds the property given, the property found under this paragraph is that property;
- (b) if the recipient holds no part of the property given, the property found under this paragraph is any property which directly or indirectly represents it in his hands;
- (c) if the recipient holds part of the property given, the property found under this paragraph is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in paragraph (1)(a) and (b) to the value are to the value found in accordance with article 63.

**Meaning of “defendant”**

65. In this Part “defendant”—

- (a) in relation to a restraint order means—
  - (i) in a case in which the first condition in article 7 is satisfied, the alleged offender;
  - (ii) in a case in which the second condition in article 7 is satisfied, the person against whom proceedings for an offence have been started in a country outside Gibraltar (whether or not he has been convicted);
- (b) in relation to an external order, the person convicted of criminal conduct;
- (c) for the purpose of Chapter 1A, has the meaning given in article 18(4).

**No further possibility of appeal**

66.(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.

**Other interpretation**

67. In this Part—

“appropriate officer” means—

- (a) an officer of HM Customs; or
- (b) a police officer.

“relevant seizure power” means a power to seize property which is conferred by or by virtue of a provision in Gibraltar Law in respect of a request for mutual legal assistance received in Gibraltar including—

- (a) article 19 (power to seize property);
- (b) article 13 (search and seizure warrants) of the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019;
- (c) article 13 (search and seizure warrants) of the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019;
- (d) Part 2 of the Criminal Procedure and Evidence Act 2011 as applied by section 15 of the Mutual Legal Assistance (International) Act 2005, section 15 of the Mutual Legal Assistance (European Union) Act 2005;
- (e) section 43 of the Drug Trafficking Offences Act, 1995.

“specified property” means property specified in an external order (other than an order that specifies a sum of money).

### PART 3

## GIVING EFFECT IN GIBRALTAR TO EXTERNAL ORDERS BY MEANS OF CIVIL RECOVERY

### CHAPTER 1

#### INTRODUCTION

#### Action to give effect to an order

68.(1) The Central Authority may forward an external order to the Attorney General.

(2) This Part has effect for the purpose of enabling the Attorney General to realise recoverable property (within the meaning of article 108) in civil proceedings before the Supreme Court for the purpose of giving effect to an external order.

(3) The powers conferred by this Part are exercisable in relation to any property whether or not proceedings have been brought in the country from which the external order was sent for criminal conduct (within the meaning of section 184D(7) of the Act) in connection with the property.

### CHAPTER 2

## CIVIL RECOVERY IN THE SUPREME COURT

### Proceedings for recovery orders

#### Proceedings for recovery orders

69.(1) Proceedings for a recovery order pursuant to the registration of an external order may be taken by the Attorney General in the Supreme Court against any person who the Attorney General thinks holds recoverable property.

(2) The Attorney General must serve the claim form—

(a) on the respondent, and

- (b) unless the court dispenses with service, on any other person who the Attorney General thinks holds any associated property which the Attorney General wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) In the case of an external order which is for the recovery of property other than a sum of money which is specified in the external order (“the specified property”), that property must also be specified in the claim form in general terms; and the form must state whether it is alleged to be recoverable property or associated property.

(4) The references above to the claim form include the particulars of claim, where they are served subsequently.

#### **Sums in a currency other than sterling**

70.(1) This article applies where the external order in respect of which proceedings for a recovery order are taken specifies a sum of money.

(2) If the sum of money which is specified in an external order is expressed in a currency other than sterling, the sum of money to be recovered is to be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of day on which the external order was made.

(3) This amount must be specified in the claim form or the particulars of claim where they are served subsequently.

#### **“Associated property”**

71.(1) “Associated property” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

- (a) any interest in the recoverable property,
- (b) any other interest in the property in which the recoverable property subsists,
- (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly.

(3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme.

*Property freezing orders*

**Application for property freezing order**

72.(1) Where the Attorney General may take proceedings for a recovery order pursuant to the registration of an external order in the Supreme Court, he may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that—

- (a) specifies or describes the property to which it applies, and
- (b) subject to any exclusions, prohibits any person to whose property the order applies from in any way dealing with property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied that the condition in paragraph (5) is met and, where applicable, that the condition in paragraph (6) is met.

(5) The first condition is that there is a good arguable case—

- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—

- (a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the Attorney General has not established the identity of the person who holds it, the Attorney General has taken all reasonable steps to do so.

**Variation and setting aside of property freezing order**

73.(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising the power to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Paragraph (5) does not apply where the court is acting as required by paragraph (2) or (3).

**Property freezing orders: exclusions**

74.(1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—

- (a) power to exclude property from the order, and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

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

- (a) to meet his reasonable living expenses. or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

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

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
- (c) is made subject to the required conditions (see article 105) in addition to any conditions imposed under paragraph (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to paragraph (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Paragraph (8) does not apply where the court is acting as required by article 73(3) or (4).

**Property freezing orders: restrictions on proceedings and remedies**

75.(1) While a property freezing order has effect—

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- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and
  - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If the court in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.
- (4) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

**Receivers in connection with property freezing orders**

76.(1) Paragraph (2) applies if—

- (a) the Supreme Court makes a property freezing order on an application by an enforcement authority, and
  - (b) the authority applies to the court to proceed under paragraph (2) (whether as part of the application for the property freezing order or at any time afterwards).
- (2) The Supreme Court may by order appoint a receiver in respect of any property to which the property freezing order applies.
- (3) An application for an order under this article may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) In its application for an order under this article, the enforcement authority must nominate a suitably qualified person for appointment as a receiver.
- (5) Such a person may be a member of staff of the enforcement authority.



(6) The enforcement authority may apply a sum received by it under article 101(2) in making payment of the remuneration and expenses of a receiver appointed under this article.

(7) Paragraph (6) does not apply in relation to the remuneration of the receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

**Powers of receivers appointed under article 76**

77.(1) If the Supreme Court appoints a receiver under article 76 on an application by an enforcement authority, the court may act under this article on the application of the authority.

(2) The court may by order authorise or require the receiver—

- (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed,
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed-

- (a) to bring the property to a place in Gibraltar specified by the receiver or to place it in the custody of the receiver (if, in either case, he is able to do so),
- (b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place in Gibraltar specified by the receiver or to place them in the custody of the receiver.

(5) In paragraph (4), “document” means anything in which information of any description is recorded.

**This version is out of date**

(6) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this article.

(7) If—

- (a) the receiver deals with any property which is not property in respect of which he is appointed under article 76, and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

#### **Supervision of article 76 receiver and variations**

78.(1) Any of the following persons may at any time apply to the Supreme Court for directions as to the exercise of the functions of a receiver appointed under article 76—

- (a) the receiver,
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned,
- (c) any person affected by any action taken by the receiver,
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under paragraph (1), the court must give an opportunity to be heard to—

- (a) the receiver,
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned,
- (c) any person who may be interested in the application under paragraph (1).

(3) The court may at any time vary or set aside the appointment of a receiver under article 76, any order under article 77 or any directions under this article.

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This version is out of date

(4) Before exercising any power under paragraph (3), the court must give an opportunity to be heard to—

- (a) the receiver,
- (b) the parties to the proceedings for the appointment of the receiver, for the order under article 77 or, as the case may be, for the directions under this article,
- (c) the parties to the proceedings for the property freezing order concerned,
- (d) any person who may be affected by the court's decision.

*Property freezing orders and interim receiving orders: registration*

**Registration.**

79. The Gibraltar Land Titles Act 2011—

- (a) shall apply as appropriate in relation to property freezing orders and in relation to interim receiving orders as they apply to orders which affect land and are made by the court for the purpose of enforcing judgements or recognisances,
- (b) shall apply as appropriate in relation to property freezing orders and in relation to interim receiving orders as they apply in relation to other pending land actions.

*Interim receiving orders*

**Application for interim receiving order**

80.(1) Where the Attorney General may take proceedings for a recovery order pursuant to the registration of an external order in the Supreme Court, he may apply to the court for an interim receiving order (whether before or after starting the proceedings).

- (2) An interim receiving order is an order for—
- (a) the detention, custody or preservation of property, and
  - (b) the appointment of an interim receiver.

**This version is out of date**

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application if it is satisfied that the conditions in paragraphs (5) and, where applicable, (6) are met.

(5) The first condition is that there is a good arguable case—

(a) that the property to which the application for the order relates is or includes recoverable property, and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—

(a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the Attorney General has not established the identity of the person who holds it, the authority has taken all reasonable steps to do so.

(7) In its application for an interim receiving order, the Attorney General must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the Attorney General.

(8) The extent of the power to make an interim receiving order is not limited by articles 81 to 87.

#### **Functions of interim receiver**

81.(1) An interim receiving order may authorise or require the interim receiver—

(a) to exercise any of the powers mentioned in Schedule 1,

(b) to take any other steps the court thinks appropriate, for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under paragraph (2).

(2) An interim receiving order—

*This version is out of date*

- (a) must require the interim receiver to take any steps which the court thinks necessary to establish whether or not the property to which the order applies is recoverable property or associated property, and
  - (b) may require him to take any steps which the court thinks necessary to establish whether or not any other property is recoverable property (which satisfies the tests in article 108(1) and (2) or 109) and, if it is, who holds it.
- (3) If—
- (a) the interim receiver deals with any property which is not property to which the order applies, and
  - (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by negligence.

*Interim receiving orders: further provisions*

**Interim receiving orders: duties of respondent etc.**

82.(1) An interim receiving order may require any person to whose property the order applies—

- (a) to bring the property to a place specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so),
  - (b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.
- (2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place specified by the interim receiver or to place them in the custody of the interim receiver.
- (3) In sub-regulation (2) “document” means anything in which information of any description is recorded.

**Supervision of interim receiver and variation of order**

**This version is out of date**

83.(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) Before giving any directions under paragraph (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.

(3) The court may at any time vary or set aside an interim receiving order.

(4) Before exercising any power to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court's decision.

**Interim receiving orders: restrictions on dealing etc. with property**

84.(1) An interim receiving order must, subject to any exclusions made in accordance with this article, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.

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

- (a) to meet his reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

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

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

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This version is out of date

- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
- (c) is made subject to the required conditions (see article 105) in addition to any conditions imposed under paragraph (3).

(5) The court, in deciding whether to make an exclusion for the purposes of enabling a person to meet legal expenses of his in respect of proceedings under this Part must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant.

(6) If the excluded property is not specified in the order it must be described in the order in general terms.

(7) The power to make exclusions must, subject to paragraph (5), be exercised with a view to ensuring so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

**Interim receiving orders: restriction on proceedings and remedies**

85.(1) While an interim receiving order has effect—

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,
- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an

opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

#### **Exclusion of property which is not recoverable etc. under interim receiving order**

86.(1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

(3) The court may exclude any property within paragraph (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

#### **Reporting under interim receiving order**

87.(1) An interim receiving order must require the interim receiver to inform the Attorney General and the court as soon as reasonably practicable if he thinks that—

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
- (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
- (c) any property to which the order does not apply is recoverable property (which satisfies the tests in article 108(1) and (2)) or associated property, or
- (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if he thinks that there has been any other material change of circumstances.

(2) An interim receiving order must require the interim receiver—

- (a) to report his findings to the court,



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- (b) to serve copies of his report on the Attorney General and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

*Vesting and realisation of recoverable property*

**Recovery orders**

88.(1) The court must decide to give effect to an external order which falls within the meaning of section 184D of the Act by registering it and making a recovery order if it determines that any property or sum of money which is specified in it is recoverable property.

- (2) In making such a determination the court must have regard to—
  - (a) the relevant definitions in section 184D of the Act, and
  - (b) articles 108 to 113.
- (3) The recovery order must vest the recoverable property in the trustee for civil recovery.
- (4) But the court may not make in a recovery order any provision in respect of any recoverable property if each of the conditions in paragraph (5) is met and it would not be just and equitable to do so.
- (5) The conditions referred to in paragraph (4) are that—
  - (a) the respondent obtained the recoverable property in good faith,
  - (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,
  - (c) when he took the steps, he had no notice that the property was recoverable,
  - (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.
- (6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in paragraph (5) are met, the court must have regard to—

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- (a) the degree of detriment that would be suffered by the respondent if the provision were made,
  - (b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.
- (7) A recovery order may sever any property.
- (8) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.
- (9) A recovery order made by a court may provide for payment under article 101 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
- (a) the proceedings under this Part in which the order is made, or
  - (b) any related proceedings under this Part.
- (10) If regulations under article 106 apply to an item of expenditure, a sum in respect of the item is not payable under article 106 in pursuance of provision under paragraph (9) unless—
- (a) the Attorney General agrees to its payment, or
  - (b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.
- (11) This article is subject to articles 91 to 98.

**Functions of the trustee for civil recovery**

89.(1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.

(2) The Attorney General must nominate a suitably qualified person for appointment as the trustee.

(3) The functions of the trustee are—

- (a) to secure the detention, custody or preservation of any property vested in him by the recovery order,

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- (b) in the case of property other than money, to realise the value of the property for the benefit of the Attorney General, and
  - (c) to perform any other functions conferred on him by virtue of this Chapter.
- (4) In performing his functions, the trustee acts on behalf of the Attorney General and must comply with any directions given by the Attorney General.
- (5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Attorney General.
- (6) The trustee has the powers mentioned in Schedule 2.
- (7) References in this article to a recovery order include an order under article 45 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under article 97.

**Rights of pre-emption etc.**

90.(1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(3) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(4) References to rights in paragraphs (2) and (3) do not include any rights in respect of which the recovery order was made.

(5) This article applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

**Associated and joint property**

91.(1) Articles 92 and 93 apply if the court makes a recovery order in respect of any recoverable property in a case within paragraph (2) or (3).

- (2) A case is within this paragraph if—
- (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form, and
  - (b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service.

- (3) A case is within this paragraph if—
- (a) the recoverable property belongs to joint tenants, and
  - (b) one of the tenants is an excepted joint owner.

(4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

**Agreements about associated and joint property**

92.(1) Where—

- (a) this article applies, and
- (b) the Attorney General (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under paragraph (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating, or extinguishing any interest in property.

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(3) The amount of the payment is to be the amount which the Attorney General and that person agree represents—

- (a) in a case within article 91(2), the value of the recoverable property,
- (b) in a case within article 91(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if—

- (a) a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order applied at any time to the associated property or joint tenancy, and
- (b) the Attorney General agrees that the person has suffered loss as a result of the order mentioned in sub-paragraph (a),

the amount of the payment may be reduced by any amount the Attorney General and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the Attorney General.

(6) A recovery order which makes any requirement under paragraph (1) must make provision for any recoverable property to cease to be recoverable.

**Associated and joint property: default of agreement**

93.(1) Where this article applies, the court may make the following provision if—

- (a) there is no agreement under article 92, and
- (b) the court thinks it just and equitable to do so.

(2) The recovery order may provide—

- (a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished, or

**2015-22**

## Proceeds of Crime

**2019/069**

### Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019

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- (b) in the case of an excepted joint owner, for the severance of his interest.
- (3) A recovery order making any provision by virtue of paragraph (2)(a) may provide—
- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or
  - (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,
- or for both.
- (4) In making any provision in a recovery order by virtue of paragraph (2) or (3), the court must have regard to—
- (a) he rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),
  - (b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.
- (5) If—
- (a) a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order applied at any time to the associated property or joint tenancy, and
  - (b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the order mentioned in subparagraph (a),
- a recovery order making any provision by virtue of paragraph (2) or (3) may require the Attorney General to pay compensation to that person.
- (6) The amount of compensation to be paid under paragraph (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

#### **Payments in respect of rights under pension schemes**

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94.(1) This article applies to recoverable property consisting of rights under a pension scheme.

(2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme—

- (a) to pay to the trustee for civil recovery within a prescribed period the amount determined by the trustees or managers to be equal to the value of the rights, and
- (b) to give effect to any other provision made by virtue of this article and the two following articles in respect of the scheme.

This paragraph is subject to articles 97 to 98.

(3) A recovery order made by virtue of paragraph (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.

(4) A recovery order made by virtue of paragraph (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in—

- (a) complying with the recovery order, or
- (b) providing information, before the order was made, to the Attorney General or interim receiver.

### **Consequential adjustment of liabilities under pension schemes**

95.(1) A recovery order made by virtue of article 94(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that paragraph.

(2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which article 94 applies to cease.

(3) So far as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which article 94 applies to cease, their powers include (in particular) power to reduce the amount of—

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- (a) any benefit or future benefit to which the respondent may be entitled under the scheme,
- (b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

**Pension schemes: supplementary**

96.(1) Regulations may make provision as to the exercise by trustees or managers of their powers under articles 94 and 95, including provision about the calculation and verification of the value at any time of rights and liabilities.

(2) The power conferred by paragraph (1) includes power to provide for any values to be calculated or verified—

- (a) in a manner which, in the particular case, is approved by a prescribed person, or
- (b) in accordance with guidance from time to time prepared by a prescribed person.

(3) Regulations means regulations made by the Minister and prescribed means prescribed by regulations.

(4) A pension scheme means an occupational pension scheme or a personal pension scheme.

(5) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means—

- (a) in the case of a scheme established under a trust, the trustees,
- (b) in any other case, the managers.

(6) References to a pension scheme include—

- (a) a retirement annuity contract,
- (b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme.

(7) References to the trustees or managers—



- (a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,
- (b) in relation to an insurance policy, are to the insurer.

(9) Paragraphs (3) to (7) have effect for the purposes of this group of articles (that is, articles 94, 95 and this article).

#### **Consent orders**

97.(1) The court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

- (2) An order under paragraph (1) may, as well as staying the proceedings on terms—
  - (a) make provision for any property which may be recoverable property to cease to be recoverable,
  - (b) make any further provision which the court thinks appropriate.

(3) Article 101 applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under article 92.

#### **Consent orders: pensions**

98.(1) This article applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.

- (2) An order made under article 97—
  - (a) may not stay the proceedings on terms that the rights are vested in any other person, but
  - (b) may include provision imposing the following requirement, if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.
- (3) The requirement is that the trustees or managers of the pension scheme—

- (a) make a payment in accordance with the agreement, and
  - (b) give effect to any other provision made by virtue of this article in respect of the scheme.
- (4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under article 97 may stay the proceedings.
- (5) The following provisions apply in respect of an order under article 97, so far as it includes the requirement mentioned in paragraph (3).
- (6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.
- (7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in—
- (a) complying with the order, or
  - (b) providing information, before the order was made, to the Attorney General or interim receiver.
- (8) Articles 94(5) and 95 (read with article 96) apply as if the requirement were included in an order made by virtue of article 94(2).
- (9) Paragraphs (4) to (7) of article 96 have effect for the purposes of this article.

**Limit on recovery**

99.(1) This article applies if the Attorney General seeks a recovery order—

- (a) in respect of both property which is or represents property which satisfies the tests in article 108(1) or (2) and related property, or
- (b) in respect of property which is or represents property which satisfies those tests where such an order, or an order under article 97, has previously been made in respect of related property.

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- (2) For the purposes of this article—
- (a) the original property means the property specified in the external order or a sum of money so specified,
  - (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.
- (3) The court is not to make a recovery order if it thinks that the Attorney General’s right to recover the original property has been satisfied by a previous recovery order or order under article 97.
- (4) Subject to paragraph (3), the court may act under paragraph (5) if it thinks that—
- (a) a recovery order may be made in respect of two or more related items of recoverable property, but
  - (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the Attorney General’s right to recover the original property.
- (5) The court may in order to satisfy that right to the extent required make a recovery order in respect of—
- (a) only some of the related items of property, or
  - (b) only a part of any of the related items of property,
- or both.
- (6) Where the court may make a recovery order in respect of any property, this article does not prevent the recovery of any profits which have accrued in respect of the property.
- (7) If—
- (a) an order is made under section 130 of the Act for the forfeiture of recoverable property, and
  - (b) the Attorney General subsequently seeks a recovery order in respect of related property,

the order under section 130 is to be treated, for the purposes of this article as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.

- (8) If—
- (a) in pursuance of a judgment in civil proceedings (whether in Gibraltar or elsewhere), the claimant has obtained property from the defendant (“the judgment property”),
  - (b) the claim was based on the defendant’s having obtained the judgment property or related property through unlawful conduct, and
  - (c) the Attorney General subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this article as if it were a recovery order obtained by the Attorney General in respect of the judgment property.

- (9) If—
- (a) property has been taken into account in deciding the amount of a person’s benefit from criminal conduct for the purpose of making a confiscation order, and
  - (b) the Attorney General subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this article as if it were a recovery order obtained by the Attorney General in respect of the property referred to in sub-paragraph (a).

- (10) In paragraph (9), a confiscation order means—
- (a) an order under section 35 of the Act or an external order registered under Part 2 of this Order,
  - (b) an order under a corresponding provision of the Drug Trafficking Offences Act, 1995 or other enactment providing for confiscation orders,

and, in relation to an order mentioned in sub-paragraph (b), the reference to the amount of a person’s benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

**Article 99: supplementary**

100.(1) Paragraphs (2) and (3) give examples of the satisfaction of the Attorney General's right to recover the original property.

(2) If—

- (a) there is a disposal, other than a part disposal, of the original property, and
- (b) other property (the representative property) is obtained in its place,

the Attorney General's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If—

- (a) there is a part disposal of the original property, and
- (b) other property (the representative property) is obtained in place of the property disposed of,

the Attorney General's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this article—

- (a) a part disposal means a disposal to which article 115(1) applies,
- (b) the original property has the same meaning as in article 99.

**Applying realised proceeds**

101.(1) This article applies to—

- (a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order,
- (b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.

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- (2) The trustee is to make out of the sums—
- (a) first, any payment required to be made by him by virtue of article 93,
  - (b) next, any payment of legal expenses which, after giving effect to article 88(9), are payable under this paragraph in pursuance of provision under article 88(10) contained in the recovery order,
  - (c) next, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this paragraph by virtue of article 3,

and any sum which remains is to be paid to the Attorney General.

(3) The Attorney General may apply a sum received by it under paragraph (2) in making payment of the remuneration and expenses of—

- (a) the trustee, or
  - (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.
- (4) Paragraph (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Attorney General (but it does apply in relation to such remuneration if the trustee is a person providing services under arrangements made by the Attorney General).

*Exemptions etc.*

**Victims of theft etc.**

102.(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this article.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

- (3) The condition is that—

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- (a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct,
  - (b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and
  - (c) the property he claims belongs to him.
- (4) Property to which a declaration under this article applies is not recoverable property.

### Other exemptions

103.(1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person himself or to the property or to any other matter. In this subsection, prescribed means prescribed by an order made by the Minister.

(2) Proceedings for a recovery order may not be taken in respect of cash found at any place unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(3) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as an insolvency practitioner.

### *Miscellaneous*

### Compensation

104.(1) If, in the case of any property to which a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order has at any time applied, the court does not in the course of the proceedings, decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.

- (2) Paragraph (1) does not apply if the court—
- (a) has made a declaration in respect of the property by virtue of article 58, or
  - (b) makes an order under article 97.

(3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.

(5) If the court is satisfied that the applicant has suffered loss as a result of the order mentioned in paragraph (1), it may require the Government to pay compensation to him.

(6) If, but for article 90(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under paragraph (6) must be made within the period of three months beginning with the vesting referred to in article 90(2).

(8) If the court is satisfied that, in consequence of the operation of article 90, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the enforcement authority to pay compensation to him.

(9) The amount of compensation to be paid under this article is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

#### **Legal expenses excluded from freezing: required conditions**

105.(1) The Minister may by regulations specify the required conditions for the purposes of article 74(5) or 84(4).

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

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

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

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



- (a) provide for sums to be released only with the agreement of the Attorney General;
  - (b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under article 106 in respect of that item and the sum is released for payment of the assessed amount;
  - (c) provide for a sum to be released in respect of an item of expenditure only if—
    - (i) the Attorney General agrees to its release, or
    - (ii) the court has assessed the amount allowed by regulations under article 106 in respect of that item and the sum is released for payment of the assessed amount.
- (4) Before making regulations under this article, the Minister must consult such persons as he considers appropriate.

**Legal expenses: regulations for purposes of article 88(10) or 105(3)**

106.(1) The Minister may by regulations—

- (a) make provision for the purposes of article 88(10);
  - (b) make provision for the purposes of required conditions that make provision of the kind mentioned in article 105(3)(b) or (c).
- (2) Regulations under this article may (in particular)—
- (a) limit the amount of remuneration allowable to representatives for a unit of time worked;
  - (b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;
  - (c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.
- (3) Before making regulations under this article, the Minister must consult such persons as he considers appropriate.

**Financial threshold**

107.(1) At any time when an order specifying an amount for the purposes of this article has effect, the Attorney General may not start proceedings for a recovery order unless it reasonably believes that the aggregate value of the recoverable property which it wishes to be subject to a recovery order is not less than the specified amount.

(2) The power to make an order under subsection (1) is exercisable by the Minister.

(3) If the authority applies for a property freezing order, or an interim receiving order, a before starting the proceedings, paragraph (1) applies to the application instead of to the start of the proceedings.

(4) This article does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order which has been properly applied for.

**CHAPTER 3****GENERAL***Recoverable property***Recoverable property: property or sum of money specified in the external order**

108.(1) Property or a sum of money is recoverable property if it is specified in an external order (within the meaning of section 184D (2) of the Act).

(2) Accordingly, the property (including money) must have been found to have been obtained as a result of or in connection with criminal conduct (within the meaning of section 184D (8) of the Act) or must have been believed to have been so obtained.

(3) But if property (including money) which is specified in the external order has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(4) Recoverable property specified in an external order may be followed into the hands of a person obtaining it on a disposal by—

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- (a) the person who through the conduct obtained the property, or
- (b) a person into whose hands it may (by virtue of this paragraph) be followed.

(5) Where an external order specifies property other than a sum of money, only that property is recoverable property.

**Tracing property, etc.**

109.(1) This article applies only where an external order specifies a sum of money.

(2) Where property which satisfies the tests in article 108(1) and (2) (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.

- (3) If a person enters into a transaction by which—
  - (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and
  - (b) he obtains other property in place of it,

the other property represents the original property.

(4) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

**Mixing property**

110.(1) This article applies only where an external order specifies a sum of money.

(2) Paragraph (3) applies if a person’s recoverable property is mixed with other property (whether his property or another's).

(3) The portion of the mixed property which is attributable to the recoverable property represents the property which satisfies the tests in article 108(1) and (2).

- (4) Recoverable property is mixed with other property if (for example) it is used—
  - (a) to increase funds held in a bank account,

- (b) in part payment for the acquisition of an asset,
- (c) for the restoration or improvement of land,
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

**Recoverable property: general exceptions**

111.(1) If—

- (a) a person disposes of recoverable property, and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) If—

- (a) in pursuance of a judgment in civil proceedings (whether in Gibraltar or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,
- (b) the claimant's claim is based on any conduct by the defendant which is unlawful conduct, and
- (c) apart from this paragraph, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

(4) If a payment is made to a person in pursuance of a restitution order or a person otherwise obtains any property in pursuance of such an order, and apart from this paragraph, the sum received, or the property obtained, would be recoverable property, the property ceases to be recoverable.

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- (5) Property is not recoverable while a restraint order applies to it.
- (6) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order.
- (7) Where—
  - (a) a person enters into a transaction to which article 109(3) applies, and
  - (b) the disposal is one to which paragraph (1) or (2) applies,

this article does not affect the recoverability (by virtue of article 109(3)) of any property obtained on the transaction in place of the property disposed of.

#### **Other exemptions**

112.(1) An order may provide that property is not recoverable or (as the case may be) associated property if—

- (a) it is prescribed property, or
- (b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 101 as if it had been disposed of in pursuance of a recovery order.

(3) An order under this article may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(4) In this article, an order means an order made by the Minister and prescribed means prescribed by the order.

#### **Granting interests**

113.(1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

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- (2) Accordingly, on his granting an interest in the property (“the property in question”)—
- (a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct,
  - (b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

*Insolvency*

**Insolvency**

114.(1) Proceedings for a recovery order may not be taken or continued in respect of property to which paragraph (2) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

- (2) This paragraph applies to recoverable property, or property associated with it, if—
- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
  - (b) it is an asset of a company and a voluntary arrangement under Part 2 of the Insolvency Act 2011 has effect in relation to the company,
  - (c) an order under Part 13 of the Insolvency Act 2011 in relation to the appointment of interim trustee or interim receiver has effect in relation to the property,
  - (d) it is an asset of an individual and a voluntary arrangement under Part 2 of the Insolvency Act 2011 has effect in relation to him.
- (3) An application under this article, or under any provision of the Insolvency Act 2011, for leave to take proceedings for a recovery order may be made without notice to any person.
- (4) Paragraph (3) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

*Interpretation*

**Obtaining and disposing of property**

115. References to a person disposing of his property include a reference—

- (a) to his disposing of a part of it, or
- (b) to his granting an interest in it,

(or to both), and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

**General interpretation**

116.(1) In this Part—

“associated property” has the meaning given by article 71;

“dealing” with property includes disposing of it, taking possession of it or removing it from Gibraltar;

“excepted joint owner” has the meaning given by article 91(4);

“interest”, in relation to land means any legal estate and any equitable interest or power;

“interest”, in relation to property other than land, includes any right (including a right to possession of the property);

“interim receiving order” has the meaning given by article 80(2);

“part”, in relation to property, includes a portion;

“premises” has the same meaning as in section 2 of the Crimes Act 2011;

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“property freezing order” has the meaning given in article 72(2);

“recoverable property” is to be read in accordance with articles 108 to 113;

“recovery order” means an order made under article 88;

“respondent” means—

- (a) where proceedings are brought by the enforcement authority, the person against whom the proceedings are brought;
- (b) where no such proceedings have been brought but the enforcement authority has applied for a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order, the person against whom he intends to bring such proceedings;

“share”, in relation to an excepted joint owner, has the meaning given by article 91(4);

“specified property” means property other than a sum of money that is specified in an external order;

“unlawful conduct” has the meaning given by section 70 of the Act; and

“value” means market value.

(2) The following provisions apply for the purposes of this Part.

(3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

(4) Property is all property wherever situated and includes—

- (a) money,
- (b) all forms of property, real or personal, heritable or moveable,
- (c) things in action and other intangible or incorporeal property.



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- (5) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (6) In relation to land, it is a reference to any interest which he holds in the land.
- (7) In relation to property other than land, it is a reference—
- (a) to the property (if it belongs to him), or
  - (b) to any other interest which he holds in the property.
- (8) References to the satisfaction of the enforcement authority's right to recover any property which satisfies the tests in article 108(1) and (2) are to read in accordance with article 99.

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**SCHEDULE 1**

**Article 81**

**POWERS OF INTERIM RECEIVER**

**Seizure**

1. Power to seize property to which the order applies.

*Information*

2. (1) Power to obtain information or to require a person to answer any question.
  - (2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).
  - (3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings.
  - (4) Sub-paragraph (3) does not apply—
    - (a) on a prosecution for an offence of perjury, or
    - (b) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.
  - (5) But an answer may not be used by virtue of sub-paragraph (4)(b) against a person unless—
    - (a) evidence relating to it is adduced, or
    - (b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

*Entry, search, etc.*

- 3.(1) Power to—
  - (a) enter any premises in Gibraltar to which the interim receiving order applies, and
  - (b) take any of the following steps.

(2) Those steps are—

- (a) to carry out a search for or inspection of anything described in the order,
- (b) to make or obtain a copy, photograph or other record of anything so described,
- (c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Chapter 2 of Part 3.

(3) The order may describe anything generally, whether by reference to a class or otherwise.

*Supplementary*

4.(1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

(2) An order making any provision under paragraph 3 may require any person—

- (a) to give the interim receiver access to any premises which he may enter in pursuance of paragraph 3,
- (b) to give the interim receiver any assistance he may require for taking the steps mentioned in that paragraph.

*Management*

5.(1) Power to manage any property to which the order applies.

(2) Managing property includes—

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,
- (c) incurring capital expenditure in respect of the property.

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SCHEDULE 2

Article 89

POWERS OF TRUSTEE FOR CIVIL RECOVERY

*Sale*

1. Power to sell the property or any part of it or interest in it.

*Expenditure*

2. Power to incur expenditure for the purpose of—
  - (a) acquiring any part of the property, or any interest in it, which is not vested in him,
  - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

*Management*

- 3.(1) Power to manage property.
  - (2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 1.

*Legal proceedings*

4. Power to start, carry on or defend any legal proceedings in respect of the property.

*Compromise*

5. Power to make any compromise or other arrangement in connection with any claim relating to the property.

*Supplementary*

- 6.(1) For the purpose of, or in connection with, the exercise of any of his powers—
  - (a) power by his official name to do any of the things mentioned in sub-paragraph (2),
  - (b) power to do any other act which is necessary or expedient.
- (2) Those things are—

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- (a) holding property,
- (b) entering into contracts,
- (c) suing and being sued,
- (d) employing agents,
- (e) executing a power of attorney, deed or other instrument.