

## SCHEDULE 3

Article 3(2)

### THE DRUG TRAFFICKING ACT 1994 AS MODIFIED

#### Meaning of “drug trafficking”

1.—(1) In this Act “drug trafficking” means, subject to subsection (2) below, doing or being concerned in any of the following, whether in England and Wales or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971(1), or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
- (d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990(2) where the manufacture or supply is an offence under that section or would be such an offence if it took place in England and Wales;
- (e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act;
- (f) conduct which is an offence under section 49 of this Act or which would be such an offence if it took place in England and Wales;
- (g) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 51 of this Act or which would amount to such an offence if it took place in England and Wales.

(2) “Drug trafficking” also includes a person doing the following, whether in England and Wales or elsewhere, that is to say, entering into or being otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated; or
- (b) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment.

(4) In this section “corresponding law” has the same meaning as in the Misuse of Drugs Act 1971.

#### External confiscation orders

2.—(1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as an “external confiscation order”.

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

#### Meaning of “realisable property”

6.—(2) In this Act “realisable property” means, subject to subsection (3) below—

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

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- (a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and
  - (b) in any other case—
    - (i) any property held by the defendant; and
    - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.
- (3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely—
- (a) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders);
  - (b) section 43 of the Powers of Criminal Courts Act 1973<sup>(3)</sup> (deprivation orders);
  - (c) section 21 or 22 of the Proceeds of Crime (Scotland) Act 1995<sup>(4)</sup> (forfeiture of property);
  - (d) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989<sup>(5)</sup> (forfeiture orders).

#### **Value of property etc.**

7.—(1) Subject to the following provisions of this section and to section 8 of this Act, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is—

- (a) the market value of the first-mentioned person’s beneficial interest in the property, less
- (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.

(2) Subject to section 8(2) of this Act, references in this Act to the value at any time (referred to in subsection (3) below as “the material time”) of a gift caught by this Act or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he received it, adjusted to take account of subsequent changes in the value of money, or
- (b) where subsection (3) below applies, the value there mentioned, whichever is the greater.

(3) Subject to section 8(2) of this Act, if at the material time the recipient holds—

- (a) the property which he received (not being cash), or
- (b) property which in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (2)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.

#### **Gifts caught by this Act**

8.—(1) A gift (including a gift made before the commencement of the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996) is caught by this Act if—

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or

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(3) 1973 c. 62.  
(4) 1995 c. 43.  
(5) 1989 c. 4.

- (b) it was made by the defendant at any time and was a gift of property—
  - (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
  - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (2) For the purposes of this Act—
  - (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
  - (b) in those circumstances, the provisions of subsection (1) above and of section 7 of this Act shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

### **Cases in which restraint orders and charging orders may be made**

**25.**—(1) The powers conferred on the High Court by sections 26(1) and 27(1) of this Act are exercisable where—

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (c) the court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(3) The powers contained in subsection (1) above are also exercisable where it appears to the High Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.

(5) Where the court has made an order under section 26(1) or 27(1) of this Act by virtue of subsection (3) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

### **Restraint orders**

**26.**—(1) The High Court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

- (2) A restraint order may apply—
  - (a) where an application under subsection (4) below relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and
  - (b) in any other case—
    - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not, and
    - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 27 of this Act or section 9 of the Drug Trafficking Offences Act 1986.

- (4) A restraint order—

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- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 40 of this Act, by a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise;
  - (b) may be made on an ex parte application to a judge in chambers; and
  - (c) shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.
- (5) A restraint order—
- (a) may be discharged or varied in relation to any property; and
  - (b) shall be discharged when the proceedings in relation to which the order was made are concluded.
- (6) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (7) Where the High Court has made a restraint order, the High 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
  - (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.
- (8) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of that expression)—
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from England and Wales.
- (9) Where a restraint order has been made a constable may seize any realisable property for the purpose of preventing its removal from England and Wales.
- (11) Property seized under subsection (9) above shall be dealt with in accordance with the directions of the court which made the order.
- (12) The Land Charges Act 1972<sup>(6)</sup> and the Land Registration Act 1925<sup>(7)</sup> shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) A person applying for a restraint order under subsection (4)(a) above shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

### **Charging orders in respect of land, securities etc.**

**27.—**(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

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<sup>(6)</sup> 1972 c. 61.

<sup>(7)</sup> 1925 c. 21.

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable, and
  - (b) in any other case, of an amount equal to the value from time to time of the property charged.
- (2) For the purposes of this Act a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- (a) may only be made on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 40 of this Act, by a Crown Prosecutor, or a person authorised in that behalf by the Commissioners of Customs and Excise;
  - (b) may be made on an ex parte application to a judge in chambers;
  - (c) shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct; and
  - (d) may be made subject to such conditions as the court thinks fit including, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act and is an interest—
    - (i) in any asset of a kind mentioned in subsection (5) below; or
    - (ii) under any trust; or
  - (b) any interest in realisable property held by a person as trustee of a trust (“the relevant trust”) if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the relevant trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or
  - (b) securities of any of the following kinds—
    - (i) government stock;
    - (ii) stock of any body (other than a building society) incorporated within England and Wales;
    - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) In relation to a charging order, the court—
- (a) may make an order discharging or varying it; and
  - (b) shall make an order discharging it—

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- (i) on the conclusion of the proceedings against the defendant in the designated country;  
or
- (ii) on payment into court of the amount payment of which is secured by the charge.

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

(9) In this section “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meaning as in the Charging Orders Act 1979(8).

### **Charging orders: supplementary provisions**

**28.**—(1) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs made or issued for the purpose of enforcing judgments.

(2) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.

(3) Subject to any provision made under section 29 of this Act or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 27(7) of this Act discharging the charging order may direct that the entry be cancelled.

### **Applications for restraint and charging orders**

**28A.** Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965, an application under section 26(4) or 27(3) of this Act shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 25(3) of this Act applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

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

### **Realisation of property**

**29.**—(1) Where an external confiscation order has been registered in the High Court under section 40 of this Act, the High Court may, on the application of a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise, exercise the powers conferred by subsections (1A) to (6) below.

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(8) 1979 c. 53.

(1A) In respect of any sum of money payable under the external confiscation order the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under subsection (2) above, under section 26 of this Act or in pursuance of a charging order—

(a) to enforce any charge imposed under section 27 of this Act on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 27 of this Act, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may—

(a) order any person holding an interest in realisable property to make to the receiver such payment as it may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act; and

(b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 27 of this Act or section 9 of the Drug Trafficking Offences Act 1986.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3) (a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

### **Application of proceeds of realisation and other sums**

**30.**—(1) The following sums in the hands of a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order, that is—

(a) the proceeds of the enforcement of any charge imposed under section 27 of this Act,

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 26 or 29 of this Act, and

(c) any other sums, being property held by the defendant,

shall be paid to the High Court and, subject to subsection (2) below, applied for the purposes specified in subsections (5) to (7) below, and in the order so specified.

(2) Before any such sums are so applied they shall be applied—

(a) first, in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 35(3) of this Act; and

(b) second, in making such payments (if any) as the High Court may direct.

(3) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver as is mentioned in subsection (1) above, the receiver shall distribute those sums—

(a) among such of those who held property which has been realised under this Act, and

(b) in such proportions,

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as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(5) Any sums paid to the High Court under subsection (1) above or under an order made under section 29(1A) of this Act or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 35(3) of this Act but not already paid under subsection (2) above.

(6) If the money was paid to the High Court by a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order, the receiver's remuneration and expenses shall next be paid.

(7) After there has been made—

(a) any payment required by subsection (5) above, and

(b) in a case to which subsection (6) above applies, any payment required by that subsection, any amount paid under section 36(2) of this Act shall be reimbursed.

(8) Any sum remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund.

#### **Exercise by High Court or receiver of powers for the realisation of property**

**31.**—(1) The following provisions apply to the powers conferred—

(a) on the High Court by sections 26 to 30 of this Act; or

(b) on a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the High Court under section 40 of this Act or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) In exercising the powers, no account should be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

(6) An order may be made or other action taken in respect of a debt owed by the Crown.

#### **Bankruptcy of defendant etc.**

**32.**—(1) Where a person who holds realisable property is adjudged bankrupt—

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and

(b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act,

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986 ("the 1986 Act").

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 26 to 30 of this Act or on a receiver so appointed shall not be exercised in relation to—



- (a) property for the time being comprised in the bankrupt's estate for the purposes of Part IX of the 1986 Act;
- (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of that Act (after—acquired property and tools, clothes etc. exceeding value of reasonable replacement, and certain tenancies); and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act;

but nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(3) Subsection (2) above does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of the 1986 Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

(5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act—

- (a) no order shall be made under section 339 or 423 of the 1986 Act (avoidance of certain transactions), in respect of the making or the gift, at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under section 339 or 423 after the discharge of the restraint or charging order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(6) In any case where a petition in bankruptcy was presented, or a receiving order or an adjudication in bankruptcy was made, before 29th December 1986 (the date on which the 1986 Act came into force), subsection (2) above shall have effect as if—

- (a) for the reference to the bankrupt's estate for the purposes of Part IX of the 1986 Act there were substituted a reference to the property of the bankrupt for the purposes of the Bankruptcy Act 1914;
- (b) for the reference to section 280(2)(c) of the 1986 Act there were substituted a reference to section 26(2) of that Act; and
- (c) subsection (2)(b) were omitted.

### **Sequestration in Scotland of defendant etc.**

**33.**—(1) Where the estate of a person who holds realisable property is sequestrated—

- (a) property for the time being subject to a restraint order made before the award of sequestration, and
- (b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act,

is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985(9) ("the 1985 Act").

(2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 26 to 30 of this Act or on a receiver so appointed shall not be exercised in relation to—

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(9) 1985 c. 66.

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- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act; and
- (b) any income of the debtor which has been ordered, under section 32(2) of that Act, to be paid to the permanent trustee or any estate which, under section 31(1) or 32(6) of that Act, vests in the permanent trustee;

and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.

(3) Nothing in the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers mentioned in subsection (2) above.

(4) Subsection (2) above does not affect the enforcement of a charging order—

- (a) made before the award of sequestration; or
- (b) on property which was subject to a restraint order when the award of sequestration was made.

(5) Where, during the period before sequestration is awarded—

- (a) an interim trustee stands appointed under section 2(5) of the 1985 Act, and
- (b) any property in the debtor's estate is subject to a restraint order,

the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.

(6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Act—

- (a) no decree shall be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences), in respect of the making of the gift, at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any decree made under section 34 or 36 after the discharge of the restraint or charging order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(7) In any case in which, notwithstanding the coming into force of the 1985 Act, the Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) there were substituted—

- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913; and
- (b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act to be paid to the trustee, or any estate which, under subsection (1) of that section, vests in the trustee;”

and subsection (3) above shall have effect as if for the reference in that subsection to the 1985 Act there were substituted a reference to the Act of 1913.

### **Winding up of company holding realisable property**

**34.**—(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up of the company, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 26 to 30 of this Act or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property;

but nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(3) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) In this section—

“company” means any company which may be wound up under the Insolvency Act 1986; and  
“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where—
  - (i) such an order has been made, but
  - (ii) before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company,the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(5) In any case in which a winding up of a company commenced or is treated as having commenced, before 29th December 1986 (the date on which the Insolvency Act 1986 came into force), this section has effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985.

### **Insolvency officers dealing with property subject to restraint order**

**35.**—(1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—

- (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) above, 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, 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—

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- (a) incurs expenses in respect of such property as is mentioned in paragraph (a) of subsection (1) above 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 of 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) above) to payment of those expenses under section 30(2) or (5) of this Act.

(4) In this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 of the Insolvency Act 1986 (interpretation) except that for the purposes of such construction—

- (a) the reference in subsection (2)(a) of that section to a permanent or interim trustee in sequestration shall be taken to include a reference to a trustee in sequestration; and
- (b) subsection (5) of that section (which includes provision to the effect that nothing in the section is to apply to anything done by the official receiver) shall be disregarded;

and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

#### **Receivers: supplementary provisions**

**36.—**(1) Where a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order—

- (a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and
- (b) believes, and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 30(6) of this Act, be paid by the person on whose application the receiver was appointed.

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

**40.—**(1) On an application made by or on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if—

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

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

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

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by the recovery of all property liable to be recovered under it or by payment of the amount due under it.

### **Interpretation**

**41.**—(1) This section shall have effect for the interpretation of this Act.

(2) Proceedings are instituted in a designated country when—

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking by the defendant, or
- (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) above, the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of alleged drug trafficking; or
- (c) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings for an offence are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered, or the payment of any amount due.

(6) An external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.

(8) An external confiscation order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

### **Meaning of “property” and related expressions**

**62.**—(1) In this Act “property” includes money and all other property, real or personal, heritable or movable, including things in action and other intangible or incorporeal property.

(2) This Act applies to property whether it is situated in England and Wales or elsewhere.

(3) In this Act “interest”, in relation to property, includes right.

(4) In this Act—

- (a) references to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator; and
- (b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(5) For the purposes of this Act—

- (a) property is held by any person if he holds any interest in it; and
- (b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

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## General interpretation

63.—(1) In this Act—

“constable” includes a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979;

“defendant” means a person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation being made have been, or are to be, instituted in a court in a designated country.

(2) In this Act references to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection, and whether received before or after the commencement of the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996 and whether received in connection with drug trafficking carried on by the recipient or some other person.

## Index of defined expressions

64. In this Act the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Act indicated below—

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acting as an insolvency practitioner	section 35(4)
charging order	section 27(2)
conclusion of proceedings in a designated country	section 41(3)
constable	section 63(1)
defendant	section 63(1)
drug trafficking	section 1(1) and (2)
external confiscation order	section 2(1)
gift caught by this Act	section 8(1)
“held” in relation to property	section 62(5)(a)
institution of proceedings in a designated country	section 41(2)
“interest”, in relation to property	section 62(3)
making a gift	section 8(2)
property	section 62(1)
realisable property	section 6(2)
restraint order	section 26(1)
“satisfied”, in relation to an external confiscation order	section 41(6)
“subject to appeal”, in relation to an external confiscation order	section 41(8)
“transferred”, in relation to property	section 62(5)(b)
value of gift, payment or reward	section 7(2)

value of property

section 7(1).

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**Modifications of other Acts**

**65.**—(3) Section 281(4) of the Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to an external confiscation order.

(4) Section 55(2) of the Bankruptcy (Scotland) Act 1985 (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to an external confiscation order.

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## APPENDIX

## INSTITUTION OF PROCEEDINGS

Section 41(2)

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	(a) (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence
Australia	(a) (a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred
The Bahamas	(a) (a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	(a) (a) when an information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred
Bermuda	when an information is laid charging a person with an offence
Bolivia	when a warrant is issued by a competent judge or an order to institute proceedings, containing the preventive annotation of property liable to registration or the bank deposit of the monies, assets and property of the accused
British Virgin Islands	(a) (a) when a summons or warrant is issued in respect of an offence;



<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
The Cayman Islands	<ul style="list-style-type: none"> <li>(b) when a person is charged with an offence after being taken into custody without a warrant;</li> <li>(c) when an indictment is preferred</li> <li>(a) (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence;</li> <li>(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section</li> </ul>
Chile	when an application for a decision from the competent judicial authority is made
Ecuador	when a writ is issued by a judge initiating criminal proceedings
Germany	when a person is notified that he is accused of an offence and will be brought before a court
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Grenada	<ul style="list-style-type: none"> <li>(a) (a) when an information has been laid before a justice of the peace;</li> <li>(b) when a person is charged with an offence;</li> <li>(c) when a bill of indictment is preferred</li> </ul>
Guernsey	when a person is charged with an offence
Guyana	when a charge has been laid against a person for an offence
Hong Kong	<ul style="list-style-type: none"> <li>(a) (a) when a magistrate issues a warrant or summons;</li> <li>(b) when a person is charged with an offence;</li> <li>(c) when an indictment is preferred</li> </ul>
India	<ul style="list-style-type: none"> <li>(a) (a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;</li> <li>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</li> </ul>

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

<i>Designated country</i>	<i>Point at which proceedings are instituted</i> (Miscellaneous Provisions) (Jersey) Law, 1949
Malaysia	when a person is charged with an offence
Montserrat	(a) (a) when a judge issues a summons or warrant in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant
Netherlands	(a) (a) when a pre-trial financial investigation has been initiated; (b) when the provisional measure has been ordered by an investigating magistrate; (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment
Panama	when a person has been charged with an offence
Paraguay	when a judge has ordered the restraint of property and a preventative detention order has been made
Romania	(a) (a) when the start of a penal pursuit is ordered; (b) when penal proceedings start in respect of an offender
Saudi Arabia	when an information has been laid before a judicial authority
South Africa	(a) (a) when a summons is issued in respect of an offence; (b) (b) when a person is charged with an offence; (c) when a bill of indictment is preferred
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion

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<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Switzerland	when proceedings for an offence are brought before an examining magistrate
Thailand	when a court or the Asset Examination Committee issues a restraint order
Ukraine	when a criminal case is brought
United Mexican States	when criminal proceedings are instituted by a judicial authority
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence
Uruguay	when criminal proceedings are instituted by a judicial authority