

SCHEDULE 3

Article 4

MODIFICATION OF PARTS I AND III OF THE ACT IN ITS APPLICATION TO EXTERNAL CONFISCATION ORDERS

General

1. Any reference in this Schedule to a numbered section or Schedule is, unless otherwise expressly provided, a reference to the section or Schedule bearing that number in the Act.

2. For the purposes of the application and modification of Parts I and III of the Act, unless the context otherwise requires—

“the 1999 Order” means the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999;

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

“designated country” has the same meaning as in article 2(1) of the 1999 Order;

“drug trafficking offence” means any offence corresponding to or similar to any of the offences specified in section 49(5) of the Act;

“interest” in relation to property, includes right;

“property” means any property wherever situated, whether heritable or moveable or whether corporeal or incorporeal;

“restraint order” means an order made under section 28 of the Act;

“external confiscation order” has the meaning assigned by section 40(2) of the Act, and proceedings for an offence are instituted against a person in the circumstances set out in article 2 of the 1999 Order.

PART I

CONFISCATION OF THE PROCEEDS OF CRIME

3. Sections 1 to 3 shall be omitted.

4. In section 4—

(a) for paragraphs (a) to (d) of subsection (1) there shall be substituted the following paragraphs:—

“(a) in relation to an external confiscation order in respect of specified property, the property which is specified in the order; and

(b) in any other case—

(i) the whole estate, wherever situated, of the accused or a person in respect of whom a restraint order has been made by virtue of section 29(3) of this Act;

(ii) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of sub-paragraph (i) above has (directly or indirectly and whether in one transaction or in a series of transactions) made a gift caught by this Part of this Act or, as the case may be, an implicative gift;

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- (iii) any other property in the possession or under the control of a person mentioned in sub-paragraph (i) or (ii) above; and
 - (iv) any income or estate vesting in a person mentioned in sub-paragraph (i) or (ii) above”;
 - (b) in subsection (2) for the words “subsection (1)(a) or (b)” there shall be substituted the words sub-paragraph (1)(b)(i) or (ii);
 - (c) subsection (3) shall be omitted;
 - (d) for subsection (4) there shall be substituted the following subsection:–
 - “(4) The value of realisable property (other than money) of a person in respect of whom an external confiscation order has been made shall be its market value having regard to any security or real burden which would require to be discharged in realising the property or to any other factors which might reduce the amount recoverable by such realisation.”;
 - (e) subsections (5) and (6) shall be omitted.
- 5.** In section 5–
- (a) in subsection (1) for “4(1)(a)(i)” there shall be substituted “4(1)(b)(i)”;
 - (b) in subsection (3)–
 - (i) for the word “court” there shall be substituted the words “High Court”;
 - (ii) the words “and if a confiscation order has already been made, varying that order accordingly, where necessary” shall be omitted;
 - (c) in subsection (4) for the word “prosecutor” there shall be substituted the words “Lord Advocate”.
- 6.** In section 6–
- (a) in subsection (1) for the words “this Act” there shall be substituted the words “the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999”;
 - (b) in paragraph (a) of subsection (1) for the words “in respect of a person suspected of, or charged with, a drug trafficking offence, the proceedings were commenced” there shall be substituted the words “in respect of a person, proceedings for a drug trafficking offence which might result in an external confiscation order being made were instituted”;
 - (c) in subsection (3)–
 - (i) for the word “court” there shall be substituted the words “High Court”;
 - (ii) for the words “a confiscation” where they first appear there shall be substituted the words “an external confiscation”;
 - (iii) the words “and if a confiscation order has already been made, varying that order accordingly, where necessary” shall be omitted;
 - (d) in subsection (4) for the word “prosecutor” there shall be substituted the words “Lord Advocate”.
- 7.** In section 7–
- (a) for the word “court” wherever it appears there shall be substituted the words “High Court”;
 - (b) in subsection (3)(a) for the words “the likely market value, on the date on which the confiscation order is to be made, of” there be substituted the words “the market value of”;
 - (c) in subsection (3)(b), the words “prior to the date on which the confiscation order is to be made” shall be omitted.

8. Sections 8 to 13 shall be omitted.
9. For section 14 there shall be substituted the following section:—

“14 Application of provisions to fines to enforcement of external confiscation orders

(1) An external confiscation order which has been registered by the Court of Session in terms of section 41 of this Act shall be remitted for enforcement to and shall be enforceable as if it were a fine imposed under the Criminal Procedure (Scotland) Act 1995⁽¹⁾ by the sheriff of Lothian and Borders at Edinburgh except that, section 216 of that Act shall apply as if subsection (1) gave the Lord Advocate an opportunity to be heard at any inquiry thereunder and as if it applied whether the person was in prison or not.

(2) Where an external confiscation order has been remitted to the sheriff in terms of subsection (1) of this section the sheriff may at any time except where an administrator has been appointed in relation thereto order that it shall be enforced by civil diligence.

(3) An order in terms of subsection (2) of this section shall have the effect of authorising the like diligence as if the external confiscation order was a fine imposed under the Criminal Procedure (Scotland) Act 1995 and, without prejudice to the foregoing generality, inhibition and adjudication and such diligence, whatever the amount of the external confiscation order, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Any sums recovered in respect of an external confiscation order shall be paid into the Consolidated Fund.”.

10. Section 15 shall be omitted.
11. In section 16—
- (a) in subsection (1)—
 - (i) for the word “court” there shall be substituted the words “Court of Session”;
 - (ii) the word “external” shall be inserted before the word “confiscation”;
 - (b) in subsection (2)—
 - (i) the word “external” shall be inserted before the word “confiscation” wherever it appears;
 - (ii) for “4(1)(a)” there shall be substituted “4(1)(b)(i)”;
 - (c) in subsection (4)—
 - (i) for “(a)” there shall be substituted “(b)(i)”;
 - (ii) for “(b) of section 4(1)” there shall be substituted “(ii) of section 4(1)”;
 - (d) in subsection (6) the word “external” shall be inserted before the word “confiscation”.
12. Sections 17 to 20 shall be omitted.

PART III
RESTRAINT ORDERS

13. In section 28—
- (a) in subsection (1)—

(1) 1995 c. 46.

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- (i) for the word “court” there shall be substituted the words “Court of Session”;
- (ii) for the word “prosecutor” there shall be substituted the words “Lord Advocate”;
- (b) subsection (1)(b) shall be omitted;
- (c) in subsection (2) for the words “a confiscation” there shall be substituted the words “an external confiscation”;
- (d) for subsection (3) there shall be substituted the following subsection—
 - “(3) A restraint order shall—
 - (a) be made on an *ex parte* application which shall be heard in chambers;
 - (b) be supported by a certificate which shall—
 - (i) state where applicable, the grounds for believing that an external confiscation order may be made in proceedings instituted or to be instituted in the designated country concerned;
 - (ii) give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
 - (iii) in a case to which section 29(3) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned, and the certificate may, unless the Court of Session otherwise direct, contain a statement of information or belief with the sources and grounds thereof;
 - (c) without prejudice to the time when it becomes effective, be intimated to each person affected by it.”;
- (e) in subsection (4) for the word “court” there shall be substituted the words “Court of Session”;
- (f) in subsection (5)—
 - (i) the words “(including a restraint order made under and within the meaning of the 1994 Act)” shall be omitted;
 - (ii) the words “(including a drug trafficking offence within the meaning of the 1994 Act)” shall be omitted;
 - (iii) for the words “Great Britain” there shall be substituted the word “Scotland”;
 - (iv) for the word “court” there shall be substituted the words “Court of Session”;
- (g) in subsection (6) for the words “court which made the order” there shall be substituted the words “Court of Session”;
- (h) subsection (7) shall be omitted;
- (i) in subsection (8) for the word “court” there shall be substituted the words “Court of Session”.

14. In section 29—

- (a) for paragraphs (a) to (c) of subsection (2) there shall be substituted:—
 - “(a) proceedings have been instituted against a person in a designated country;
 - (b) the proceedings have not been concluded; and
 - (c) either an external confiscation order has been made or it appears to the Court of Session that, there are reasonable grounds for thinking that an external confiscation order may be made in those proceedings.”.
- (b) for subsection (3) there shall be substituted:—

“(3) For the purposes of this subsection, the circumstances are that it appears to the Court of Session that proceedings which might result in an external confiscation order being made are to be instituted against a person in a designated country within 28 days and that there are reasonable grounds for thinking that such an order may be made in them.”;

- (c) in subsection (4)–
 - (i) for the word “court” wherever it appears there shall be substituted the words “Court of Session”;
 - (ii) for the words “prosecutor” there shall be substituted the words “Lord Advocate”;
 - (iii) for the words “subsection (3)(a) and (b)” there shall be substituted the words “subsection (3) above”;
- (d) in subsection (5) the words “or, as the case may be, proceedings on an application under section 11 or 13 of this Act” shall be omitted;
- (e) for subsection (6) there shall be substituted the following subsection:–

“(6) For the purposes of this section, proceedings are concluded as regards an offence in the circumstances set out in article 2(3) of the 1998 Order.”;
- (f) subsection (7) shall be omitted.

15. Section 30 shall be omitted.

16. In section 31–

- (a) for the word “court” wherever it appears there shall be substituted the words “Court of Session”;
- (b) for the word “prosecutor” wherever it appears there shall be substituted the words “Lord Advocate”.

17. In section 33–

- (a) for the word “prosecutor” wherever it appears there shall be substituted the words “Lord Advocate”;
- (b) for the word “court” wherever it appears there shall be substituted the words “Court of Session”.

18. In Schedule 1–

- (a) in paragraph 1(1) the words “prosecutor the court” shall be substituted with the words “Lord Advocate the Court of Session”;
- (b) in paragraph 1(1)(b) and 4(1) for the word “made” there shall be substituted the word “registered”;
- (c) for the word “court” wherever it appears there shall be substituted the words “Court of Session”;
- (d) the words “or a suspended forfeiture order”, “a suspended forfeiture order or” and “the suspended forfeiture order or a” shall be omitted;
- (e) before the words “confiscation order” wherever they appear there shall be inserted the words “an external”;
- (f) for paragraph 4(4)(d) there shall be substituted “next, in accordance with any direction given by the Court of Session”;
- (g) paragraph 10 shall be omitted.