

### SCHEDULE 3

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

#### PART III

#### RESTRAINT ORDERS

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

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**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”;

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- (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.