

SCHEDULE 2

Article 3(2)

MODIFICATIONS OF PART VI OF THE CRIMINAL JUSTICE ACT 1988

1. For section 71 there shall be substituted the following section:

“71 External confiscation orders

- (1) An order made by a court in a designated country for the purpose—

- (a) of recovering—

(i) property obtained as a result of or in connection with conduct to which this Part of this Act applies; or

(ii) the value of property so obtained; or

- (b) of depriving a person of a pecuniary advantage so obtained,

is referred to in this Part of this Act as an “external confiscation order”, and “a designated country” means a country or territory designated under article 3(1) of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991.

(2) Section 97 below shall have effect with respect to the registration of external confiscation orders.

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

(4) Where a person derives a pecuniary advantage as a result of or in connection with conduct to which this Part of this Act applies, he is to be treated for the purposes of this Part of this Act as if he had obtained as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.”

2. Sections 72 and 73 shall be omitted.

3. For section 74 there shall be substituted the following section:

“74 Definition of principal terms used

- (1) In this Part of this Act—

(a) “drug trafficking offence” has the same meaning as in the Drug Trafficking Offences Act 1986(1);

(b) references to conduct to which this Part of this Act applies are references to conduct corresponding to any offence which—

(i) is listed in Schedule 4 to this Act; or

(ii) if not listed, is an indictable offence, other than a drug trafficking offence or an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989(2); and

(c) a 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, is referred to as “the defendant”.”

- (2) In this Part of this Act, “realisable property” means, subject to subsection (3) below—

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

(2) 1989 c. 4.

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- (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) 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 Part of this Act.
- (3) Property is not realisable property if—
 - (a) an order under section 43 of the Powers of Criminal Courts Act 1973⁽³⁾ (deprivation orders);
 - (b) an order under section 27 of the Misuse of Drugs Act 1971⁽⁴⁾ (forfeiture orders);
 - (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975⁽⁵⁾ (forfeiture of property);
 - (d) an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders); or
 - (e) an order under section 71 above,is in force in respect of the property.

(4) For the purposes of subsection (3)(e) above, modifications effected by paragraph 1 of Schedule 2 to the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991 shall be disregarded.

(5) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first-mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

(6) References in this Part of this Act to the value at any time (referred to in subsection (7) below as "the material time") of any property obtained by a person as a result of or in connection with conduct are references to—

- (a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (7) below applies, the value there mentioned,

whichever is the greater.

(7) If at the material time he holds—

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

the value referred to in subsection (6)(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 obtained, but disregarding any charging order.

⁽³⁾ 1973 c. 62; section 43 was amended by the Criminal Justice Act 1988 (c. 33), s.69.

⁽⁴⁾ 1971 c. 38, amended by the Criminal Justice Act 1988 (c. 33), section 70 and the Criminal Justice (International Co-operation) Act 1990 (c. 5), section 31(1) and Schedule 4.

⁽⁵⁾ 1975 c. 21.

(8) Subject to subsection (11) below, references in this Part of this Act to the value at any time (referred to in subsection (9) below as “the material time”) of a gift caught by this Part of this Act are references to—

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (9) below applies, the value there mentioned,

whichever is the greater.

(9) Subject to subsection (11) below, if at the material time he 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 (8) 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 any charging order.

(10) A gift (including a gift made before the commencement of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991) is caught by this Part of this Act if—

- (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(11) For the purposes of this Part 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 preceding provisions of this section 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.

4. Section 75 shall be omitted.

5. In section 76—

(a) for subsection (1)(a) there shall be substituted:

“(a) proceedings have been instituted against the defendant in a designated country.”;

(b) for subsection (1)(c) there shall be substituted:

“(c) either an external confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for thinking that such an order may be made in them.”;

(c) for subsection (2) there shall be substituted:

“(2) Those powers 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 thinking that an external confiscation order may be made in them.”;

(d) subsection (3) shall be omitted; and

(e) in subsection (4), for the words from “proceedings” to “otherwise”, there shall be substituted the words “the proposed proceedings are not instituted”.

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6. In section 77–

- (a) for subsection (3)(a) and (b) there shall be substituted:
 - “(a) where an application under subsection (5) below relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and
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.”;
- (b) in paragraph (a) of subsection (5) for the words “the prosecutor” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 97 below, by a receiver appointed under section 80 below, a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise”, and for paragraph (c) of that subsection there shall be substituted the following paragraph:
 - “(c) notwithstanding anything in Order 11 of the Rules of the Supreme Court(6) may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.”;
- (c) for subsection (6)(b) there shall be substituted:
 - “(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”;
- (d) in subsections (9)(b) and (10) for the words “Great Britain” there shall be substituted the words “England and Wales”;
- (e) in subsection (13), for the words “The prosecutor” there shall be substituted the words “A person applying for a restraint order under subsection (5)(a) above”.

7. In section 78–

- (a) for subsection (1)(a) and (b) there shall be substituted the following:
 - “(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
in any other case, of an amount equal to the value from time to time of the property charged.”;
- (b) in subsection (3)(a) for the words “the prosecutor” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 97 below, by a receiver appointed under section 80 below, a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise”, and for paragraph (c) of that subsection there shall be substituted the following paragraph:
 - “(c) notwithstanding anything in Order 11 of the Rules of the Supreme Court 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;”;
- (c) in subsection (7) for the words “for the offence” there shall be substituted the words “against the defendant in the designated country”.

8. In section 79, subsection (5) shall be omitted.

(6) S.I.1965/1776.

9. After section 79 there shall be inserted the following section:

“Applications for restraint and charging orders

79A. Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965(7), an application under section 77(5) or 78(3) above shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for thinking 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 76(2) above 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.”.

10. In section 80, for subsection (1) there shall be substituted the following two subsections:

“(1) Where an external confiscation order has been registered in the High Court under section 97 below, 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.

(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.”.

11. In section 81—

- (a) in subsection (1), for the words from “sums”, in the last place where it occurs, to the end of the subsection, there shall be substituted the words “be paid to the High Court and applied for the purposes specified in subsections (4) to (6) below and in the order so specified.”;
- (b) in subsection (2), for the words “If, after the amount payable under the confiscation order”, there shall be substituted the words “Where a fixed amount is payable under the external confiscation order and, after that amount”;
- (c) subsection (3) shall be omitted;
- (d) in subsection (4), for the words “The justices' clerk shall first”, there shall be substituted the words “Any sums paid to the High Court under subsection (1) above or under an order made under section 80(1A) above or otherwise in satisfaction of an external confiscation order shall be first applied to”;
- (e) for subsection (5) there shall be substituted the following subsection—

“(5) If the money was paid to the High Court by a receiver appointed under section 77 or 80 above or in pursuance of a charging order the receiver’s remuneration and expenses shall next be paid.”;
- (f) in subsection (6), for the words “After making” there shall be substituted the words “After there has been made”, and for the words “the justices' clerk shall reimburse any amount

(7) Order 115 was inserted by R.S.C. (Amendment No. 3) 1986 (S.I. 1986/2289), and amended by R.S.C. (Amendment No. 2) (S.I. 1989/386).

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paid under section 88(2) below” there shall be substituted the words “any amount paid under section 88(2) below shall be reimbursed.”;

- (g) subsection (7) shall be omitted;
- (h) for subsection (8) there shall be substituted the following subsection–
 - “(8) Any sums 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.”; and
- (i) subsections (9) and (10) shall be omitted.

12. In section 82–

- (a) in subsection (1) the words “or on the Court of Session by sections 90 to 92 below,” shall be omitted;
- (b) in subsection (2), for the words from “making available” to the end of the subsection there shall be substituted the words “recovering property which is liable to be recovered under an external confiscation order registered in the High Court under section 97 below 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.”; and
- (c) in subsection (6), after the word “the” in the fourth place where it occurs, there shall be inserted the word “external”.

13. Section 83 shall be omitted.

14. In section 84–

- (a) in subsection (2) the words “or on the Court of Session by sections 90 to 92 below” shall be omitted;
- (b) in subsection (6)(a), the words “proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when” shall be omitted;
- (c) in subsection (6)(b), for the words “conclusion of the proceedings” there shall be substituted the words “discharge of the restraint or charging order”; and
- (d) for subsection (7) there shall be substituted the following subsection:
 - “(7) In any case in which 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 Insolvency Act 1986(8) came into force), subsection (2) shall have effect as if–
 - (a) for the reference to the bankrupt’s estate for the purposes of Part IX of the Insolvency Act 1986 there were substituted a reference to the property of the bankrupt for the purposes of the Bankruptcy Act 1914(9)
 - (b) for the reference to section 280(2)(c) of the Act of 1986 there were substituted a reference to section 26(2) of that Act; and
 - (c) subsection (2)(b) were omitted.”.

15. For section 85 there shall be substituted the following section:

(1) Where an award of sequestration has been made under the Bankruptcy (Scotland) Act 1985(10) by the Court of Session, in relation to a person who holds realisable property,

(8) 1986 c. 45.
(9) 1914 c. 59.
(10) 1985 c. 66.

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the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed shall not be exercised in relation to—

- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of that Act, and
- (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, under subsection (10) of section 31 of that Act, or subsection (6) of the said section 32, vests in the permanent trustee.

(2) Subsection (1) 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.

(3) In any case in which, notwithstanding the coming into force of the Bankruptcy (Scotland) Act 1985, the Bankruptcy (Scotland) Act 1913⁽¹¹⁾ applies to a sequestration, subsection (1) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—

- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
- (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 of any estate which, under subsection (1) of that section, vests in the trustee.”.

16. In section 86—

- (a) in subsection (2) the words “or in the Court of Session by sections 90 to 92 below” shall be omitted; and
- (b) subsection (5) shall be omitted.

17. In subsection (3) of section 87 the words from “except that” to “trustee in sequestration” shall be omitted.

18. In subsection (2) of section 88, the words “by the prosecutor or, in a case where proceedings for an offence to which this Part of this Act applies are not instituted,” shall be omitted.

19. Sections 89 to 96 shall be omitted.

20. Sections 98 to 101 shall be omitted.

21. In section 102—

- (a) for the list of expressions and relevant provisions in subsection (2) there shall be substituted—

“Expression	Relevant provision
Charging order	Section 78(2)
External Confiscation Order	Section 71(1)
Dealing with property	Section 77(9)
Defendant	Section 74(1)(c)
Gift caught by this Part of this Act	Section 74(10)

⁽¹¹⁾ 1913 c. 20.

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“Expression	Relevant provision
Making a gift	Section 74(11)
Conduct to which this Part of this Act applies	Section 74(1)(b)
Realisable property	Section 74(2)
Restraint order	Section 77(1)
Value of gift	Section 74(8) and (9)
Value of property	Section 74(5) to (7)”;

- (b) subsection (4) shall be omitted;
- (c) at the end of subsection (5) the fullstop shall be omitted and there shall be added the words “, and whether received before or after the commencement of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991.”;
- (d) for subsection (11), there shall be substituted the following:
 - “(11) Proceedings are instituted in a designated country when—
 - (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of the Appendix to this section has been taken there in respect of alleged conduct by the defendant to which this Part of this Act applies; or
 - (b) 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.”; and
- (e) for subsection (12), there shall be substituted the following:
 - “(12) Proceedings are concluded—
 - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of 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, or otherwise).”;
- (f) at the end, the following Appendix shall be added—

“APPENDIX

Section 102(11)

INSTITUTION OF PROCEEDINGS

Designated country	Point at which proceedings are instituted
Italy	<ul style="list-style-type: none"> (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in process; (b) when a proposal for the application of a preventative measure is laid before a court.

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Designated country	Point at which proceedings are instituted
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly the prosecutor is obliged under the Code of Judicial Procedure to notify the person of the suspicion.”

22. Section 103 shall be omitted.

23. In Schedule 4–

- (a) in Part I the entries relating to the London Government Act 1963⁽¹²⁾ and the Local Government (Miscellaneous Provisions) Act 1982⁽¹³⁾ shall be omitted; and
- (b) Part II shall be omitted.

⁽¹²⁾ 1963 c. 33; the entry relating to this Act was inserted by section 71 of and paragraph 1 of Part II of Schedule 4 to the Criminal Justice Act 1988 and the Criminal Justice Act 1988 (Confiscation Orders) Order 1990 (S.I. 1990/1570).

⁽¹³⁾ 1982 c. 30.