

SCHEDULES

SCHEDULE 5

Section 113(3).

AMENDMENTS TO THE CRIMINAL JUSTICE (SCOTLAND) ACT 1987 RELATING TO PART II

- 1 The Criminal Justice (Scotland) Act 1987 shall be amended as follows.
- 2 In section 1 (confiscation orders)—
 - (a) in subsection (1)—
 - (i) for the words from “High Court” to “pronounced” there shall be substituted the words “High Court or sheriff court (in this section and sections 2 to 7A of this Act referred to as “the court”) of an offence to which this section relates the court, on the application of the prosecutor, may”, and in the remainder of that subsection for the word “Court” where it appears there shall be substituted the word “court”; and
 - (ii) in paragraph (b), for the word “property” where it first appears there shall be substituted the word “amount” and for the words “the value of that property” there shall be substituted the words “that amount”;
 - (b) in subsection (2), after the word “following” there shall be inserted the words “offences when prosecuted either on indictment or on summary complaint before the sheriff if the offence is punishable by a fine in excess of level 5 or by imprisonment for a period of more than 3 months or by both such fine and imprisonment”;
 - (c) after subsection (2) there shall be inserted the following subsections—
 - “(2A) Any application under this section shall be made—
 - (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the offender is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
 - (b) in summary proceedings following the conviction of the accused.
 - (2B) A confiscation order shall not be made unless the court orders some other disposal (including an absolute discharge) in respect of the offender.
 - (2C) If the court decides to make a confiscation order, it shall determine the amount to be payable thereunder before making any decision as to—
 - (a) imposing a fine on the person;
 - (b) making any order involving any other payment by him.
 - (2D) Where a court makes a confiscation order against an accused in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

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- (a) imposing any fine on him;
 - (b) making any order involving any other payment by him,
- but subject to that, the court shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the accused.

(2E) Where a court makes both a confiscation order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same person in the same proceedings in relation to the same offence and the offence involves the misappropriation of property, it shall direct that the compensation shall be paid first out of any sums applied towards the satisfaction of the confiscation order.”;

- (d) subsection (3) shall cease to have effect; and
- (e) in subsection (5) for the words “High Court” and “Court” where they occur there shall be substituted the word “court”.

3 For section 2 (postponed confiscation orders) there shall be substituted the following section—

- “2 (1) If the court considers that it has some, but not sufficient, relevant information for the purpose of enabling it to come to a decision as to whether to make a confiscation order or that it does not have sufficient relevant information to enable it to come to a decision as to the amount to be payable under the confiscation order, it may, subject as the case may be to subsection (6) or (10) below, postpone that decision for a period not exceeding 6 months after the date of conviction for the purpose of enabling further information to be obtained.
- (2) Without prejudice to sections 179 and 219 (or as the case may be sections 380 and 432) of the 1975 Act, the court may notwithstanding postponement under subsection (1) above and subject to subsection (3) below, proceed, on the prosecutor’s motion therefor, to sentence or to otherwise deal with the accused in respect of the conviction.
- (3) Where the court proceeds as mentioned in subsection (2) above—
- (a) no fine shall be imposed on the accused; and
 - (b) no order shall be made involving any other payment by him,
- in relation to the conviction before the decision whether to make a confiscation order is taken.
- (4) Where in the case of conviction on indictment a decision has been postponed under subsection (1) above for a period, any intention to appeal under section 228 of the 1975 Act against conviction or against both conviction and any sentence passed during that period in respect of the conviction, shall be intimated under section 231(1) of the 1975 Act not within 2 weeks of the final determination of the proceedings but within 2 weeks of—
- (a) in the case of an appeal against conviction where there has been no such sentence, the day on which the period of postponement commences;
 - (b) in any other case, the day on which such sentence is passed in open court.

- (5) Notwithstanding any appeal of which intimation has been given by virtue of subsection (4) above, a person may appeal under section 228 of the 1975 Act against the confiscation order (if the decision is to make one) or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (6) If during the period of postponement intimation is given by virtue of subsection (4) above by the person, the High Court may, on the application of the prosecutor, extend that period to a date up to 3 months after the date of disposal of the appeal.
- (7) This subsection applies where in the case of summary conviction a decision has been postponed under subsection (1) above for a period.
- (8) Where subsection (7) above applies and the offender appeals under section 442 of the 1975 Act against conviction or against both conviction and any sentence passed during the period of postponement—
- (a) his application for a stated case shall be made not within one week of the final determination of the proceedings but within one week of the day mentioned in paragraph (a) or (b) of subsection (4) above;
 - (b) his draft stated case shall be prepared and issued not within 3 weeks of the final determination of the proceedings but within 3 weeks of the said day.
- (9) Where subsection (7) above applies, then, notwithstanding any appeal against conviction or sentence or both the offender may appeal under section 442(1)(a)(ii), and the prosecutor may appeal under section 442(1)(b)(ii), of the 1975 Act against any confiscation order or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (10) Where subsection (7) above applies, then, if during the period of postponement the offender applies for a stated case or lodges a note of appeal, the High Court may, on the application of the prosecutor, extend the period of postponement to a date up to 3 months after the date of disposal of the appeal.”.
- 4 In section 3 (assessing the proceeds of drug trafficking)—
- (a) in each of subsections (2) and (4) for the word “Court” where it appears there shall be substituted the word “court”;
 - (b) at the end of paragraph (a)(ii) of subsection (2) there shall be added the words “or being served with the complaint (as the case may be)”; and
 - (c) subsection (5) shall cease to have effect.
- 5 In section 4 (statements relating to drug trafficking)—
- (a) in each of subsections (1), (2) and (4) for the word “Court” where it appears there shall be substituted the word “court”;
 - (b) in each of subsections (1) and (4) after the words “section 150” there shall be inserted the words “or, as the case may be, section 354”;
 - (c) at the end there shall be added the following subsections—
 - “(6) Without prejudice to section 2(1) of this Act, where—
 - (a) any allegation in the statement lodged under subsection (1) above is challenged by the accused; or

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- (b) the basis of the non-acceptance by the accused of any such allegation is challenged by the prosecutor,
the court shall consider the matters being challenged at a hearing.
- (7) Where the judge presiding at a hearing held under subsection (6) above is not the trial judge he may, on the application of either party, if he considers that it would be in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.”.
- 6 In section 5 (realisable property)—
- (a) for subsections (1) to (3) there shall be substituted the following—
- “(1) In this Part of this Act “realisable property” means, subject to subsection (2) below—
- (a) the whole estate wherever situated of a person—
- (i) against whom proceedings have been instituted for an offence to which section 1 of this Act relates; or
- (ii) in respect of whom a restraint order has been made by virtue of section 8(4) of this Act;
- (b) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or indirectly and whether in one transaction or in a series of transactions) made an implicative gift;
- (c) any other property in the possession or under the control of a person mentioned in paragraph (a) or (b) above; and
- (d) any income or estate vesting in a person mentioned in paragraph (a) or (b) above.
- (2) Property is not realisable if—
- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned;
- (b) a suspended forfeiture order is in force in respect of the property; or
- (c) it is, for the time being, subject to a restraint order made in respect of other proceedings.
- (3) For the purposes of this section proceedings for an offence are instituted against a person—
- (a) on his arrest without warrant;
- (b) when he is charged with the offence without being arrested;
- (c) when a warrant to arrest him is granted;
- (d) when a warrant to cite him is granted;
- (e) in summary proceedings, on the first calling of the case; or
- (f) when a petition is intimated to him or an indictment or a complaint is served on him,
- 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 be instituted at the earliest of those times.”;

- (b) in subsection (4)—
- (i) for the words “realisable property owned” there shall be substituted the words “his realisable property”; and
 - (ii) for the words from “except that” to the end there shall be substituted “, less any amount due by him at that time in respect of any compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 made before the confiscation order.”;
- (c) in subsection (5)—
- (i) for the words “High Court” there shall be substituted the word “court”;
 - (ii) after the words “regard to the” there shall be inserted the word “likely”;
 - (iii) after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) of realisable property held by a person whose estate has been sequestrated, or who has been adjudged bankrupt in England and Wales or Northern Ireland, the court shall take into account the extent to which the property is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act.”;
 - (iv) paragraph (b) shall cease to have effect; and
 - (v) at the end there shall be added the words “and in this subsection, “money” includes cheques, banknotes, postal orders, money orders and foreign currency”;
- (d) subsection (6) shall cease to have effect;
- (e) in subsection (7)—
- (i) for the word “Court” there shall be substituted the word “court”;
 - and
 - (ii) the words “notwithstanding subsections (5)(b) and (6) above” shall cease to have effect;
- (f) after subsection (7) there shall be inserted the following subsections—
- “(7A) Where the court is satisfied, on the application of a person in receipt of an implicative gift made before or after a confiscation order has been made—
- (a) that the person received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the giver was in any way concerned in drug trafficking; and
 - (b) that he is not, and has never been, associated with the giver in drug trafficking; and
 - (c) that he would suffer hardship if the application were not granted,
- it may make an order declaring that the gift or a part of the gift shall not be an implicative gift and that the property or part of the property of the recipient of the gift shall not be, or shall cease to be, realisable for the purposes of this Part of this Act and, if

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a confiscation order has already been made, varying that order accordingly, where necessary.

(7B) An appeal shall lie to the High Court at the instance of—

- (a) the applicant against the refusal;
- (b) the prosecutor against the granting,

of an application under subsection (7A) above.

(7C) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.”; and

- (g) subsection (8) shall cease to have effect.

7 In section 6 (implicative gifts)—

- (a) in subsection (1), in paragraph (a) for the words “the warrant to arrest and commit was granted” there shall be substituted the words “the proceedings were commenced within the meaning of section 5(3) of this Act”;
- (b) for subsections (2) and (3) there shall be substituted the following—

“(2) In assessing the value of an implicative gift, the court shall, subject to subsections (3) and (3A) below, take it to be the greater of—

- (a) the value of the gift when received adjusted to take account of subsequent changes in the value of money; or
- (b) both of the following—

(i) the likely market value, on the date on which the confiscation order is to be made, of—

- (A) the gift, if retained; or
- (B) where the recipient of the gift retains only part of it, the retained part, and any property or part of any property which, directly or indirectly, represents the gift; or

(C) where the recipient of the gift retains no part of it, any property or part of any property which, directly or indirectly, represents the gift; and

(ii) the value of any other property and any other economic advantage which by reason of the making of the gift the recipient of the gift has obtained, directly or indirectly, prior to the date on which the confiscation order is to be made, adjusted to take account of subsequent changes in the value of money.

- (3) The circumstances in which the accused is to be treated as making a gift include those where he transfers an interest in property to another person directly or indirectly for a consideration the value of which is significantly less than the value of that interest at the time of transfer; and in those circumstances the value of the gift shall be the difference between the value of that consideration and the value of that interest at the time of transfer adjusted to take account of subsequent changes in the value of money.

(3A) Where an implicative gift was in the form of money and the recipient of the gift shows that, on the balance of probabilities, the money or any of it has not been used to purchase goods or services or to earn interest or any other return, the value of the gift or such part of it as has not been so used shall be taken to be the face value of the money or, as the case may be, unused amount of the money.

(3B) In subsection (3A) above, “money” includes cheques, banknotes, postal orders, money orders and foreign currency.”; and

(c) subsections (4) and (5) shall cease to have effect.

8 After section 6 (implicative gifts) there shall be inserted the following sections—

“6A Increase in value of proceeds of drug trafficking or realisable property

(1) This section applies where the court which made a confiscation order is satisfied, on an application made by the prosecutor, that at the time the application is made the value of the proceeds of the person’s drug trafficking, or the amount that might be realised, is greater than—

- (a) the value of the proceeds of the person’s drug trafficking; or, as the case may be,
- (b) the amount that might be realised,

which was taken into account when the order was made.

(2) The considerations by reference to which to court may be satisfied as mentioned in subsection (1) above shall include—

- (a) the value of the proceeds of the person’s drug trafficking was greater than was taken into account when the confiscation order was made or has increased since the order was made; or
- (b) further proceeds of drug trafficking have been obtained since the confiscation order was made; or
- (c) the value of realisable property was greater than was taken into account when the confiscation order was made; or
- (d) any realisable property taken into account at the time when the confiscation order was made has subsequently increased in value; or
- (e) the amount, or part of the amount, of a gift which was disregarded under section 5(7) of this Act could now be realised.

(3) An application under subsection (1) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.

(4) Where this section applies—

- (a) the court may make a new confiscation order for the payment of such sum as appears to the court to be appropriate having regard to what is now shown to be the value of the proceeds of drug trafficking or the amount that might be realised; and
- (b) if the earlier confiscation order has not been satisfied, then the court, in making the new confiscation order, shall recall the earlier order and may take into account the amount unpaid (including any

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interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the earlier order.

- (5) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (6) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.

6B Confiscation orders where proceeds of crime discovered at later date

- (1) This section applies where no confiscation order has been made in relation to an offence under section 1 or 2 of this Act.
- (2) Where the court, on an application made to it by the prosecutor under this section, is satisfied—
 - (a) that a person convicted of an offence to which this Part of this Act relates was in receipt of the proceeds of drug trafficking in respect of that offence;
 - (b) that the information necessary to enable a confiscation order to be made on the date on which an application under section 1 of this Act was or could have been made was not available to the prosecutor,
 it may make a confiscation order in relation to that person.
- (3) An application under this section shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) In determining the sum to be payable under a confiscation order made in pursuance of this section, the court shall take into account—
 - (a) any order involving any payment by the offender;
 - (b) any order under section 87 of the Criminal Justice (Scotland) Act 1995 or an order for forfeiture under any other enactment made in respect of the offender,
 which forms part of the sentence already imposed for the offence concerned.
- (5) In determining such sum the court may take into account any payment or other reward received by the offender on or after the date of conviction, but only if the prosecutor satisfies the court that it was received by the offender in connection with drug trafficking carried on by the offender or another on or before that date.
- (6) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (7) Section 1(2B), (2C), (2D) and (2E) of this Act shall not apply in relation to a confiscation order made in pursuance of this section.
- (8) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.

(9) Where the court makes a confiscation order in pursuance of this section and a compensation order has been made under section 58 of the Criminal Justice (Scotland) Act 1980 in respect of misappropriation of property by the offender, the court shall direct that compensation shall first be paid out of any sums applied towards the satisfaction of the confiscation order to the extent of any sums outstanding in respect of the compensation order.

(10) In this section “the court” means the court which had jurisdiction in respect of the offence concerned to make a confiscation order under section 1 of this Act.”.

9 In section 7 (application of provisions relating to fines to enforcement of confiscation orders)—

(a) in subsection (1)—

(i) after “203” there shall be inserted the words “or, as the case may be, 402 and 412”;

(ii) for the words from “as applied” to “below shall” there shall be substituted the words “the provisions of that Act specified in subsection (2) below (or those provisions as applied by section 194 of that Act) shall”;

(b) in subsection (2)—

(i) in the entry relating to section 398, at the end there shall be inserted the words “but as if subsection (1)—

(a) gave the prosecutor an opportunity to be heard at any enquiry thereunder; and

(b) applied whether the offender was in prison or not;”;

(ii) in the entry relating to section 411, the words “except the proviso to subsection (3)” shall cease to have effect;

(c) after subsection (2) there shall be inserted the following subsection—

“(2A) Where a court, by virtue of subsection (1) above, orders the sum due under a confiscation order to be recovered by civil diligence under section 411 of the Criminal Procedure (Scotland) Act 1975, any arrestment executed by a prosecutor under subsection (2) of section 11A of this Act shall be deemed to have been executed by the court as if that subsection authorised such execution.”.

10 After section 7 (application of provisions relating to fines to enforcement of confiscation orders) there shall be inserted the following section—

“7A Disposal of family home

Section 111 of the Criminal Justice (Scotland) Act 1995 shall apply in respect of a person’s family home if a confiscation order has been made in relation to that person as it applies in respect of a person’s family home if a confiscation order has been made in relation to that person under section 70(1) of that Act but as if for subsection (1) there were substituted the following subsection—

“(1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person’s interest in his family home has been acquired by means of the proceeds of drug trafficking.”.

- 11 For sections 8 (cases in which restraint orders may be made) and 9 (restraint orders) there shall be substituted the following sections—

“8 Restraint orders

- (1) The court may, on the application of the prosecutor, make an order (in this Part of this Act referred to as a “restraint order”) in the circumstances mentioned in either subsection (3) or (4) below interdicting—
 - (a) any person named in the order from dealing with his realisable property; or
 - (b) that person and any person named in the order as appearing to the court to have received from him an implicative gift from dealing with their own, or the other's, realisable property,
(whenever that property was acquired and whether it is described in the order or not).
- (2) A restraint order may contain conditions and exceptions to which the interdict shall be subject and in particular—
 - (a) may make provision for the release to the person named in the order of such reasonable living expenses as the court thinks fit; and
 - (b) shall provide for the release of property in so far as it is required to meet reasonable legal expenses payable or likely to be payable in relation to proceedings—
 - (i) as regards the offence by virtue of which the restraint order has been made; or
 - (ii) as regards a confiscation order made on conviction of the offence.
- (3) For the purposes of this subsection, the circumstances are—
 - (a) proceedings have been instituted against an accused in Scotland for an offence to which section 1 of this Act relates;
 - (b) the proceedings have not been concluded; and
 - (c) either a confiscation order has been made or it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings.
- (4) For the purposes of this subsection, the circumstances are that the court is satisfied that—
 - (a) it is proposed to institute proceedings within 28 days against a person suspected of such an offence and it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings; or
 - (b) the prosecutor has made, or proposes within 28 days to make, an application under section 6A or, as the case may be, section 6B of this Act in relation to that person in respect of the offence and it appears to the court that there are reasonable grounds for thinking that the application may be granted.
- (5) Where the court has made a restraint order in the circumstances mentioned in subsection (4)(a) or (b) above and no proceedings have been instituted

or application made within 28 days as mentioned in that subsection, the prosecutor shall forthwith apply to the court for the recall of the order and the court shall grant the application.

- (6) When proceedings for the offence or, as the case may be, proceedings on an application under section 6A or 6B of this Act are concluded, the prosecutor shall forthwith apply to the court for recall of the order and the court shall grant the application.
- (7) A restraint order shall—
- (a) be made on an ex parte application which shall be heard in chambers; and
 - (b) without prejudice to the time when it becomes effective, be intimated to each person affected by it.
- (8) For the purposes of this Part of this Act, dealing with property includes (without prejudice to the generality of the expression)—
- (a) making a payment to any person in reduction of the amount of a debt;
 - (b) removing the property from the jurisdiction of the court; and
 - (c) transferring or disposing of the property.
- (9) In this section and sections 9 to 12 of this Act, “the court” means where, as regards the criminal proceedings in question, a trial diet or a diet fixed for the purposes of section 102 of the 1975 Act is intended to be held, is being or has been held—
- (a) in the High Court of Justiciary, the Court of Session;
 - (b) in the sheriff court, a sheriff of that court exercising his civil jurisdiction.
- (10) For the purposes of this section, proceedings on an application under section 6A or 6B of this Act are concluded—
- (a) when the application is refused; or
 - (b) where the application is granted, when a confiscation order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the accused serving imprisonment in default).
- (11) References in this section to the institution of proceedings for an offence against a person shall be construed in accordance with section 5(3) of this Act.

9 Variation and recall of restraint orders

- (1) Subject to subsections (2) and (3) below, the court may, at the instance of—
- (a) the prosecutor, at any time vary or recall a restraint order in relation to any person or to any property;
 - (b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property.
- (2) On an application made under subsection (1)(b) above of a person named in a restraint order as having received an implicative gift, the court may recall the order in relation to that person if it is satisfied on the balance of probabilities—

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- (a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and
 - (b) that he was not associated with the giver in the commission of the offence; and
 - (c) that he would suffer hardship if the order were not recalled.
- (3) Where an application has been made under subsection (1) above for the variation or recall of a restraint order, any property in relation to which the restraint order was made shall not be realised during the period beginning with the making of the application and ending with the determination of the application by the court.
- (4) The court may, where it has recalled a restraint order as mentioned in subsection (1)(b) or (2) above, order that property of the person at whose instance it was recalled shall cease to be realisable.
- (5) The prosecutor or any person having an interest may reclaim or appeal to the Court of Session against an interlocutor refusing, varying or recalling or refusing to vary or recall a restraint order, within such period as may be prescribed by act of sederunt.
- (6) Where, in relation to a restraint order which is recalled, interdict has been granted under section 12(1) of this Act, the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.”.
- 12 In section 11 (inhibition and arrestment of property affected by restraint order or by interdict under section 12)—
- (a) in subsection (1), in paragraph (ii), the words “where granted under subsection (1)(a) above,” shall cease to have effect;
 - (b) in subsection (2), for the words “(1)(a)” there shall be substituted “(1)”;
 - (c) in subsections (4) and (5), the words “or arrestment”, in each place where they occur, shall cease to have effect; and
 - (d) subsection (6) shall cease to have effect.

13 After section 11 there shall be inserted the following section—

“11A Arrestment of property affected by restraint order

- (1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of an administrator’s

powers under or for the purposes of this Part of this Act in respect of that property.

(4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.”.

14 In section 12 (interdict of person not subject to a restraint order)—

(a) in subsection (1)—

(i) for the words “Court of Session” there shall be substituted the word “court”; and

(ii) the words from “and the clerk of court” to the end shall cease to have effect;

(b) for subsection (2) there shall be substituted the following subsection—

“(2) Subsections (2)(a) and (7)(a) of section 8 of this Act shall apply in relation to an interdict under subsection (1) above as they apply in relation to a restraint order; and subsections (1), (2), (4) and (5) of section 9 thereof shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of the said section 9.”; and

(c) for subsection (3) there shall be substituted the following—

“(3) Without prejudice to the time when it becomes effective, an interdict under subsection (1) above shall be intimated to every person affected by it.”.

15 In section 13 (administrators)—

(a) for the words “Lord Advocate” there shall be substituted the word “prosecutor”;

(b) for the words “Court of Session” where they appear there shall be substituted the word “court”; and

(c) for the word “Court” where it appears other than as mentioned in paragraph (b) above there shall be substituted the word “court”.

16 In section 14 (functions of administrators)—

(a) in subsection (1)—

(i) in paragraph (c) the words from “and, without” to the end of the paragraph shall cease to have effect;

(ii) in the proviso to paragraph (j) after the words “of his” there shall be inserted the words “(within the meaning of section 74 of the 1985 Act)”; and

(iii) in paragraphs (n) and (o) for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”; and

(b) in subsection (3), for the words “Court of Session” there shall be substituted the word “court”.

17 In section 16 (application of proceeds of realisation and other sums)—

(a) in subsections (1) and (2) for the words “Court of Session” where they occur there shall be substituted the word “court”;

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- (b) in subsection (1) for the words “such expenses as are payable” there shall be substituted the words “any expenses to the payment of which a person is entitled”; and
 - (c) in subsection (3)—
 - (i) after paragraph (c) there shall be inserted the following paragraph—
 - “(d) next, in accordance with any direction given by the court under section 1(2E) or 6B(9) of this Act,”;
 - (ii) for the words “of the 1975 Act (fines payable to H.M. Exchequer)” there shall be substituted the words “or 412 of the 1975 Act (destination of fines)”.
- 18 In section 17 (supervision of administrators), in subsection (2), for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”.
- 19 In section 18 (accounts and remuneration of administrator), for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”.
- 20 In section 19 (effect of appointment under section 13 of that Act on diligence) for the words “section 11” there shall be substituted “sections 11 and 11A”.
- 21 In section 20 (further provision as to administrators), at the end there shall be added the following subsection—
- “(3) Any disposal of property under section 13 of this Act to a person taking in good faith shall vest the ownership of the property in that person.”.
- 22 In section 23 (exercise of powers by Court of Session or administrator)—
- (a) for the words “Court of Session” where they appear there shall be substituted the word “court”;
 - (b) in subsection (1) for the words “11(1) to (5)” there shall be substituted “9, 11, 11A”;
 - (c) in subsection (3) for the words from “, so far as” to the end there shall be substituted “be exercised with a view to realising no more than the value of the gift as assessed in pursuance of section 6(2), (3) or (3A) of this Act”;
 - (d) in subsection (6) the words from “and without” to “family” and the words “(other than an obligation having priority, within the meaning of section 5(8) of this Act)” shall cease to have effect; and
 - (e) in subsection (7) for the words from “and” to “11(6)” there shall be substituted “28, 28A and 28B”.
- 23 In section 24 (power to facilitate realisation), for the words “Court of Session” there shall be substituted the word “court” and thereafter for the word “Court” where it appears there shall be substituted the word “court”.
- 24 For section 25 (variation of confiscation order), there shall be substituted the following section—

“25 Realisable property inadequate to meet payments under confiscation order

- (1) This section applies where the court which made a confiscation order is satisfied on the balance of probabilities, on an application made to it by

the offender or the prosecutor, that the value of the realisable property is inadequate to meet any outstanding amount payable (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the confiscation order.

- (2) When considering whether the value of the realisable property is inadequate the court—
- (a) shall, unless already taken into account under section 5(5)(aa) of this Act, take into account the extent to which property held by a person whose estate has been sequestered or who has been adjudged bankrupt is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act; and
 - (b) may disregard any inadequacy which appears to it to be attributable, wholly or partly, to anything done by the offender for the purpose of protecting the realisable property from realisation.
- (3) Where this section applies, the court shall recall the confiscation order and make a new confiscation order for the payment of such sum of a lesser amount than that for which the original order was made which appears to the court to be appropriate having regard to—
- (a) the value of the realisable property as determined under subsection (1) above; and
 - (b) any amount paid in pursuance of the original order.
- (4) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.”.

25

In section 26 (compensation)—

- (a) in subsection (1)—
 - (i) for paragraph (b) there shall be substituted the following paragraph—

“(b) where he is convicted of one or more such offences—

 - (i) the conviction or convictions concerned are quashed (and no conviction for any such offence is substituted); or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,”;
 - (ii) for the words “Court of Session” there shall be substituted the word “court”; and
 - (iii) for the words from “; but this subsection” to the end there shall be substituted the words “if, having regard to all the circumstances, it considers it appropriate to do so.”;
- (b) after subsection (1) there shall be inserted the following—

“(1A) Subsection (1) above is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) and (b) of subsection (2) below.”;

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- (c) in subsections (2) and (3) for the words “Court of Session” where they occur there shall be substituted the word “court”;
- (d) in subsection (2)(b)—
 - (i) the word “substantial” shall cease to have effect; and
 - (ii) for the word “11” there shall be substituted “9, 11, 11A”;
- (e) in subsection (4)—
 - (i) for the words “this section” there shall be substituted the words “subsection (1) above”;
 - (ii) after paragraph (c) the word “and” shall cease to have effect; and
 - (iii) at the end there shall be added “; and
 - (e) an officer of the Commissioners of Inland Revenue, by those Commissioners.”; and
- (f) after subsection (4) there shall be added the following subsections—
 - “(5) Where the court, on an application made to it by a person other than the accused or the recipient of an implicative gift is satisfied on the balance of probabilities that in relation to any property realised under section 13 of this Act he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.
 - (6) An application for compensation under this section shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made.”.

26 After section 28 (provisions supplementary to section 27), there shall be inserted the following sections—

“28A Inhibition of Scottish property affected by order registered under section 27

- (1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property; and the warrant—
 - (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
 - (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.
- (2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1) above as that section applies to an inhibition by separate letters or contained in a summons.

- (3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (5) No inhibition executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—
 - (a) apply for the recall, or as the case may be restriction, of the inhibition; and
 - (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.
- (6) Any power of the Court of Session to recall, loose or restrict inhibitions shall, in relation to an order containing an inhibition under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.

28B Arrestment of Scottish property affected by order registered under section 27

- (1) On the application of the Lord Advocate, the Court of Session may, in respect of moveable property affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the Court of Session for an order recalling, or as the case may be, restricting the arrestment accordingly.
- (5) Any power of the Court of Session to recall, loose or restrict arrestments shall, in relation to an arrestment proceeding upon a warrant under subsection (1) above and without prejudice to any other consideration

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lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.”.

- 27 In section 30 (enforcement of other external orders)—
- (a) in subsection (1), paragraph (b)(i) and paragraph (c) and the word “and” immediately preceding paragraph (c) shall cease to have effect; and
 - (b) in subsection (2), in the definition of “external confiscation order” after the word “rewards” there shall be inserted the words “or property or other economic advantage”.
- 28 In section 32 (Orders in Council as regards taking action in designated country)—
- (a) in subsection (2), for the words “(9)(a), (10), (11) and (12)” there shall be substituted the words “(1)(b)(ii) and (iii), (3) and (5)”; and
 - (b) after subsection (2) there shall be inserted the following subsection—
 - “(3) An Order in Council under this section may amend or apply, with or without modifications, any enactment.”.
- 29 In section 33 (sequestration of person holding realisable property)—
- (a) in subsection (1), for paragraph (a) there shall be substituted the following paragraph—
 - “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the 1985 Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration;”;
 - (b) in subsection (2)—
 - (i) for the words “Court of Session” there shall be substituted the word “court”; and
 - (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”.
- 30 In section 34 (bankruptcy in England and Wales of person holding realisable property)—
- (a) in subsection (1), for paragraph (a) there shall be substituted the following paragraph—
 - “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made;”;
 - (b) in subsection (2)—
 - (i) for the words “Court of Session” there shall be substituted the word “court”; and

- (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”.

31 In section 35 (winding up company holding realisable property)—

- (a) in subsection (1), for paragraph (a) there shall be substituted the following—

- “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time;”;

- (b) in subsection (2)—

- (i) for the words “Court of Session” there shall be substituted the word “court”; and

- (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”; and

- (c) after subsection (4) there shall be inserted the following subsection—

- “(4A) Where an order for the winding up of a company has been made or a resolution has been passed by a company for its voluntary winding up and before the relevant time the company has directly or indirectly made an implicative gift—

- (a) no order or, as the case may be, decree shall, at any time when proceedings as regards an offence to which section 1 of this Act relates have been instituted against the company and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 238 or 239 of the Insolvency Act 1986 (transactions at an undervalue and preferences) or granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and

- (b) any order made under either of the said sections 238 or 239 or decree granted under either of the said sections 242 and 243 after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.”.

32 In section 36 (property subject to floating charge)—

- (a) in subsection (1) for paragraph (a) there shall be substituted the following paragraph—

- “(a) so much of it, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be,

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registered in the Land Register of Scotland before the such appointment;” and

- (b) in subsection (2) for the words for the words from “Court of Session” to “16 and 24” there shall be substituted the words “court by sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”.

- 33 After section 37 (insolvency practitioners dealing with property subject to restraint order), there shall be inserted the following section—

“Forfeiture of property where accused has died

37A Forfeiture of property where accused has died

- (1) Section 112 of the Criminal Justice (Scotland) Act 1995 shall, subject to any necessary modifications, apply in respect of an offence to which Part I of this Act relates as it applies to an offence to which Chapter I of Part II of that Act applies.

- (2) Without prejudice to subsection (1) above, in the application of subsection (2) of that section, in paragraph (b)(i) for the words “in connection with the commission of the offence” there shall be substituted the words “in connection with drug trafficking”.

- 34 In section 41(2) (disclosure of information held by government departments)—

- (a) in paragraph (a), for the words “paragraph (a) thereof” there shall be substituted “subsection (3) of that section”;
- (b) in paragraph (b), for the words “paragraph (b) of subsection (1)” there shall be substituted “subsection (4)”;
- (c) the words from the end of paragraph (b) to the end of the subsection shall cease to have effect.

- 35 In section 44(1) (offences relating to controlled drugs: fines), for the words “the proviso to subsection (1)” there shall be substituted “subsection (3)(a)”.

- 36 In section 47 (interpretation of Part I)—

- (a) in subsection (1)—
- (i) the definition of “associate” shall cease to have effect;
- (ii) for the definition of “confiscation order” there shall be substituted the following definition—

““confiscation order” means an order under section 1(1), 6A, 6B or 25 of this Act;” and

- (iii) after the definition of “confiscation order” there shall be inserted the following definition—

““the court” means—

- (a) for the purpose of sections 1 to 7A, the High Court of Justiciary or sheriff court;
- (b) for the purposes of sections 8 to 26 and 33 to 37, the Court of Session or the sheriff court;”

- (b) in subsection (5), in each of paragraphs (c) and (d) after the words “High Court” there shall be inserted the words “or, as the case may be, the sheriff”;
and
- (c) at the end there shall be added the following subsection—
 - “(6) Any reference in this Part of this Act to a conviction of an offence includes a reference to a finding that the offence has been committed.”.