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STATUTORY INSTRUMENTS

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**1991 No. 2873**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991**

*Made - - - - 19th December 1991*

*Coming into force in accordance with article 1(1)*

At the Court at Buckingham Palace, the 19th day of December 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 96 of the Criminal Justice Act 1988(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Title, commencement and extent**

1.—(1) This Order may be cited as the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991 and shall come into force on the tenth day after the day on which it is made.

(2) This Order extends to England and Wales only.

**Interpretation**

2. In this Order—

“the Act” means the Criminal Justice Act 1988;

“country” means a country or territory;

“designated country” means a country or territory designated under article 3(1) below;

“appropriate authority of a designated country” means an authority specified opposite that country in Schedule 1 to this Order;

“a court of a designated country” includes a court of any state or territory of a designated country.

### **Designation of and application of the Act to countries and territories**

3.—(1) Each of the countries specified in Schedule 1 to this Order is hereby designated for the purposes of sections 96 and 97 of the Act.

(2) In relation to a designated country, Part VI of the Act shall apply, subject to the modifications specified in Schedule 2 to this Order, to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there, and, accordingly, in relation to such orders and such proceedings, Part VI of the Act and Schedule 4 thereto shall have effect as set out in Schedule 3 to this Order.

### **Proof of orders and judgment of court of a designated country**

4.—(1) For the purposes of sections 96 and 97 of the Act, and of the other provisions of the Act as applied under article 3(2) above—

- (a) any order made or judgment given by a court of a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a designated country is duly authenticated for the purpose of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

### **Evidence in relation to proceedings and orders in a designated country**

5.—(1) For the purposes of sections 96 and 97 of the Act, and of the other provisions of the Act as applied under article 3(2) above, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) that an external confiscation order is in force and is not subject to appeal;
- (c) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) that an order (however described) made by a court of the designated country has the purpose—
  - (i) of recovering property obtained as a result of or in connection with conduct to which Part VI of the Act applies or the value of property so obtained; or
  - (ii) of depriving a person of a pecuniary advantage so obtained,

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court of the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this article shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this article.

### **Representation of government of a designated country**

6. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Crown Prosecution Service or the Commissioners of Customs and Excise to act on its behalf in any proceedings in the High Court under section 97 of the Act or any other provision of the Act as applied by article 3(2) above.

### **Satisfaction of confiscation order in a designated country**

7.—(1) Where—

- (a) a confiscation order has been made under section 71 of the Act; and
- (b) a request has been sent by the Secretary of State to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this article, and without prejudice to the admissibility of any evidence which may be admissible apart from this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Secretary of State, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in England and Wales, be admissible as evidence of the facts so stated.

### **Currency conversion**

8.—(1) Where the value of property recovered as described in article 7(1) above is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the High Court under section 97 of the Act is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Act as applied under article 3(2) above the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this article a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in the United Kingdom and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

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*G. I. de Deney*  
Clerk of the Privy Council

SCHEDULE 1

Article 3(1)

DESIGNATED COUNTRIES

Designated country	Appropriate authority
Italy	the Ministry of Justice
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Sweden	the Ministry of Foreign Affairs

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(2);

(2) 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.

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- (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(3); 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—
- (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(4) (deprivation orders);
  - (b) an order under section 27 of the Misuse of Drugs Act 1971(5) (forfeiture orders);
  - (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975(6) (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—

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(3) 1989 c. 4.

(4) 1973 c. 62; section 43 was amended by the Criminal Justice Act 1988 (c. 33), s.69.

(5) 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.

(6) 1975 c. 21.

(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.

(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,”;

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- (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”.
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(7) 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”; and
  - (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.”;

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(7) S.I.1965/1776.



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- (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.

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(8), 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”;

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(8) 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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- (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 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(9) came into force), subsection (2) shall have effect as if–

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(9) 1986 c. 45.

- (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<sup>(10)</sup>
- (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<sup>(11)</sup> by the Court of Session, in relation to a person who holds realisable property, 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<sup>(12)</sup> 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—

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<sup>(10)</sup> 1914 c. 59.

<sup>(11)</sup> 1985 c. 66.

<sup>(12)</sup> 1913 c. 20.

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- (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)
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	<p>(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;</p> <p>(b) when a proposal for the application of a preventative measure is laid before a court.</p>
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(13) and the Local Government (Miscellaneous Provisions) Act 1982(14) shall be omitted; and
- (b) Part II shall be omitted.

## SCHEDULE 3

Article 3(2)

## PART VI OF THE CRIMINAL JUSTICE ACT 1988 AS MODIFIED

**External confiscation orders**

71.—(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.

(13) 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).

(14) 1982 c. 30.

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(2) Section 97 below shall have effect with regard 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.

### **Definition of principal terms used**

74.—(1) In this Part of this Act—

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

- (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 (deprivation orders);
- (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders);
- (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (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.

(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 the 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

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- (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.

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

76.—(1) The powers conferred on the High Court by sections 77(1) and 78(1) below are exercisable where—

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (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.

(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.

(4) Where the court has made an order under section 77(1) or 78(1) below by virtue of subsection (2) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

#### **Restraint Orders**

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

(2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply—

- (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
- (b) in any other case—
  - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and
  - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.

(5) A restraint order—

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 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;
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) notwithstanding anything in Order 11 of the Rules of the Supreme Court 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.



(6) a restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

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

(8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—

- (a) to take possession of any realisable property, and
- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from England and Wales.

(10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from England and Wales, seize the property.

(11) Property seized under subsection (10) above shall be dealt with in accordance with the court's directions.

(12) The Land Charges Act 1972<sup>(15)</sup> and the Land Registration Act 1925<sup>(16)</sup> shall apply—

- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
- (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

(13) A person applying for a restraint order under subsection (5)(a) above shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

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

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

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

(2) For the purposes of this Part of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order—

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<sup>(15)</sup> 1972 c. 61.

<sup>(16)</sup> 1925 c. 21.

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- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 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;
  - (b) may be made on an ex parte application to a judge in chambers;
  - (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; and
  - (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act—
    - (i) in any asset of a kind mentioned in subsection (5) below; or
    - (ii) under any trust; or
  - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or
  - (b) securities of any of the following kinds—
    - (i) government stock;
    - (ii) stock of any body (other than a building society) incorporated within England and Wales;
    - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings against the defendant in the designated country are concluded or the amount payment of which is secured by the charge is paid into court.
- (8) An application for the discharge or variation of a charging order may be made by any person affected by it.

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

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

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

(3) Subject to any provision made under section 80 below or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 78(7) above discharging the charging order may direct that the entry be cancelled.

(5) In this section and section 78 above, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the Charging Orders Act 1979(17) .

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

**79A.** Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965, 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.

### **Realisation of property**

**80.—(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.

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

(3) The court may empower a receiver appointed under subsection (2) above, under section 77 above or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 78 above on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 78 above, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

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

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(17) 1979 c. 53.

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

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) and (6) above do not apply to property for the time being subject to a charge under section 78 above.

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

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

**81.**—(1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under this Part of this Act or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 78 above;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 77 or 80 above; and
- (c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 87(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be paid to the High Court and applied for the purposes specified in subsections (4) to (6) below and in the order so specified.

(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—

- (a) among such of those who held property which has been realised under this Part of this Act, and
- (b) in such proportions,

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

(4) 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 pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 87(2) below but not already paid under subsection (1) above.

(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.

(6) After there has been made—

- (a) any payment required by subsection (4) above; and
- (b) in a case to which subsection (5) above applies, any payment required by that subsection,

any amount paid under section 88(2) below shall be reimbursed.

(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.

### **Exercise of powers by High Court or receiver**

**82.**—(1) This section applies to the powers conferred on the High Court by sections 77 to 81 above or on a receiver appointed under this Part of this Act or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the High Court under section 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.

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

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

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

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

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

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

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
- (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,

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

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

(3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

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

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

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

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

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- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
  - (b) any order made under either of those sections after the discharge of the restraint or charging order shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.
- (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 came into force), subsection (2) above shall have effect as if—
- (a) for the reference to the bankrupt’s estate for the purposes of Part IX of the Insolvency Act 1986 there were substituted a reference to the property of the bankrupt for the purposes of the Bankruptcy Act 1914;
  - (b) for the reference to section 280(2)(c) of the Act of 1986 there were substituted a reference to section 26(2) of that Act; and
  - (c) subsection (2)(b) were omitted.

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

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

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

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

- (a) property for the time being subject to a restraint order made before the relevant time, and

- (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 77 to 80 above or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
  - (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (6) In this section—
  - “company” means any company which may be wound up under the Insolvency Act 1986; and
  - “the relevant time” means—
    - (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
    - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
    - (c) in any other case where such an order has been made, the time of the making of the order.
- (7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985.

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

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

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—

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- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 81(1) or (4) above.

(3) In this Part of this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

### **Receivers: Supplementary provisions**

**88.**—(1) Where a receiver appointed under this Part of this Act or in pursuance of a charging order takes any action—

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

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 81(5) above, be paid by the person on whose application the receiver was appointed.

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

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

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

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

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

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

### **Part VI – Interpretation**

**102.**—(1) In this Part of this Act—



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“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“interest”, in relation to property, includes right;

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

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)
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)

(3) This Part of this Act applies to property wherever situated.

(5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained, or to a pecuniary advantage derived, both in that connection and in some other connection, and whether received before or after the commencement of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991.

(6) The following provisions shall have effect for the interpretation of this Part of this Act.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator.

(9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(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 hereto 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,

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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.

(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).

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

## APPENDIX

## INSTITUTION OF PROCEEDINGS

Section 102(11)

Designated country	Point at which proceedings are instituted
Italy	<p>(a) (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in process;</p> <p>(b) when a proposal for the application of a preventative measure is laid before a court.</p>
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.

SCHEDULE 4 TO THE  
CRIMINAL JUSTICE  
ACT 1988 AS MODIFIED

Section 74

## CORRESPONDING CONDUCT—SUMMARY OFFENCES

Enactment	Description of offence
PRIVATE PLACES OF ENTERTAINMENT (LICENSING) ACT 1967 (c. 19)	
Section 4(1)	Offences relating to the use of places for dancing, music or other entertainment of the like kind which is not a public entertainment but provided for private gain.
Section 4(2), in relation only to an offence referred to in subsection (3A)(b) of section 4.	
VIDEO RECORDINGS ACT 1984 (c. 39)	
Section 9	Supplying video recording of unclassified work.
Section 10	Possession of video recording of unclassified work for the purpose of supply.
CINEMAS ACT 1985 (c. 13)	
Section 10(1)(a)	Use of unlicensed premises for exhibition which requires a licence.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides that, subject to certain modifications, Part VI of the Criminal Justice Act 1988 applies to an order made by a court of a designated country or territory for the purposes of recovering property obtained as a result of or in connection with conduct corresponding to an offence to which Part VI of the Act applies, recovering the value of property so obtained or depriving a person of a pecuniary advantage so obtained. Part VI of the Act as modified will also apply to proceedings which have been or are to be instituted in a designated country or territory and may result in such an order being made there. Offences to which Part VI of the Act apply are indictable offences (other than drug trafficking offences and offences under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989) and certain exceptional summary maxima offences.

Article 3 of the Order designates the countries and territories listed in Schedule 1 for the purposes of enforcement of confiscation orders, and applies the provisions of Part VI of the Criminal Justice Act 1988, with modifications, to confiscation orders of courts of those countries and territories and proceedings which may lead to such an order being made. The modifications to Part VI are set out in Schedule 2 to this Order, and Schedule 3 sets out in full Part VI as so modified.

Articles 4 and 5 provide for the proof of orders and judgments of courts of designated countries and as to evidence in relation to proceedings and orders in designated countries. Article 6 provides for the representation of the government of a designated country.

Article 7 of the Order provides that the value of any property recovered in a designated country or territory in response to a request by the Government of the United Kingdom for assistance in the enforcement of an order is to be treated as reducing the amount payable in England and Wales under a confiscation order made by the Crown Court or a magistrates' court. Article 8 provides for currency conversion.