
STATUTORY INSTRUMENTS

1999 No. 675 (S.46)

CRIMINAL LAW, SCOTLAND

The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999

<i>Made</i>	- - - -	<i>10th March 1999</i>
<i>Laid before Parliament</i>		<i>22nd March 1999</i>
<i>Coming into force</i>	- -	<i>1st May 1999</i>

At the Court at Buckingham Palace, the 10th day of March 1999

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 9 of the Criminal Justice (International Co-operation) Act 1990(1) and section 43 of the Proceeds of Crime (Scotland) Act 1995(2), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999 and shall come into force on 1st May 1999.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order—

“the Act” means the Proceeds of Crime (Scotland) Act 1995;

“the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990;

“appropriate authority of a designated country” means—

(1) 1990 c. 5. Section 9 was amended by section 21 of the Criminal Justice Act 1993 (c. 36) by section 14 of the Proceeds of Crime Act 1995 (c. 11) and by paragraph 190 of Schedule 6 to the Criminal Justice (Scotland) Act 1995 (c. 20).

(2) 1995 c. 43.

- (a) the authority specified opposite that country in Part I or, as the case may be, Part II of Schedule 1 to this Order;
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of section 9 of the 1990 Act and of the relevant provisions of the Act as applied by article 4 of this Order;

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

“designated country” means a country or territory designated under article 3 of this Order;

“drug trafficking offence” has the same meaning as in section 49(5) of the Act as applied by article 4 of this Order;

“external forfeiture order” means an order, including any decree, direction or judgment, or any part thereof, however described, made by a court in a designated country for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence to which this Order applies has been committed or which was used or intended for use in connection with the commission of such an offence;

“offence to which this Order applies” means a drug trafficking offence or any offence corresponding to or similar to an offence to which Part I of the Act applies or an offence in respect of which a suspended forfeiture order may be made under section 21 of the Act;

“property” has the same meaning as in section 49(1) of the Act.

- (2) 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 Schedule 2 to this Order has been taken there in respect of an alleged offence to which this Order applies; or
 - (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) above, the accused has been notified in writing in accordance with the laws of the designated country that the appropriate authorities of that country have begun proceedings against him in respect of an offence; or
 - (c) an application has been made to a court in a designated country for an external forfeiture order,

and where the application of this paragraph 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.

- (3) 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 a forfeiture order being made in the proceedings;
 - (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered or otherwise).

(4) 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 raised or set aside.

Designation of countries and territories

- 3.—(1) There are hereby designated for the purposes of section 9 of the 1990 Act—
 - (a) each of the countries and territories specified in Part I of Schedule 1 to this Order but only in relation to any case in which the external forfeiture order which has been or may be made is in respect of a drug trafficking offence;

- (b) each of the countries and territories specified in Part II of Schedule 1 to this Order but only in relation to any case in which the external forfeiture order which has been or may be made is in respect of any other offence to which this Order applies.

Application of the Act

4. In relation to a designated country, Parts II, III and V of the Act shall apply for the purposes of this Order subject to the modifications specified in Schedule 3 to this Order.

Registration of external forfeiture orders

5.—(1) An external forfeiture order shall be registered in accordance with this article before it is capable of being enforced under this Order and the provisions of the Act as applied by this Order.

(2) On an application made by or on behalf of the Government of a designated country, the Court of Session may register an external forfeiture 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 Scotland would not be contrary to the interests of justice.

(3) In paragraph (2) above “appeal” includes—

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

(4) The Court of Session shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Proof of orders and judgment of court in a designated country

6.—(1) For the purposes of this Order and the provisions of the Act as applied by article 4 of this Order—

- (a) any order made or judgment given by a court in 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 in 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 in 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

7.—(1) For the purposes of this Order and the provisions of the Act as applied by article 4 of this Order, 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) in a case to which article 2(2)(b) above applies, that the accused has been notified as specified in that article;
- (c) that an external forfeiture order is in force and is not subject to appeal;
- (d) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (f) that an order (however described) made by or to be made by a court of the designated country is for, or, as the case may be, will be for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence to which this Order applies has been committed or which was used or intended for use in connection with the commission of such an offence,

shall, in any proceedings in the Court of Session or the High Court, be sufficient 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 in a designated country, shall be sufficient 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 in 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.

Certificate of appropriate authority

8. Where in relation to any designated country no authority is specified in Schedule 1 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order and the provisions of the Act as applied by article 4 of this Order, shall be sufficient evidence of that fact.

Representation of government of a designated country

9. 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 Lord Advocate to act on its behalf in any proceedings in the Court of Session or the High Court under article 5 of this Order or any provision of the Act as applied by article 4 of this Order.

Satisfaction of forfeiture order or suspended forfeiture order in a designated country

10.—(1) Where—

- (a) a suspended forfeiture order has been made under section 21 of the Act or a forfeiture order has been made under any other enactment;
- (b) a request has been made 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 in respect of which the suspended forfeiture order has been made is recovered in that country,

the property shall be regarded as validly forfeited for the purposes of the order.

(2) For the purposes of this article, and without prejudice to the sufficiency of any evidence which may be sufficient apart from this paragraph, a certificate stating that property has been recovered 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 Scotland be sufficient evidence of the facts so stated.

Revocations

11. The following Orders are hereby revoked namely—

- (a) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1991⁽³⁾;
- (b) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment Order 1992⁽⁴⁾;
- (c) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment Order 1993⁽⁵⁾;
- (d) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment (No. 2) Order 1993⁽⁶⁾;
- (e) The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Amendment Order 1994⁽⁷⁾.

A. K. Galloway
Clerk of the Privy Council

(3) S.I. 1991/1468.
(4) S.I. 1992/1734.
(5) S.I. 1993/1807.
(6) S.I. 1993/3155.
(7) S.I. 1994/1645.

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SCHEDULE 1

Article 3

PART I

DESIGNATED COUNTRIES – DRUG TRAFFICKING OFFENCES

<i>Designated country</i>	<i>Appropriate authority</i>
Afghanistan	
Algeria	
Anguilla	The Attorney General of Anguilla
Antigua and Barbuda	The Attorney General
Argentina	The Ministry of Foreign Affairs
Armenia	
Australia	The Attorney General's Department
Austria	
Azerbaijan	
Bahamas, The	The Attorney General of the Bahamas
Bahrain	The Ministry of the Interior
Bangladesh	
Barbados	The Attorney General
Belarus	
Belgium	
Belize	
Benin	
Bermuda	The Attorney General of Bermuda
Bhutan	
Bolivia	The Secretaria Nacional de Defensa Social del Ministerio de Gobierno
Bosnia and Herzegovina	
Botswana	
Brazil	
British Virgin Islands	The Attorney General of the British Virgin Islands
Brunei Darussalam	
Bulgaria	
Burkina Faso	
Burundi	

<i>Designated country</i>	<i>Appropriate authority</i>
Cameroon	
Canada	The Minister of Justice or officials designated by that Minister
Cape Verde	
Cayman Islands, The	The Attorney General of the Cayman Islands
Chad	
Chile	Ministerio del Interior
China	
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Costa Rica	
Cote d'Ivoire	
Croatia	
Cuba	
Cyprus	
Czech Republic, The	
Denmark	
Dominica	
Dominican Republic	
Ecuador	Consejo Nacional de Control de Sustancias Estupefacientes y Psicotropicas (CONSEP)
Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Gambia	
Germany	
Ghana	
Gibraltar	The Attorney General of Gibraltar
Greece	
Grenada	The Ministry of External Affairs
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey

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<i>Designated country</i>	<i>Appropriate authority</i>
Guinea	
Guinea-Bissau	
Guyana	The Permanent Secretary, Ministry of Home Affairs
Haiti	
Honduras	
Hong Kong	The Department of Justice
Hungary	
India	The Ministry of Home Affairs
Iran	
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Jamaica	
Japan	
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kazakhstan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Lithuania	
Luxembourg	
Macedonia, the former Yugoslav Republic of	
Madagascar	
Malawi	
Malaysia	The Inspector General of Police, Malaysia
Mali	
Malta	
Mauritania	
Moldova	
Monaco	

<i>Designated country</i>	<i>Appropriate authority</i>
Montserrat	The Attorney General of Montserrat
Morocco	
Myanmar	
Nepal	
Netherlands, The	Afdeling Internationale Rechtshulp
Nicaragua	
Niger	
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Oman	
Pakistan	
Panama	The Ministry of Government and Justice
Paraguay	National Anti Drugs Secretariat of the Presidency of the Republic (SENAD)
Peru	
Poland	
Portugal	
Qatar	
Romania	The Ministry of the Interior and the Ministry of Justice
Russian Federation, The	
Saint Kitts and Nevis	
Saint Lucia	
Saint Vincent and the Grenadines	
Sao Tome and Principe	
Saudi Arabia	The Ministry of the Interior
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	The Department of Foreign Affairs
Spain	The Ministerio de Justicia, Madrid

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<i>Designated country</i>	<i>Appropriate authority</i>
Sri Lanka	
Sudan	
Suriname	
Swaziland	
Sweden	The Ministry for Foreign Affairs
Switzerland	Office federal de la police
Syrian Arab Republic	
Tajikistan	
Thailand	The Attorney General or a person designated by him
Togo	
Tonga	
Trinidad and Tobago	
Tunisia	
Turkey	
Turkmenistan	
Turks and Caicos Island	
Uganda	
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Arab Emirates	
United Mexican States	The Office of the Attorney General
United Republic of Tanzania	
United States of America	The Attorney General of the United States of America
Uruguay	The Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yemen	
Yugoslavia, the Federal Republic of	
Zambia	
Zimbabwe	

PART II

DESIGNATED COUNTRIES – OTHER OFFENCES

<i>Designated Country</i>	<i>Appropriate Country</i>
Antigua and Barbuda	The Attorney General
Australia	The Attorney General's Department
Austria	
Bulgaria	
Canada	The Minister of Justice or officials designated by that Minister
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Cyprus	
Czech Republic, The	
Denmark	
Finland	
France	
Hong Kong	The Department of Justice
India	The Ministry of Home Affairs
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Lithuania	
Netherlands, The	Afdeling Internationale Rechtshulp
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Romania	The Ministry of the Interior and the Ministry of Justice
Sweden	The Ministry of Foreign Affairs
Switzerland	Office federal de la police
Thailand	The Attorney General or a person designated by him
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Mexican States	The Office of the Attorney General of the Republic

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<i>Designated Country</i>	<i>Appropriate Country</i>
United States of America	The Attorney General of the United States of America

SCHEDULE 2

Article 2(2)

INSTITUTION OF PROCEEDINGS

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	(a) (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred
Antigua and Barbuda	when a person has been charged with a scheduled offence
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence
Australia	(a) (a) when an information or a complaint has been laid before a justice of the peace or a magistrate; (b) when a person has been charged with an offence; (c) when an indictment or a presentment has been preferred
Bahamas, The	(a) (a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	(a) (a) when an information has been laid before a magistrate; (b) when a person is charged with an offence (c) when a bill of indictment is preferred
Bermuda	when an information is laid charging a person with an offence

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Bolivia	when a warrant is issued by a competent judge or an order to institute proceedings containing the preventive annotation of property liable to registration or the bank deposit of the monies, assets and property of the accused
British Virgin Islands	<ul style="list-style-type: none"> (a) (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when an indictment is preferred
Cayman Islands, The	<ul style="list-style-type: none"> (a) (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; or (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section
Chile	when an application for a decision from the competent judicial authority is made
Colombia	when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freeing or seizure order
Ecuador	when a writ is issued by a judge initiating criminal proceedings
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Grenada	<ul style="list-style-type: none"> (a) (a) when an information is laid before a justice of the peace; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred
Guernsey	when a person is charged with an offence
Guyana	when a charge has been laid against a person for an offence
Hong Kong	<ul style="list-style-type: none"> (a) (a) when a magistrate issues a warrant or summons; (b) when a person is charged with an offence; (c) when an indictment is preferred

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<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
India	<ul style="list-style-type: none"> (a) (a) when information relating to the commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law; (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence; (c) when a person is charged with an offence; (d) when any investigation or inquiry into the commission of any offence is directed by a court of law
Isle of Man	<ul style="list-style-type: none"> (a) (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917
Italy	<ul style="list-style-type: none"> (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 progress; (b) when a proposal for the application of a preventative measure (“misura di prevenzione”) is laid before a court
Jersey	<ul style="list-style-type: none"> (a) (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the Island;

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
	<ul style="list-style-type: none"> (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General; (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949
Malaysia	when a person is charged with an offence
Montserrat	<ul style="list-style-type: none"> (a) (a) when a judge issues a summons or warrant in respect of an offence; or (b) when a person is charged with an offence after being taken into custody without a warrant
Netherlands, The	<ul style="list-style-type: none"> (a) (a) when a pre-trial financial investigation has been initiated; (b) when the provisional measure has been ordered by an investigating magistrate; (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment
Panama	when a person has been charged with an offence
Paraguay	when a judge has ordered the restraint of property and a preventative detention order has been made
Romania	<ul style="list-style-type: none"> (a) (a) when the start of a penal pursuit is ordered; (b) when penal proceedings start in respect of an offender
Saudi Arabia	when an information has been laid before a judicial authority
South Africa	<ul style="list-style-type: none"> (a) (a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred

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<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
Switzerland	when proceedings for an offence are brought before an examining magistrate
Thailand	when a court or the Asset Examination Committee issues a restraint order
Ukraine	when a criminal case is brought
United Mexican States	(a) (a) when criminal proceedings are instituted by a judicial authority; (b) when the Ministerio Publico has established that there is probable cause to suspect that a person has committed an offence
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence
Uruguay	when criminal proceedings are instituted by a judicial authority

SCHEDULE 3

Article 4

MODIFICATION OF PARTS II, III AND V OF THE ACT IN ITS APPLICATION TO EXTERNAL FORFEITURE ORDERS

General

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

PART II

FORFEITURE OF PROPERTY USED IN CRIME

2. In section 21–

(a) for subsection (1) there shall be substituted the following subsection–

“(1) This section applies where an external forfeiture order has been registered in the Court of Session under article 5 of the 1999 Order.”;

- (b) subsection (2) to (9) shall be omitted;
 - (c) for subsection (10) there shall be substituted the following subsection—
 - “(10) As soon as may be after an external forfeiture order has been registered, the Lord Advocate—
 - (a) shall notify in writing any person named in the order, other than the person in respect of whom the order has been made, who is the owner of, or otherwise has an interest in, the property to which the external forfeiture order relates;
 - (b) if the property in respect of which the order has been made includes heritable property in Scotland, shall cause a certified copy of the order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and
 - (c) if the Court of Session direct him to do so, shall insert a notice in the Edinburgh Gazette or in such other newspaper or journal as appears to the Court to be appropriate specifying the terms of the external forfeiture order.”;
 - (d) for subsection (11) there shall be substituted the following subsection—
 - “(11) Any property in respect of which an external forfeiture order is registered shall be taken into the possession of or placed under the control of the clerk of court until—
 - (a) an order is made under section 25 of the Act that the property should not be forfeited under section 24; or
 - (b) the property is forfeited to the Crown and disposed of under section 24 of the Act or forfeited to another person under that section.”;
 - (e) subsections (12) and (13) shall be omitted.
3. Sections 22 and 23 shall be omitted.
4. In section 24—
- (a) in subsection (1) —
 - (i) for the words “a suspended” there shall be substituted the words “an external”;
 - (ii) for the word “court” there shall be substituted the words “Court of Session”;
 - (b) in paragraphs (a) to (c) of subsection (1) for the word “suspended” wherever it appears there shall be substituted the word “external”;
 - (c) in subsection (2) for the word “prosecutor” there shall be substituted the words “Lord Advocate”;
 - (d) in paragraph (c) of subsection (2) for the word “suspended” there shall be substituted the word “external”;
 - (e) for subsection (3) there shall be substituted the following subsection—
 - “(3) If an application is made under section 25 of this Act, there shall be no forfeiture of property mentioned in paragraph (a), (b) or (c) of subsection (1) above unless and until whichever is the later of the following occurs—
 - (a) the application is finally disposed of in favour of the Lord Advocate; or
 - (b) the period mentioned in that paragraph has expired.”;
 - (f) subsection (4) shall be omitted;
 - (g) in subsection (6) for the word “prosecutor” there shall be substituted the words “Lord Advocate”.
5. In section 25—
- (a) for subsections (1) to (4) there shall be substituted the following subsection—

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“25 Enforcement of external forfeiture order

(1) The High Court shall, on an application being made to it under this section by a person other than the accused, order that property shall not be forfeited in accordance with section 24 in relation to any property or an interest in property if–

- (a) it is satisfied by the applicant on the balance of probabilities that he is the owner of the property or otherwise has an interest in it; and
- (b) subsection (2) or subsection (3) below is applicable.

(2) This subsection applies if the High Court is not satisfied by the Lord Advocate that–

- (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the external forfeiture order was made, he–
 - (i) knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence; and
 - (ii) did not take all the steps which were reasonable for him to take to prevent such intended use; or
- (b) where he has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, the applicant knew or ought to have known that the property had been intended to be, or had been, so used.

(3) This subsection applies if the High Court is satisfied as mentioned in subsection (2) above, but it appears to the High Court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.

(4) Where an order under subsection (1) above relates to heritable property situated in Scotland, the Lord Advocate shall, as soon as may be after the order has been made, cause a certified copy of the order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.”;

(b) subsection (5) to (7) and (9) and (10) shall be omitted.

6. Section 26 shall be omitted.

7. In section 27–

- (a) in subsection (1) –
 - (i) for the word “prosecutor” there shall be substituted the words “Lord Advocate”;
 - (ii) the words “or 26(1)” shall be omitted;
- (b) for subsection (3) there shall be substituted the following subsection–

“(3) Where an order is made on appeal to the High Court of Justiciary that property shall not be forfeited in accordance with section 24 and that order relates to heritable property situated in Scotland, the Lord Advocate shall, as soon as may be after the appeal has been disposed of, cause a certified copy of the interlocutor of the Court to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.”.

PART III

RESTRAINT ORDERS

8. In section 28–

- (a) for subsection (1) there shall be substituted the following subsection–

“(1) The Court of Session may, on the application of the Lord Advocate make an order (in this Part of this Act referred to as a “restraint order”) in the circumstances mentioned in section 30(1) of this Act interdicting any person named in the order from dealing with any property which is, or is liable to be, the subject of an external forfeiture order.”;

- (b) subsection (2) shall be omitted;

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

“(3) A restraint order shall–

- (a) be made on an *ex parte* application which shall be heard in chambers;

- (b) be supported by a certificate which shall–

(i) state where applicable, the grounds for believing that an external forfeiture order may be made in proceedings instituted or to be instituted in the designated country concerned;

(ii) give particulars of the property in respect of which the order is sought and specify the person or persons holding such property;

(iii) in a case to which section 30(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the certificate may, unless the Court of Session otherwise directs, contain a statement of information or belief with the sources and grounds thereof;

- (c) without prejudice to the time when it becomes effective, be intimated to each person affected by it.”;

- (d) in subsection (4) for the word “court” there shall be substituted the words “Court of Session”;

- (e) in subsection (5) –

(i) the words “(including a restraint order made under and within the meaning of the 1994 Act)” shall be omitted;

(ii) the words “(including a drug trafficking offence within the meaning of the 1994 Act shall be omitted)”;

(iii) for the words “Great Britain” there shall be substituted the word “Scotland”;

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

- (f) in subsection (6) for the words “court which made the order” there shall be substituted the words “Court of Session”;

- (g) subsection (7) shall be omitted;

- (h) in subsection (8) for the word “court” there shall be substituted the words “Court of Session”;

- (i) in subsection (9) –

(i) for the words “Subsections (2) (a) and (3) (a)” there shall be substituted the words “Subsection (3) (a)”;

(ii) for the words “they apply” there shall be substituted the words “it applies”;

(iii) the reference to “(2)” shall be omitted.

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9. Section 29 shall be omitted.

10. In section 30–

(a) for subsections (1) and (2) there shall be substituted the following subsections–

“(1) A restraint order may be made in respect of a person under section 28(1) where–

- (a) proceedings have been instituted against a person in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external forfeiture order has been made in the proceedings; or it appears to the Court of Session that there are reasonable grounds for thinking that an external forfeiture order may be made in those proceedings.

(2) A restraint order may also be made where the Court of Session is satisfied that it is proposed to institute proceedings in a designated country in respect of an offence within 28 days and it appears to the Court that there are reasonable grounds for thinking that an external forfeiture order may be made in those proceedings.”;

(b) in subsections (3) and (4) –

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

(ii) for the word “prosecutor” wherever it appears there shall be substituted the words “Lord Advocate”;

(c) for subsection (5) there shall be substituted the following subsection–

“(5) For the purposes of this section, proceedings are concluded as regards an offence in the circumstances set out in article 2(3) of the 1999 Order.”.

11. In section 31–

(a) for the word “court” wherever it appears there shall be substituted the words “Court of Session”;

(b) for the word “prosecutor” wherever it appears there shall be substituted the words “Lord Advocate”;

(c) in subsection (1) for the words “subsections (2) and (3) ” there shall be substituted the words “subsection (3) ”;

(d) subsection (2) shall be omitted;

(e) in subsection (4) the words “or (2) ” shall be omitted.

12. In section 33–

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

(b) for the word “court” wherever it appears there shall be substituted the words “Court of Session”.

PART V

MISCELLANEOUS AND GENERAL

13. In section 44–

(a) in subsection (1) the words “realisable or” shall be omitted;

(b) in subsection (2) for the words “a suspended” there shall be substituted the words “an external”.

- 14.** In section 45–
- (a) subsection (1) (a) shall be omitted;
 - (b) for the word “court” wherever it appears there shall be substituted the words “Court of Session”.
- 15.** Section 46 to 48 shall be omitted.
- 16.** In section 49–
- (a) for subsection (1) there shall be substituted the following subsection–
 - “(1) In this Act, unless the context otherwise requires–
 - “the 1999 Order” means the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1999;
 - “the accused” means a person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture order being made have been, or are to be, instituted in a court of a designated country;
 - “designated country” means a country or territory designated by virtue of article 3 of the 1999 Order;
 - “interest” in relation to property, includes right;
 - “property” means any property wherever situated, whether heritable or moveable or whether corporeal or incorporeal;
 - “restraint order” means an order made under section 28 of this Act;
 - “external forfeiture order” has the meaning assigned by article 2(1) of the 1999 Order.”;
 - (b) in subsection (5) for the words “means any of the following” there shall be substituted the words “means any offence corresponding to or similar to”;
 - (c) for subsection (6) there shall be substituted the following subsection–
 - “(6) For the purpose of this Act proceedings for an offence are instituted against a person in the circumstances set out in Article 2(2) of the 1999 Order.”.
- 17.** Section 50 shall be omitted.
- 18.** In Schedule 1–
- (a) in paragraph 1(1) for the words “prosecutor the court” there shall be substituted the words “Lord Advocate the Court of Session”;
 - (b) in paragraph 1(1) (b) for the word “made” there shall be substituted the word “registered”;
 - (c) for the word “court” wherever else it appears there shall be substituted the words “Court of Session”;
 - (d) for the words “a suspended” and “the suspended” there shall be substituted the words “an external” and “the external” respectively;
 - (e) the words “or a confiscation order” and “or confiscation order” in paragraphs 1(1) and (3) shall be omitted;
 - (f) in paragraph 2(1) (a) the words “and if appointed (or empowered) under paragraph 1(1) (b) above where a confiscation order has been made shall as soon as practicable take possession of,” shall be omitted;
 - (g) paragraph 4 shall be omitted;
 - (h) paragraph 5 shall be omitted;

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- (i) in paragraph 8(2) the words “, unless in a case where a confiscation order has been made there are sums available to be applied in payment of it under paragraph 4(4) (b) above,” shall be omitted;
 - (j) paragraphs 10 and 11 shall be omitted.
- 19.** In Schedule 2–
- (a) the words “realisable or” wherever they appear shall be omitted;
 - (b) for the words “sections 28 to 33 and 33 to 38” wherever they appear there shall be substituted the words “section 28 and 30 to 33”;
 - (c) in paragraph 1(2) the words “and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act” shall be omitted;
 - (d) paragraphs 1(5) and 2(5) shall be omitted;
 - (e) paragraph 6(1) (a) shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

The Proceeds of Crime (Scotland) Act 1995 (“the Act”) which came into force on 1st April 1996 consolidated and re-enacted the provisions of the Criminal Justice (Scotland) Act 1987 and the Criminal Justice Act 1995 which related to the forfeiture of property used in crime.

This Order which comes into force on 1st May 1999 revokes the existing Order in Council, the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Scotland) Order 1991 (“the 1991 Order”) which was made under the Criminal Justice (International Co-operation) Act 1990 and dealt with orders made by courts in designated countries for the forfeiture and destruction or other disposal of property used in connection with the commission of a drug trafficking offence.

The Order provides that subject to certain modifications, the Act applies to an order made by a court in a designated country or territory for the forfeiture and destruction or other disposal of property used in connection with the commission of a drug trafficking offence or another criminal offence and to proceedings which may result in such an order being made there.

Article 2(2) of and Schedule 2 to the Order set out when proceedings are to be regarded as instituted in a designated country.

Article 3(1) (a) of the Order designates the countries and territories listed in Part I of Schedule 1 for the purposes of the enforcement of forfeiture orders made in connection with drug trafficking offences, namely the countries and territories designated under the 1991 Order, together with a number of countries and territories which are designated for the first time. Article 3(1) (b) of the Order designates the countries and territories listed in Part II of Schedule 1 for the purposes of the enforcement of forfeiture orders made in connection with other criminal offences. Article 4 of and Schedule 3 to the Order apply certain provisions of the Act with modifications to forfeiture orders of courts in the designated countries and territories and the proceedings which may lead to such orders being made.

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Articles 5 provides for the registration of external forfeiture orders as a condition for their enforcement. Articles 6 and 7 provide for the proof of orders and judgments of courts in the designated countries and as to evidence in relation to proceedings and orders in designated countries. Article 8 enables evidence as to the appropriate authority to be given by means of a certificate made by the Secretary of State in a case where no authority is specified for a designated country. Article 9 provides for the representation of the government of a designated country. Article 10 makes provision for the satisfaction of domestic forfeiture orders in designated countries. Article 11 revokes the 1991 Order and subsequent Orders amending that Order.