

## 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”;

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- (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—

**“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;

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- (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.
- 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.

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**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;
- (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.