

SCHEDULE 3

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

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”;

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- (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.”.