

### SCHEDULE 3

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

#### 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”;

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- (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”.