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STATUTORY INSTRUMENTS

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**2005 No. 3181**

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005

PART 3

GIVING EFFECT IN SCOTLAND TO EXTERNAL REQUESTS IN CONNECTION WITH CRIMINAL INVESTIGATIONS OR PROCEEDINGS AND TO EXTERNAL ORDERS ARISING FROM SUCH PROCEEDINGS

CHAPTER 4

INTERPRETATION

**Tainted gifts and their recipients**

**88.**—(1) In this Part, a gift is tainted if it was made by the accused or offender, as the case may be, at any time after—

- (a) the date on which the offence to which the external order or external request relates was committed, or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before or after the coming into force of this Order.

(4) In this Part, an accused or offender, as the case may be, is to be treated as making a gift if he transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer.

(5) If paragraph (4) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—

- (a) whose numerator is the difference between the two values mentioned in paragraph (4), and
- (b) whose denominator is the value of the property at the time of the transfer.

(6) In this Part, references to a recipient of a tainted gift are to a person to whom the accused or offender, as the case may be, has (whether directly or indirectly) made the gift.