

SCHEDULE 2

Article 3(2)

MODIFICATIONS OF THE DRUG TRAFFICKING ACT 1994

1. In section 1, subsections (3) and (5) shall be omitted.
2. For section 2 there shall be substituted the following section:

**“2 External confiscation orders**

(1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as an “external confiscation order”.

(2) In subsection (1) above the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.”.

3. Sections 3 to 5 shall be omitted.

4. In section 6—

(a) subsection (1) shall be omitted;

(b) for subsection (2) there shall be substituted the following subsection:

“(2) In this Act “realisable property” means, subject to subsection (3) below—

(a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(b) in any other case—

(i) any property held by the defendant; and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.”;

(c) subsection (4) shall be omitted.

5. In section 7, subsection (4) shall be omitted.

6. In section 8, in subsection (1) for the words “commencement of this Act” there shall be substituted the words “commencement of the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996”.

7. Sections 9 to 24 shall be omitted.

8. In section 25—

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

“(a) proceedings have been instituted against the defendant in a designated country;”;

(b) in subsection (1)(b) the words “or the application has not” shall be omitted;

(c) in subsection (1)(c) sub-paragraph (i) and the words “in any other case” in sub-paragraph (ii) shall be omitted;

(d) subsection (2) shall be omitted;

(e) for subsection (3) there shall be substituted:

“(3) The powers mentioned in subsection (1) above are also exercisable where it appears to the High Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.”;

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- (f) subsection (4) shall be omitted;
  - (g) in subsection (5) for the words “proceedings in respect of the offence are not instituted, whether by the laying of an information or otherwise, or (as the case may be) if the application is not made”, there shall be substituted the words “the proposed proceedings are not instituted”.
- 9.** In section 26—
- (a) for subsection 2(a) and (b) there shall be substituted the following:
    - “(a) where an application under subsection (4) below relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and
    - (b) in any other case—
      - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not, and
      - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.”;
  - (b) in subsection 4(a)—
    - (i) for the words “the prosecutor” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 40 of this Act, by a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise”, and
    - (ii) for paragraph (c) there shall be substituted the following paragraph:
      - “(c) shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.”;
  - (c) for subsection (5)(b) there shall be substituted:
    - “(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”;
  - (d) in subsection (7) the words “or a county court” shall be omitted;
  - (e) in subsection (8)(b) and in subsection (9), for the words “Great Britain” there shall be substituted the words “England and Wales”;
  - (f) subsection (10) shall be omitted;
  - (g) in subsection (13), for the words “The prosecutor” there shall be substituted the words “A person applying for a restraint order under subsection 4(a) above”.
- 10.** In section 27—
- (a) for subsection 1(a) and (b) there shall be substituted the following:
    - “(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable, and
    - (b) in any other case, of an amount equal to the value from time to time of the property charged.”;
  - (b) in subsection (3)(a)—
    - (i) for the words “the prosecutor” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 40 of this Act, by a Crown Prosecutor, or a person authorised in that behalf by the Commissioners of Customs and Excise”, and
    - (ii) for paragraph (c) there shall be substituted the following paragraph:

- “(c) shall provide for the service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct”; and
- (c) in subsection (7)(b)(i), for the words “or the application in question” there shall be substituted the words “against the defendant in the designated country”.
11. In section 28, subsections (5) and (6) shall be omitted.
12. After section 28 there shall be inserted the following section:

**“Applications for restraint and charging orders**

**28A.** Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965(1), an application under section 26(4) or 27(3) of this Act shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 25(3) of this Act applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.”.

13. In section 29, for subsection (1) there shall be substituted the following two subsections:

“(1) Where an external confiscation order has been registered in the High Court under section 40 of this Act, the High Court may, on the application of a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise, exercise the powers conferred by subsections (1A) to (6) below.

(1A) In respect of any sum of money payable under the external confiscation order the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.”.

14. In section 30—

- (a) in subsection (1), for the words “shall be applied, subject to subsection (2) below, on the defendant’s behalf towards the satisfaction of the confiscation order” there shall be substituted the words “shall be paid to the High Court and, subject to subsection (2) below, applied for the purposes specified in subsections (5) to (7) below, and in the order so specified”;
- (b) in subsection (2)(b), the words “or a county court” shall be omitted;
- (c) in subsection (3), for the words “If, after the amount payable under the confiscation order”, there shall be substituted the words “Where a fixed amount is payable under the external confiscation order and, after that amount” and the words “or a county court” shall be omitted;
- (d) subsection (4) shall be omitted;

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(1) Order 115 was inserted by R.S.C. (Amendment No. 3) 1986 (S.I. 1986/2289), and rule 3 was amended by R.S.C. (Amendment No. 2) 1989 (S.I. 1989/386).

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- (e) in subsection (5), for the words “The justices' clerk shall first”, there shall be substituted the words “Any sums paid to the High Court under subsection (1) above or under an order made under section 29(1A) of this Act or otherwise in satisfaction of an external confiscation order shall be first applied to”;
- (f) for subsection (6) there shall be substituted the following subsection—
  - “(6) If the money was paid to the High Court by a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order, the receiver’s remuneration and expenses shall next be paid.”;
- (g) for subsection (7) there shall be substituted the following subsection—
  - “(7) After there has been made—
    - (a) any payment required by subsection (5) above, and
    - (b) in a case to which subsection (6) above applies, any payment required by that subsection,any amount paid under section 36(2) of this Act shall be reimbursed.”;
- (h) for subsection (8) there shall be substituted the following subsection—
  - “(8) Any sum remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund.”;
- (i) subsection (9) shall be omitted.

**15.** In section 31—

- (a) in subsection (1), the words “or a county court” shall be omitted;
- (b) in subsection (2), for the words “making available” to the end of the subsection there shall be substituted the words “recovering property which is liable to be recovered under an external confiscation order registered in the High Court under section 40 of this Act or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant’s case.”; and
- (c) in subsection (5), after the word “the” in the fifth place where it occurs, there shall be inserted the word “external”.

**16.** In section 32—

- (a) in subsection (2), the words “or a county court” shall be omitted;
- (b) in subsection (5), the sub-paragraphs (a)(i) and (a)(ii) shall be omitted and, in sub-paragraph (b), for the words “conclusion of the proceedings or of the application” there shall be substituted the words “discharge of the restraint or charging order”;
- (c) after subsection (5) there shall be inserted the following:
  - “(6) In any case in which a petition in bankruptcy was presented, or a receiving order or an adjudication in bankruptcy was made, before 29th December 1986 (the date on which the 1986 Act came into force), subsection (2) above shall have effect as if—
    - (a) for the reference to the bankrupt’s estate for the purposes of Part IX of the 1986 Act there were substituted a reference to the property of the bankrupt for the purposes of the Bankruptcy Act 1914(2);
    - (b) for the reference to section 280(2)(c) of the 1986 Act there were substituted a reference to section 26(2) of that Act; and
    - (c) subsection (2)(b) were omitted.”.

**17.** In section 33—

- (a) in subsection (2) the words “or a county court” shall be omitted;
- (b) in subsection (6), sub-paragraphs (a)(i) and (a)(ii) shall be omitted and in sub-paragraph (b) for the words “conclusion of the proceedings or of the application” there shall be substituted the words “discharge of the restraint or charging order”.

**18.** In section 34—

- (a) in subsection (2) the words “or a county court” shall be omitted; and
- (b) at the end, there shall be inserted the following:

“(5) In any case in which a winding up of a company commenced or is treated as having commenced, before 29th December 1986 (the date on which the Insolvency Act 1986 came into force), this section has effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985.”.

**19.** In subsection (2) of section 36, the words “by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted,” shall be omitted.

**20.** Sections 37 to 39 shall be omitted.

**21.** In section 40—

- (a) in subsection (3), after the word “satisfied” there shall be inserted the words “by the recovery of all property liable to be recovered under it or”;
- (b) subsection (4) shall be omitted.

**22.** In section 41—

- (a) in subsection (1), for the word “Part” there shall be substituted the word “Act”;
- (b) for subsection (2) there shall be substituted the following subsection:

“(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 column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking by the defendant, or
- (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) above, the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of alleged drug trafficking, or
- (c) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this subsection 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.”;

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

“(3) Proceedings for an offence are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered, or the payment of any amount due”;

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- (c) subsections (4) and (5) shall be omitted;
  - (e) for subsection (6), there shall be substituted the following subsection—
    - “(6) An external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.”;
  - (f) subsection (7) shall be omitted; and
  - (g) in subsection (8), before the word “order” the first time that it appears there shall be inserted the words “external confiscation”.
- 23.** Sections 42 to 61 shall be omitted.
- 24.** In section 63—
- (a) in subsection (1)—
    - (i) for the definition of “defendant” there shall be substituted the following definition:
      - ““defendant” means a person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a court in a designated country.”;
    - (ii) the definition of “modifications” shall be omitted;
  - (b) at the end of subsection (2) the fullstop shall be omitted and there shall be added the words “, and whether received before or after the commencement of the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996 and whether received in connection with drug trafficking carried on by the recipient or some other person.”; and
  - (c) subsection (3) shall be omitted.
- 25.** For section 64 there shall be substituted the following section:

“**64.** In this Act the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Act indicated below—

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acting as an insolvency practitioner	section 35(4)
charging order	section 27(2)
conclusion of proceedings in a designated country	section 41(3)
constable	section 63(1)
defendant	section 63(1)
drug trafficking	section 1(1) and (2)
external confiscation order	section 2(1)
gift caught by this Act	section 8(1)
“held” in relation to property	section 62(5)(a)
institution of proceedings in a designated country	section 41(2)
“interest”, in relation to property	section 62(3)
making a gift	section 8(2)
property	section 62(1)

realisable property	section 6(2)
restraint order	section 26(1)
“satisfied”, in relation to an external confiscation order	section 41(6)
“subject to appeal”, in relation to an external confiscation order	section 41(8)
“transferred”, in relation to property	section 62(5)(b)
value of gift, payment or reward	section 7(2)
value of property	section 7(1).”.

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- 26.** In section 65—
- (a) subsections (1) and (2) shall be omitted, and
  - (b) in subsections (3) and (4) the word “external” shall be inserted before the words “confiscation order” in both places where they occur.
- 27.** After section 65 there shall be inserted the Appendix set out at the end of Schedule 3 to this Order.
- 28.** Sections 66 to 69 shall be omitted.
- 29.** Schedule 1, Schedule 2, Schedule 3 and the Table of Derivations shall be omitted.