
STATUTORY INSTRUMENTS

1999 No. 673 (S.44)

CRIMINAL LAW, SCOTLAND

The Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999

<i>Made</i>	- - - -	<i>10th March 1999</i>
<i>Laid before Parliament</i>		<i>22nd March 1999</i>
<i>Coming into force</i>	- -	<i>1st May 1999</i>

At the Court at Buckingham Palace, the 10th day of March 1999

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 40 and 43 of the Proceeds of Crime (Scotland) Act 1995(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. This Order may be cited as the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999 and shall come into force on 1st May 1999.

Interpretation

2.—(1) In this Order—

“the Act” means the Proceeds of Crime (Scotland) Act 1995;

“appropriate authority of a designated country” means—

- (a) the authority specified opposite that country in Part I or, as the case may be, Part II of Schedule 1 to this Order;
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for that country for the purposes of sections 40 and 41 of the Act, and of the other relevant provisions of the Act as applied by article 4 of this Order;

“a court of a designated country” includes a court of any state or territory of a designated country;

“designated country” means a country or territory designated under article 3 of this Order;
“drug trafficking” has the same meaning as in section 49(2) of the Act.

- (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 the right-hand column of Schedule 2 to this Order has been taken there in respect of an alleged offence, corresponding with or similar to an offence to which Part I of the Act applies or, as the case may be, alleged drug trafficking; or
 - (b) where no steps have been specified in relation thereto as mentioned in sub-paragraph (a) above, the accused has been notified in writing in accordance with the laws of the designated country that the appropriate authorities of that country have begun proceedings against him in respect of an offence; 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 paragraph 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.

- (3) Proceedings are concluded—
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
 - (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or otherwise).
- (4) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be raised or set aside.

Designation of countries and territories

- 3.—(1) There are hereby designated for the purposes of section 40 and 41 of the Act—
- (a) each of the countries and territories specified in Part I of Schedule 1 to this Order, but only in relation to any case in which the external confiscation order which has been or may be made is for the purpose of recovering payments or other rewards or property or other economic advantage received in connection with an offence corresponding with or similar to an offence to which Part I of the Act applies or the value of such payments, property, reward or economic advantage;
 - (b) each of the countries and territories specified in Part II of Schedule 1 to this Order, but only in relation to any case in which the external confiscation order which has been or may be made is for the purpose of recovering payments or other rewards or property or other economic advantage received in connection with drug trafficking, or the value of such payments, property, reward or economic advantage.

Application of the Act

4. In relation to a designated country, Part I of the Act and Part III of the Act so far as it relates to realisable property shall apply, subject to the modifications specified in Schedule 3 to this Order, in relation to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there.

Proof of orders and judgment of court in a designated country

5.—(1) For the purposes of sections 40 and 41 of the Act, and of the other provisions of the Act as applied by article 4 of this Order—

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purpose of paragraph (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

6.—(1) For the purposes of sections 40 and 41 of the Act, and of the other provisions of the Act as applied by article 4 of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) in a case to which article 2(2)(b) applies, that the accused has been notified as specified in that article;
- (c) that an external confiscation order is in force and is not subject to appeal;
- (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (f) that an order (however described) made by or to be made by a court of the designated country is for, or, as the case may be, will be for recovering payments or other rewards or property or other economic advantage received in connection with:—
 - (i) an offence corresponding with or similar to an offence to which Part I of the Act applies; or
 - (ii) drug trafficking,or the value of such payments, property, reward or economic advantage,

shall, in any proceedings in the Court of Session or the High Court, be sufficient evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be sufficient evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

Certificate of appropriate authority

7. Where in relation to any designated country no authority is specified in Schedule 1 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of sections 40 and 41 of the Act and of the other relevant provisions of the Act as applied by article 4 of this Order, shall be sufficient evidence of that fact.

Representation of government of a designated country

8. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Lord Advocate to act on its behalf in any proceedings in the Court of Session or the High Court under section 41 of the Act or any other provision of the Act as applied by article 4 of this Order.

Satisfaction of confiscation order in a designated country

9.—(1) Where—

- (a) a confiscation order has been made under section 1 of the Act; and
- (b) a request has been sent by the Secretary of State to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this article, and without prejudice to the sufficiency of any evidence which may be sufficient apart from this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Secretary of State, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in Scotland, be sufficient evidence of the facts so stated.

Currency conversion

10.—(1) Where the value of property recovered as described in article 9(1) of this Order is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Court of Session under section 41 of the Act is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Act as applied under article 4 of this Order the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this article a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in the United Kingdom and stating the exchange rate prevailing on a specified date shall be sufficient evidence of the facts so stated.

Revocations

11. The following Orders are hereby revoked namely:—

- (a) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Order 1991⁽²⁾;
- (b) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment Order 1992⁽³⁾;
- (c) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment Order 1993⁽⁴⁾;
- (d) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment (No.2) Order 1993⁽⁵⁾; and
- (e) The Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Amendment Order 1994⁽⁶⁾.

A. K. Galloway
Clerk of the Privy Council

(2) [S.I. 1991/1467](#).
(3) [S.I. 1992/1733](#).
(4) [S.I. 1993/1806](#).
(5) [S.I. 1993/3156](#).
(6) [S.I. 1994/1644](#).

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SCHEDULE 1

Article 3

PART I

DESIGNATED COUNTRIES – DRUG TRAFFICKING

<i>Designated Country</i>	<i>Appropriate Authority</i>
Afghanistan	
Algeria	
Anguilla	The Attorney General of Anguilla
Antigua and Barbuda	The Attorney General
Argentina	The Ministry of Foreign Affairs
Armenia	
Australia	The Attorney General's Department
Austria	
Azerbaijan	
Bahamas, The	The Attorney General of the Bahamas
Bahrain	The Ministry of the Interior
Bangladesh	
Barbados	The Attorney General
Belarus	
Belgium	
Belize	
Benin	
Bermuda	The Attorney General of Bermuda
Bhutan	
Bolivia	The Secretaria Nacional de Defensa Social del Ministerio de Gobierno
Bosnia and Herzegovina	
Botswana	
Brazil	
British Virgin Islands	The Attorney General of the British Virgin Islands
Brunei Darussalam	
Bulgaria	
Burkina Faso	
Burundi	

<i>Designated Country</i>	<i>Appropriate Authority</i>
Cameroon	
Canada	The Minister of Justice or officials designated by that Minister
Cape Verde	
Cayman Islands, The	The Attorney General of the Cayman Islands
Chad	
Chile	Ministerio del Interior
China	
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Costa Rica	
Cote d'Ivoire	
Croatia	
Cuba	
Cyprus	
Czech Republic, The	
Denmark	
Dominica	
Dominican Republic	
Ecuador	Consejo Nacional de Control de Sustancias Estupefacientes y Psicotropicas (CONSEP)
Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Gambia	
Germany	
Ghana	
Gibraltar	The Attorney General of Gibraltar
Greece	
Grenada	The Ministry of External Affairs
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey

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<i>Designated Country</i>	<i>Appropriate Authority</i>
Guinea	
Guinea-Bissau	
Guyana	The Permanent Secretary, Ministry of Home Affairs
Haiti	
Honduras	
Hong Kong	The Department of Justice
Hungary	
India	The Ministry of Home Affairs
Iran	
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Jamaica	
Japan	
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kazakhstan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Lithuania	
Luxembourg	
Macedonia, The Former Yugoslav Republic of	
Madagascar	
Malawi	
Malaysia	The Inspector General of Police, Malaysia
Mali	
Malta	
Mauritania	
Moldova	
Monaco	

<i>Designated Country</i>	<i>Appropriate Authority</i>
Montserrat	The Attorney General of Montserrat
Morocco	
Myanmar	
Nepal	
Netherlands, The	Afdeling Internationale Rechtshulp
Nicaragua	
Niger	
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Oman	
Pakistan	
Panama	The Ministry of Government and Justice
Paraguay	National Anti-Drugs Secretariat of the Presidency of the Republic (SENAD)
Peru	
Poland	
Portugal	
Qatar	
Romania	The Ministry of the Interior and the Ministry of Justice
Russian Federation, The	
Saint Kitts and Nevis	
Saint Lucia	
Saint Vincent and the Grenadines	
Sao Tome and Principe	
Saudi Arabia	The Ministry of the Interior
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	The Department of Foreign Affairs
Spain	The Ministerio de Justicia, Madrid
Sri Lanka	

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<i>Designated Country</i>	<i>Appropriate Authority</i>
Sudan	
Suriname	
Swaziland	
Sweden	The Ministry of Foreign Affairs
Switzerland	Office federal de la police
Syrian Arab Republic	
Tajikistan	
Thailand	The Attorney General or a person designated by him
Togo	
Tonga	
Trinidad and Tobago	
Tunisia	
Turkey	
Turkmenistan	
Turks & Caicos Islands	
Uganda	
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Arab Emirates	
United Mexican States	The Office of the Attorney General
United Republic of Tanzania	
United States of America	The Attorney General of the United States of America
Uruguay	The Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yemen	
Yugoslavia, The Federal Republic of	
Zambia	
Zimbabwe	

PART II

DESIGNATED COUNTRIES – OFFENCES CORRESPONDING WITH OR SIMILAR TO AN OFFENCE TO WHICH PART I OF THE ACT APPLIES

<i>Designated Country</i>	<i>Appropriate Authority</i>
Antigua and Barbuda	The Attorney General
Australia	The Attorney General's Department
Austria	
Bulgaria	
Canada	The Minister of Justice or officials designated by that Minister
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Cyprus	
Czech Republic, The	
Denmark	
Finland	
France	
Hong Kong	The Department of Justice
India	The Ministry of Home Affairs
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Lithuania	
Netherlands, The	Afdeling Internationale Rechtshulp
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Romania	The Ministry of the Interior and the Ministry of Justice
Sweden	The Ministry of Foreign Affairs
Switzerland	Office federal de la police
Thailand	The Attorney General or a person designated by him
Ukraine	The Office of the General Prosecutor and the Ministry of Justice

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<i>Designated Country</i>	<i>Appropriate Authority</i>
United Mexican States	The Office of the Attorney General of the Republic
United States of America	The Attorney General of the United States of America

SCHEDULE 2

Article 2(2)

INSTITUTION OF PROCEEDINGS IN DESIGNATED COUNTRIES

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	(a) (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred
Antigua and Barbuda	when a person has been charged with a scheduled offence
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence
Australia	(a) (a) when an information or a complaint has been laid before a justice of the peace or a magistrate; (b) when a person has been charged with an offence; (c) when an indictment or a presentment has been preferred
Bahamas, The	(a) (a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	(a) (a) when an information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Bermuda	when an information is laid charging a person with an offence
Bolivia	when a warrant is issued by a competent judge or an order to institute proceedings, containing the preventive annotation of property liable to registration or the bank deposit of the monies, assets and property of the accused
British Virgin Islands	<ul style="list-style-type: none"> (a) (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when an indictment is preferred
Cayman Islands, The	<ul style="list-style-type: none"> (a) (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section
Chile	when an application for a decision from the competent judicial authority is made
Colombia	when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freezing or seizure order
Ecuador	when a writ is issued by a judge initiating criminal proceedings
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Grenada	<ul style="list-style-type: none"> (a) (a) when an information is laid before a justice of the peace; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred
Guernsey	when a person is charged with an offence
Guyana	when a charge has been laid against a person for an offence
Hong Kong	<ul style="list-style-type: none"> (a) (a) when a magistrate issues a warrant or summons; (b) when a person is charged with an offence;

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<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
India	<p>(c) when an indictment is preferred</p> <p>(a) (a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</p> <p>(c) when a person is charged with an offence;</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law</p>
Isle of Man	<p>(a) (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;</p> <p>(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;</p> <p>(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;</p> <p>(d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917</p>
Italy	<p>(a) (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in process;</p> <p>(b) when a proposal for the application of a preventative measure (“misura di prevenzione”) is laid before a court</p>
Jersey	<p>(a) (a) when the Bailiff issues a warrant in respect of an offence for the</p>

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
	<p>arrest of a person who is out of the Island;</p> <p>(b) when a person is arrested and charged with an offence;</p> <p>(c) when a summons in respect of an offence is served on a person at the instance of the Attorney General;</p> <p>(d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949</p>
Malaysia	when a person is charged with an offence
Montserrat	<p>(a) (a) when a judge issues a summons or warrant in respect of an offence;</p> <p>(b) when a person is charged with an offence after being taken into custody without a warrant</p>
Netherlands, The	<p>(a) (a) when a pre-trial financial investigation has been initiated;</p> <p>(b) when the provisional measure has been ordered by an investigating magistrate;</p> <p>(c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;</p> <p>(d) when a public prosecutor has laid an indictment</p>
Panama	when a person has been charged with an offence
Paraguay	when a judge has ordered the restraint of property and a preventative detention order has been made
Romania	<p>(a) (a) when the start of a penal pursuit is ordered;</p> <p>(b) when penal proceedings start in respect of an offender</p>
Saudi Arabia	when an information has been laid before a judicial authority
South Africa	<p>(a) (a) when a summons is issued in respect of an offence;</p> <p>(b) when a person is charged with an offence;</p>

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<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
	(c) when a bill of indictment is preferred
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
Switzerland	when proceedings for an offence are brought before an examining magistrate
Thailand	when a court or the Asset Examination Committee issues a restraint order
Ukraine	when a criminal case is brought
United Mexican States	when criminal proceedings are instituted by a judicial authority or, as the case may be when the Ministerio Publico has established that there is probable cause to suspect that a person has committed an offence
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence
Uruguay	when criminal proceedings are instituted by a judicial authority

SCHEDULE 3

Article 4

MODIFICATION OF PARTS I AND III OF THE ACT IN ITS APPLICATION TO EXTERNAL CONFISCATION 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.

2. For the purposes of the application and modification of Parts I and III of the Act, unless the context otherwise requires—

“the 1999 Order” means the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999;

“accused” means the 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 of a designated country;

“designated country” has the same meaning as in article 2(1) of the 1999 Order;

“drug trafficking offence” means any offence corresponding to or similar to any of the offences specified in section 49(5) of the Act;

“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 the Act;

“external confiscation order” has the meaning assigned by section 40(2) of the Act, and proceedings for an offence are instituted against a person in the circumstances set out in article 2 of the 1999 Order.

PART I

CONFISCATION OF THE PROCEEDS OF CRIME

3. Sections 1 to 3 shall be omitted.

4. In section 4–

(a) for paragraphs (a) to (d) of subsection (1) there shall be substituted the following paragraphs:–

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

(b) in any other case–

(i) the whole estate, wherever situated, of the accused or a person in respect of whom a restraint order has been made by virtue of section 29(3) of this Act;

(ii) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of sub-paragraph (i) above has (directly or indirectly and whether in one transaction or in a series of transactions) made a gift caught by this Part of this Act or, as the case may be, an implicative gift;

(iii) any other property in the possession or under the control of a person mentioned in sub-paragraph (i) or (ii) above; and

(iv) any income or estate vesting in a person mentioned in sub-paragraph (i) or (ii) above”;

(b) in subsection (2) for the words “subsection (1)(a) or (b)” there shall be substituted the words sub-paragraph (1)(b)(i) or (ii);

(c) subsection (3) shall be omitted;

(d) for subsection (4) there shall be substituted the following subsection:–

“(4) The value of realisable property (other than money) of a person in respect of whom an external confiscation order has been made shall be its market value having regard to any security or real burden which would require to be discharged in realising the property or to any other factors which might reduce the amount recoverable by such realisation.”;

(e) subsections (5) and (6) shall be omitted.

5. In section 5–

(a) in subsection (1) for “4(1)(a)(i)” there shall be substituted “4(1)(b)(i)”;

(b) in subsection (3)–

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- (i) for the word “court” there shall be substituted the words “High Court”;
 - (ii) the words “and if a confiscation order has already been made, varying that order accordingly, where necessary” shall be omitted;
 - (c) in subsection (4) for the word “prosecutor” there shall be substituted the words “Lord Advocate”.
6. In section 6–
- (a) in subsection (1) for the words “this Act” there shall be substituted the words “the Confiscation of the Proceeds of Crime (Designated Countries and Territories) (Scotland) Order 1999”;
 - (b) in paragraph (a) of subsection (1) for the words “in respect of a person suspected of, or charged with, a drug trafficking offence, the proceedings were commenced” there shall be substituted the words “in respect of a person, proceedings for a drug trafficking offence which might result in an external confiscation order being made were instituted”;
 - (c) in subsection (3)–
 - (i) for the word “court” there shall be substituted the words “High Court”;
 - (ii) for the words “a confiscation” where they first appear there shall be substituted the words “an external confiscation”;
 - (iii) the words “and if a confiscation order has already been made, varying that order accordingly, where necessary” shall be omitted;
 - (d) in subsection (4) for the word “prosecutor” there shall be substituted the words “Lord Advocate”.
7. In section 7–
- (a) for the word “court” wherever it appears there shall be substituted the words “High Court”;
 - (b) in subsection (3)(a) for the words “the likely market value, on the date on which the confiscation order is to be made, of” there be substituted the words “the market value of”;
 - (c) in subsection (3)(b), the words “prior to the date on which the confiscation order is to be made” shall be omitted.
8. Sections 8 to 13 shall be omitted.
9. For section 14 there shall be substituted the following section:–

“14 Application of provisions to fines to enforcement of external confiscation orders

(1) An external confiscation order which has been registered by the Court of Session in terms of section 41 of this Act shall be remitted for enforcement to and shall be enforceable as if it were a fine imposed under the Criminal Procedure (Scotland) Act 1995(7) by the sheriff of Lothian and Borders at Edinburgh except that, section 216 of that Act shall apply as if subsection (1) gave the Lord Advocate an opportunity to be heard at any inquiry thereunder and as if it applied whether the person was in prison or not.

(2) Where an external confiscation order has been remitted to the sheriff in terms of subsection (1) of this section the sheriff may at any time except where an administrator has been appointed in relation thereto order that it shall be enforced by civil diligence.

(3) An order in terms of subsection (2) of this section shall have the effect of authorising the like diligence as if the external confiscation order was a fine imposed under the Criminal Procedure (Scotland) Act 1995 and, without prejudice to the foregoing generality, inhibition

(7) 1995 c. 46.

and adjudication and such diligence, whatever the amount of the external confiscation order, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Any sums recovered in respect of an external confiscation order shall be paid into the Consolidated Fund.”.

10. Section 15 shall be omitted.

11. In section 16–

(a) in subsection (1)–

(i) for the word “court” there shall be substituted the words “Court of Session”;

(ii) the word “external” shall be inserted before the word “confiscation”;

(b) in subsection (2)–

(i) the word “external” shall be inserted before the word “confiscation” wherever it appears;

(ii) for “4(1)(a)” there shall be substituted “4(1)(b)(i)”;

(c) in subsection (4)–

(i) for “(a)” there shall be substituted “(b)(i)”;

(ii) for “(b) of section 4(1)” there shall be substituted “(ii) of section 4(1)”;

(d) in subsection (6) the word “external” shall be inserted before the word “confiscation”.

12. Sections 17 to 20 shall be omitted.

PART III

RESTRAINT ORDERS

13. In section 28–

(a) in subsection (1)–

(i) for the word “court” there shall be substituted the words “Court of Session”;

(ii) for the word “prosecutor” there shall be substituted the words “Lord Advocate”;

(b) subsection (1)(b) shall be omitted;

(c) in subsection (2) for the words “a confiscation” there shall be substituted the words “an external confiscation”;

(d) 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 confiscation order may be made in proceedings instituted or to be instituted in the designated country concerned;

(ii) give particulars of the realisable 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 29(3) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

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and the certificate may, unless the Court of Session otherwise direct, 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.”;
- (e) in subsection (4) for the word “court” there shall be substituted the words “Court of Session”;
- (f) 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”;
- (g) in subsection (6) for the words “court which made the order” there shall be substituted the words “Court of Session”;
- (h) subsection (7) shall be omitted;
- (i) in subsection (8) for the word “court” there shall be substituted the words “Court of Session”.

14. In section 29–

- (a) for paragraphs (a) to (c) of subsection (2) there shall be substituted:–
 - “(a) proceedings have been instituted against a person in a designated country;
 - (b) the proceedings have not been concluded; and
 - (c) either an external confiscation order has been made or it appears to the Court of Session that, there are reasonable grounds for thinking that an external confiscation order may be made in those proceedings.”.
- (b) for subsection (3) there shall be substituted:–

“(3) For the purposes of this subsection, the circumstances are that it appears to the Court of Session that proceedings which might result in an external confiscation order being made are to be instituted against a person in a designated country within 28 days and that there are reasonable grounds for thinking that such an order may be made in them.”;
- (c) in subsection (4)–
 - (i) for the word “court” wherever it appears there shall be substituted the words “Court of Session”;
 - (ii) for the words “prosecutor” there shall be substituted the words “Lord Advocate”;
 - (iii) for the words “subsection (3)(a) and (b)” there shall be substituted the words “subsection (3) above”;
- (d) in subsection (5) the words “or, as the case may be, proceedings on an application under section 11 or 13 of this Act” shall be omitted;
- (e) for subsection (6) there shall be substituted the following subsection:–

“(6) For the purposes of this section, proceedings are concluded as regards an offence in the circumstances set out in article 2(3) of the 1998 Order.”;
- (f) subsection (7) shall be omitted.

15. Section 30 shall be omitted.

- 16.** 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”.
- 17.** 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”.
- 18.** In Schedule 1–
- (a) in paragraph 1(1) the words “prosecutor the court” shall be substituted with the words “Lord Advocate the Court of Session”;
 - (b) in paragraph 1(1)(b) and 4(1) for the word “made” there shall be substituted the word “registered”;
 - (c) for the word “court” wherever it appears there shall be substituted the words “Court of Session”;
 - (d) the words “or a suspended forfeiture order”, “a suspended forfeiture order or” and “the suspended forfeiture order or a” shall be omitted;
 - (e) before the words “confiscation order” wherever they appear there shall be inserted the words “an external”;
 - (f) for paragraph 4(4)(d) there shall be substituted “next, in accordance with any direction given by the Court of Session”;
 - (g) paragraph 10 shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

The Proceeds of Crime (Scotland) Act 1995 (“the Act”) which came into force on 1 April 1996 consolidated and re-enacted the provisions of the Criminal Justice (Scotland) Act 1987 (“the 1987 Act”) and the Criminal Justice Act 1995 which related to the confiscation of the proceeds of drug trafficking and the proceeds of all other crimes respectively.

This Order which comes into force on 1st May 1999 revokes the existing Order in Council, the Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Order 1991 (“the 1991 Order”) which was made under the 1987 Act and dealt with orders made by courts in designated countries for the purpose of recovering payments or other rewards received in connection with drug trafficking.

The Order provides that, subject to certain modifications, Part I and Part III of the Act so far as it relates to realisable property apply to an order made by a court in a designated country or territory for the purpose of recovering payments or other rewards or property or other economic advantage

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received in connection with offences corresponding with or similar to offences to which Part I of the Act applies or drug trafficking or the value of such payments, property, reward or economic advantage (an external confiscation order), and to proceedings which may result in such an order being made there.

Article 2(2) and Schedule 2 to the Order set out when proceedings are to be regarded as instituted in a designated country.

Article 3(1)(a) of the Order designates the countries and territories listed in Part I of Schedule 1 for the purposes of the enforcement of confiscation orders made in connection with drug trafficking, namely the countries and territories designated under the 1991 Order, together with a number of countries and territories which are designated for the first time. Article 3(1)(b) of the Order designates the countries and territories listed in Part II of Schedule 1 for the purposes of enforcement of confiscation orders made in connection with other criminal offences. Article 4 of and Schedule 3 to the Order applies the provisions of Part I and III of the Act with modifications to confiscation orders of courts in the designated countries and territories and the proceedings which may lead to such orders being made.

Articles 5 and 6 provide for the proof of orders and judgments of courts of designated countries and as to evidence in relation to proceedings and orders in designated countries. Article 7 enables evidence as to the appropriate authority to be given by means of a certificate made by the Secretary of State in a case where no authority is specified for a designated country. Article 8 provides for the representation of the government of a designated country. Article 9 makes provision for the satisfaction of domestic confiscation orders in designated countries. Article 10 provides for currency conversion in relation to property recovered in a designated country under article 9. Article 11 revokes the 1991 Order and the subsequent Orders amending that Order.