

### SCHEDULE 3

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

#### 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)—
    - (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—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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<sup>(1)</sup> 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 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–

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(1) 1995 c. 46.

- (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.