

SCHEDULE 1

Regulation 16

Proceeds of Crime (Foreign Property and Foreign Orders): Scotland

Interpretation

1. In this Schedule—

“court” means—

- (a) in paragraphs 2 and 3, the Court of Session or the sheriff exercising his civil jurisdiction;
- (b) in paragraphs 4 to 6, the Court of Session;
- (c) in paragraphs 7 and 8, the High Court of Justiciary or the sheriff; and
- (d) in paragraphs 9 to 11, the Court of Session;

“domestic confiscation order” means a confiscation order under section 92 of the 2002 Act (making of order) (but see regulation 22);

“domestic restraint order” means a restraint order under section 120 of the 2002 Act (restraint orders etc) (but see regulation 21);

“specified information” means—

- (a) in relation to a certificate under paragraph 2, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;
- (b) in relation to a certificate under paragraph 7, any information required to be given by the form of certificate annexed to the 2006 Framework Decision.

Domestic restraint orders: certification

2.—(1) If any of the property to which an application for a domestic restraint order relates is property in a member State other than the United Kingdom, the prosecutor may apply to the court for a certificate under this paragraph to be made.

(2) The court may make a certificate under this paragraph if—

- (a) it makes a domestic restraint order in relation to property in the other member State, and
- (b) it is satisfied that there is a good arguable case that the property—
 - (i) has been or is likely to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.

(3) A certificate under this paragraph is a certificate which—

- (a) is made for the purposes of the 2003 Framework Decision, and
- (b) gives the specified information.

(4) If the court makes a certificate under this paragraph, the domestic restraint order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic restraint order is to have the same relevant powers in respect of a certificate under this paragraph.

(6) For that purpose “relevant powers” means the powers—

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or recall, and
- (c) to make an order on any such appeal or application.

Sending domestic restraint orders and certificates overseas

3.—(1) If a certificate is made under paragraph 2, the domestic restraint order and the certificate are to be forwarded by the Lord Advocate to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The domestic restraint order and the certificate must be accompanied by a domestic confiscation order, unless the certificate indicates when the court expects a domestic confiscation order to be sent.

(3) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.

(5) The signature may be an electronic signature.

(6) If the domestic restraint order and the certificate are not accompanied by a domestic confiscation order, but a domestic confiscation order is subsequently made, it is to be sent to the Lord Advocate for forwarding as mentioned in sub-paragraph (1).

Sending overseas restraint orders to the court

4.—(1) In a case where—

- (a) the Lord Advocate receives an overseas restraint order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the Lord Advocate must send a copy of the order to the court.

(2) An overseas restraint order is an order made by an appropriate court or authority in a member State which—

- (a) relates to—
 - (i) criminal proceedings instituted in the member State, or
 - (ii) a criminal investigation being carried on there; and
- (b) prohibits dealing with property which is in Scotland and which the appropriate court or authority considers to be property that—
 - (i) has been or is likely to be used for the purposes of criminal conduct, or
 - (ii) is the proceeds of criminal conduct.

(3) Condition A is that the action which the appropriate court or authority considered would constitute or, as the case may be, constituted the criminal conduct is not action done as an act of terrorism or for the purposes of terrorism (within the meaning of paragraph 25D(3) of Schedule 4 to the Terrorism Act 2000 (overseas freezing orders)(**1**)).

(4) Condition B is that the order received by the Lord Advocate is accompanied by a certificate which—

- (a) gives the specified information;
- (b) is signed by or on behalf of the court or authority which made or confirmed the order;

(1) Paragraph 25D(3) was inserted by section 90 of, and paragraphs 1 and 5 of Schedule 4 to, the Crime (International Co-operation) Act 2003.

- (c) includes a statement as to the accuracy of the information given in it; and
- (d) if it is not in English, includes a translation of it into English.
- (5) For the purposes of Condition B—
 - (a) the certificate may be treated as giving any specified information which is not given in it if the Lord Advocate has the information in question;
 - (b) the signature may be an electronic signature.
- (6) Condition C is that—
 - (a) the order is accompanied by another order made by a court exercising criminal jurisdiction in the member State for the confiscation of the property; or
 - (b) such an order for the confiscation of the property may be made and the certificate indicates when that order is expected to be sent.
- (7) An appropriate court or authority in a member State in relation to an overseas restraint order is—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country, or
 - (c) any other authority in the country which appears to the Lord Advocate to have the function of making such orders.
- (8) References in this Schedule to an overseas restraint order include its accompanying certificate.
- (9) In this paragraph “criminal conduct” means—
 - (a) a listed 2003 Framework Decision offence; or
 - (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there.

Giving effect to overseas restraint orders

5.—(1) Subject to sub-paragraph (2), where the court receives a copy of an overseas restraint order sent by the Lord Advocate in accordance with paragraph 4, the court must consider giving effect to the order no later than the end of the next working day after the relevant day.

(2) In exceptional circumstances, the court may delay its consideration of the overseas restraint order, provided that it does consider giving effect to the order no later than the end of the fifth working day after the relevant day.

(3) Subject to sub-paragraph (4), the court may consider giving effect to the overseas restraint order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(4) The court must not consider giving effect to the overseas restraint order unless the Lord Advocate—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(5) The court may decide not to give effect to the overseas restraint order only if, in its opinion, giving effect to it would be—

- (a) impossible as a consequence of an immunity under the law of Scotland; or

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- (b) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (6) The court may postpone giving effect to an overseas restraint order in respect of any property—
 - (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
 - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.
- (7) In this paragraph, “relevant day” means the day on which a copy of an overseas restraint order sent by the Lord Advocate in accordance with paragraph 4 is received by the court.

Registration and enforcement of overseas restraint orders

- 6.—(1) Where the court decides to give effect to an overseas restraint order, it must—
 - (a) direct its registration as an order in that court, and
 - (b) give directions for notice of the order to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas restraint order registered in accordance with sub-paragraph (1), the order is to have effect as if it were an order made by the court.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate, or any other person affected by it, if or to the extent that—
 - (a) the court is of the opinion mentioned in paragraph 5(5), or
 - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the Lord Advocate or person affected by the order must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court;
 - (ii) the Lord Advocate (if the applicant is not the Lord Advocate); and
 - (iii) any person who will or may be affected by the application;
 - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
 - (d) set out the proposed terms of any variation; and
 - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.
- (5) Subject to sub-paragraph (6), Part 3 of the 2002 Act (confiscation: Scotland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas restraint order registered in accordance with this paragraph as it applies in relation to a domestic restraint order.
- (6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in a member State may be considered by the court.

Domestic confiscation orders: certification

- 7.—(1) If any of the property to which an application for a domestic confiscation order relates is property in a member State other than the United Kingdom, the prosecutor may apply to the court for a certificate under this paragraph to be made.
- (2) The court may make a certificate under this paragraph if—

- (a) it makes a domestic confiscation order in relation to property in the other member State, and
- (b) it is satisfied that there is a good arguable case that the property—
 - (i) was used or was intended to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.
- (3) A certificate under this paragraph is a certificate which—
 - (a) is made for the purposes of the 2006 Framework Decision, and
 - (b) gives the specified information.
- (4) If the court makes a certificate under this paragraph, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.
- (5) A court which has relevant powers in respect of a domestic confiscation order is to have the same relevant powers in respect of a certificate under this paragraph.
- (6) For that purpose “relevant powers” means the powers—
 - (a) to consider an appeal,
 - (b) to consider an application for reconsideration, variation or discharge, and
 - (c) to make an order on any such appeal or application.

Sending domestic confiscation orders and certificates overseas

- 8.—**(1) If a certificate is made under paragraph 7, the domestic confiscation order and the certificate are to be forwarded by the Lord Advocate to—
- (a) a court exercising jurisdiction in the other member State where the property is situated, or
 - (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.
- (2) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).
- (3) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
- (4) The signature may be an electronic signature.

Sending overseas confiscation orders to the court

- 9.—**(1) In a case where—
- (a) the Lord Advocate receives an overseas confiscation order from the court or authority which made or confirmed the order, and
 - (b) conditions A to C are met,
- the Lord Advocate must send a copy of the order to the court.
- (2) An overseas confiscation order is an order made by an appropriate court or authority in a member State for the confiscation of property which is in Scotland, or is the property of a resident of Scotland, and which the appropriate court or authority considers—
- (a) was used or intended to be used for the purposes of criminal conduct, or
 - (b) is the proceeds of criminal conduct.
- (3) Condition A is that a person has been convicted of that criminal conduct in the member State.
- (4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

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- (5) Condition C is that the order is accompanied by a certificate which—
 - (a) gives the specified information;
 - (b) is signed by or on behalf of the court or authority which made or confirmed the order,
 - (c) includes a statement as to the accuracy of the information given in it, and
 - (d) if it is not in English, includes a translation of it into English.
- (6) For the purposes of Condition C—
 - (a) the certificate may be treated as giving any specified information which is not given in it if the Lord Advocate has the information in question;
 - (b) the signature may be an electronic signature.
- (7) An appropriate court or authority in a member State in relation to an overseas confiscation order is—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country, or
 - (c) any other authority in the country which appears to the Lord Advocate to have the function of making such orders.
- (8) References in this Schedule to an overseas confiscation order include its accompanying certificate.
- (9) In this paragraph—
 - “criminal conduct” means—
 - (a) a listed 2006 Framework Decision offence; or
 - (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there;
 - “resident of Scotland” means—
 - (a) an individual who is normally resident in Scotland, or
 - (b) a body of persons (whether corporate or not) established in Scotland (including a company registered in Scotland).

Giving effect to overseas confiscation orders

10.—(1) Where the court receives a copy of an overseas confiscation order sent by the Lord Advocate in accordance with paragraph 9, the court must consider giving effect to the order.

(2) Subject to sub-paragraph (3), the court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(3) The court must not consider giving effect to the overseas confiscation order unless the Lord Advocate—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(4) The court may decide not to give effect to the overseas confiscation order only if, in its opinion, giving effect to it would be—

- (a) statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of Scotland;
 - (b) impossible as a consequence of an immunity under the law of Scotland; or
 - (c) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (5) The court may postpone giving effect to an overseas confiscation order in respect of any property—
- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom;
 - (b) where it considers that there is a risk that the amount recovered through the execution of the order in Scotland may exceed the amount specified in the order because of simultaneous execution of the order in more than one member State;
 - (c) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with, or the property is subject to proceedings for such an order; or
 - (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with paragraph 11.

Registration and enforcement of overseas confiscation orders

- 11.**—(1) Where the court decides to give effect to an overseas confiscation order, it must—
- (a) direct its registration as an order in that court,
 - (b) give directions for notice of the order to be given to any person affected by it, and
 - (c) appoint a sheriff clerk for the purpose of receiving payment of any amount due under the order.
- (2) For the purpose of enforcing an overseas confiscation order registered in accordance with this paragraph, the order is to have effect as if it were a domestic confiscation order.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate, or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 10(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the Lord Advocate or person affected by the order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court;
 - (ii) the Lord Advocate (if the applicant is not the Lord Advocate); and
 - (iii) any person who will or may be affected by the application;
 - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
 - (d) set out the proposed terms of any variation; and
 - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.
- (5) Subject to sub-paragraphs (6) and (7), Part 3 of the 2002 Act (confiscation: Scotland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in

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relation to an overseas confiscation order registered in accordance with this paragraph as it applies in relation to a domestic confiscation order.

(6) Sections 117 (interest on unpaid sums) and 118 (application of provisions about fine enforcement) of the 2002 Act do not apply to an overseas confiscation order registered in the court in accordance with this paragraph.

(7) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a member State may be considered by the court.