

SCHEDULE 2

Article 3(2)

MODIFICATIONS OF THE DRUG TRAFFICKING OFFENCES ACT 1986

1. For section 1 there shall be substituted the following section:

“1 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) 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, is referred to in this Act as “the defendant”.

2. Sections 2 to 4 shall be omitted.

3. In section 5—

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

“(1) In this Act “realisable property” means, subject to subsection (2) 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.”

- (b) subsections (3), (7) and (8) shall be omitted; and

- (c) in subsection (9) for the words “section 1 of this Act” there shall be substituted the words “the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990”.

4. Section 6 shall be omitted.

5. In section 7—

- (a) for subsection (1)(a) there shall be substituted:

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

- (b) for subsection (1)(c) there shall be substituted:

“(c) either an external confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them”;

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

“(2) Those powers 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.”;

- (d) subsection (3) shall be omitted; and

Status: This is the original version (as it was originally made).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

- (e) in subsection (4), for the words from “proceedings” to “otherwise”, there shall be substituted the words “the proposed proceedings are not instituted”.
6. In section 8—
- (a) for subsection (2)(a) and (b) there shall be substituted:
- “**(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) 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 26A of this Act, by a receiver appointed under section 11 of this Act, a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise”, and for paragraph (c) of that subsection there shall be substituted the following paragraph:
- “**(c)** notwithstanding anything in Order 11 of the Rules of the Supreme Court⁽¹⁾, may 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)(b) and in subsection (8) for the words “Great Britain” there shall be substituted the words “England and Wales”;
- (e) in subsection (11), for the words “The prosecutor” there shall be substituted the words “A person applying for a restraint order under subsection (4)(a) above”.
7. In section 9—
- (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) 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 26A of this Act, by a receiver appointed under section 11 of this Act, a Crown Prosecutor, or a person authorised in that behalf by the Commissioners of Customs and Excise”, and for paragraph (c) of that subsection, there shall be substituted the following paragraph:
- “**(c)** notwithstanding anything in Order 11 of the Rules of the Supreme Court, 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”; and

(1) S.I.1965/1776.

- (c) in subsection (7) for the words “for the offence” there shall be substituted the words “against the defendant in the designated country”.
- 8. In section 10, subsection (6) shall be omitted.
- 9. After section 10 there shall be inserted the following section:

“Applications for restraint and charging orders

10A. Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965(2), an application under section 8(4) or 9(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 7(2) 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.”.

- 10. In section 11, 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 26A 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.”.

- 11. In section 12—

- (a) in subsection (1), for the words from “sums”, in the last place where it occurs, to the end of the subsection, there shall be substituted the words “be paid to the High Court and applied for the purposes specified in subsections (3) to (6) below and in the order so specified.”;
- (b) in subsection (2), 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”;
- (c) subsection (3) shall be omitted;
- (d) in subsection (4), 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 11(1A) of this Act or otherwise in satisfaction of an external confiscation order shall be first applied to”;
- (e) for subsection (5) there shall be substituted the following subsection—

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

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

“(5) If the money was paid to the High Court by a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order the receiver’s remuneration and expenses shall next be paid.”;

(f) in subsection (6), for the words “After making” there shall be substituted the words “After there has been made”, and for the words “the justices’ clerk shall reimburse any amount paid under section 18(2) of this Act” there shall be substituted the words “any amount paid under section 18(2) of this Act shall be reimbursed.”; and

(g) for subsection (7) there shall be substituted the following subsection—

“(7) Any sums 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.”.

12. In section 13—

(a) in subsection (2), for the words from “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 26A 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

(b) in subsection (6), after the word “the” in the fourth place where it occurs, there shall be inserted the word “external”.

13. Section 14 shall be omitted.

14. In section 15—

(a) in subsection (6)(a), the words “proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when” shall be omitted;

(b) in subsection (6)(b), for the words “conclusion of the proceedings” there shall be substituted the words “discharge of the restraint or charging order”; and

(c) for subsection (7) there shall be substituted the following subsection:

“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 Insolvency Act 1986 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 Insolvency Act 1986 there were substituted a reference to the property of the bankrupt for the purposes of the Bankruptcy Act 1914(3);

(b) for the reference to section 280(2)(c) of the Act of 1986 there were substituted a reference to section 26(2) of that Act; and

(c) subsection (2)(b) were omitted.”.

15. In section 16—

(a) in subsection (6)(a), the words “proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when” shall be omitted; and

(b) in subsection (6)(b), for the words “conclusion of the proceedings” there shall be substituted the words “discharge of the restraint or charging order”.

16. In subsection (6) of section 17, the word “has” shall be omitted in the first place where it occurs, and for the words “the date on which the Insolvency Act 1986 comes into force” there shall

(3) 1914 c. 59.

be substituted the words “29th December 1986 (the date on which the Insolvency Act 1986 came into force)”.

17. In subsection (2) of section 17A, the words “or (3)(za)” shall be omitted.

18. In subsection (2) of section 18, for the words “12(3B)” there shall be substituted the words “12(5)”, and the words “by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted,” shall be omitted.

19. Section 19, and sections 24 to 26 shall be omitted.

20. Sections 27 to 32 shall be omitted.

21. In section 33—

- (a) in subsection (1), the words “(2) or”, and
- (b) subsections (2) and (3) shall be omitted.

22. Sections 34 to 37 shall be omitted.

23. In section 38—

- (a) in subsection (1) the definitions of “authorised government department” and “drug trafficking offence” shall be omitted;
- (b) in subsection (2) in the list of expressions and relevant provisions the entries for “Benefited from drug trafficking”, “Proceeds of drug trafficking” and “Value of proceeds of drug trafficking” shall be omitted, and for the words “Confiscation order” there shall be substituted the words “External confiscation order”;
- (c) subsection (4) shall be omitted;
- (d) at the end of subsection (5) the fullstop shall be omitted and there shall be added the words “, and whether received before or after the commencement of the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990 and whether received in connection with drug trafficking carried on by the recipient or some other person.”;
- (e) for subsection (11), there shall be substituted the following:
 - “(11) 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 (a) 1914 c. 59. has been taken there in respect of alleged drug trafficking by the defendant; or
 - (b) 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.”; and

- (f) in subsection (12)(b), for the words from “payment” to the end of the subsection there shall be substituted the words “the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).”.

24. In section 39—

- (a) in subsection (1) before “confiscation” there shall be inserted the word “external”,
- (b) subsections (2) to (4) shall be omitted, and
- (c) in subsections (5) and (6), for the words “a confiscation” in each place where they occur, there shall be substituted the words “an external confiscation”.

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

25. After section 39 there shall be inserted the Appendix set out at the end of Schedule 3 to this Order.

26. Section 40 shall be omitted.