

## SCHEDULE 3

### PART VI OF THE CRIMINAL JUSTICE ACT 1988 AS MODIFIED

#### **Definition of principal terms used**

74.—(1) In this Part of this Act—

- (a) “drug trafficking offence” has the same meaning as in the Drug Trafficking Offences Act 1986;
- (b) references to conduct to which this Part of this Act applies are references to conduct corresponding to any offence which—
  - (i) is listed in Schedule 4 to this Act; or
  - (ii) if not listed, is an indictable offence, other than a drug trafficking offence or an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989; and
- (c) 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 of a designated country, is referred to as “the defendant”.

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

- (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) 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 Part of this Act.

(3) Property is not realisable property if—

- (a) an order under section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders);
- (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders);
- (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property);
- (d) an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders); or
- (e) an order under section 71 above,

is in force in respect of the property.

(4) For the purposes of subsection (3)(e) above, modifications effected by paragraph 1 of Schedule 2 to the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991 shall be disregarded.

(5) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
  - (i) the market value of the first-mentioned person’s beneficial interest in the property, less
  - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

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(b) in any other case, is its market value.

(6) References in this Part of this Act to the value at any time (referred to in subsection (7) below as “the material time”) of any property obtained by a person as a result of or in connection with conduct are references to—

(a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (7) below applies, the value there mentioned,

whichever is the greater.

(7) If at the material time he holds—

(a) the property which he obtained (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,

the value referred to in subsection (6)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above, so far as it so represents the property which he obtained, but disregarding any charging order.

(8) Subject to subsection (11) below, references in this Part of this Act to the value at any time (referred to in subsection (9) below as “the material time”) of a gift caught by this Part of this Act are references to—

(a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (9) below applies, the value there mentioned,

whichever is the greater.

(9) Subject to subsection (11) below, if at the material time he holds—

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

the value referred to in subsection (8) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding any charging order.

(10) A gift (including a gift made before the commencement of the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991) is caught by this Part of this Act if—

(a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and

(b) the court considers it appropriate in all the circumstances to take the gift into account.

(11) For the purposes of this Part of the Act—

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.