



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### [PART VIIA

#### PROPERTY IN UNLAWFUL POSSESSION OF PERSONS TAKEN INTO POLICE CUSTODY AND CERTAIN OTHER PROPERTY TO WHICH PART VII DOES NOT APPLY

##### <sup>F1</sup>86A Application of Part VIIA to property.

- (1) Subject to subsection (2) below, this Part of this Act applies to property to which, by virtue only of paragraph (a) or (b) of section 80(2) of this Act, Part VII of this Act does not apply.
- (2) This Part of this Act does not apply to property—
  - (a) possession of which has passed to the prosecutor and is for the time being retained by him or, in accordance with arrangements made by him, by some person other than the chief constable or himself; or
  - (b) in respect of which a suspended forfeiture order or a restraint order has been—
    - (i) made and not recalled; or
    - (ii) applied for and not refused.
- (3) In subsection (2) above, “suspended forfeiture order” and “restraint order” shall be construed in accordance with, respectively, [<sup>F2</sup>section 21(2) of the Proceeds of Crime (Scotland) Act 1995 and Part 3 of the Proceeds of Crime Act 2002] .

#### Textual Amendments

**F1** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

**F2** Words in s. 86A(3) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 11 para. 12(2); S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7)

*Status: Point in time view as at 01/10/2009.*

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### **F<sup>3</sup>86B Certification by prosecutor.**

The prosecutor may certify that, notwithstanding any determination under section 80(2)(b) of this Act, property to which this Part of this Act applies is not, or is no longer, required as a production in criminal proceedings or for any other purpose relating to such proceedings (property which he has so certified being, in the following provisions of this Part, referred to as “relevant” property).

#### **Textual Amendments**

**F3** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### **F<sup>4</sup>86C Claims by owner etc. prior to disposal.**

- (1) The owner, or the person having right to possession, of any property to which this Part of this Act applies and which is in the possession of the chief constable, or of another person under arrangements made by the chief constable, may at any time prior to its disposal under section 86E of this Act claim that property in accordance with such procedure as the chief constable may direct.
- (2) The chief constable shall consider any claims to property made under subsection (1) above and, on being satisfied that the property is relevant property and that the claimant is the owner of it or has a right to possession of it, shall deliver it, or arrange for its delivery, to the claimant on such conditions (if any) as the chief constable thinks fit, as for example, but without prejudice to the generality of this subsection, for payment of such reasonable charges (including any reasonable expenses incurred in relation to the property by or on behalf of the chief constable) as the chief constable may determine.

#### **Textual Amendments**

**F4** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### **F<sup>5</sup>86D Duty of care etc.**

Subject to the proviso to section 17(3)(b) of the <sup>M1</sup>Police (Scotland) Act 1967 (duty to comply with instructions received from prosecutor), the chief constable shall make such arrangements as he considers appropriate for the care and custody of property to which this Part of this Act applies; and if he has reason to believe that the person taken into police custody is not the owner or the person having right to possession of it, shall take reasonable steps to ascertain the identity of the owner or of the person with that right and to notify him of the procedures directed under section 86C(1) of this Act.

#### **Textual Amendments**

**F5** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

#### **Marginal Citations**

**M1** 1967 c. 77.

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### **F<sup>6</sup>86E Disposal of relevant property.**

- (1) If relevant property cannot, in the opinion of the chief constable, safely be kept he may dispose of it or arrange for its disposal in such manner as he thinks fit.
- (2) The chief constable may sell relevant property or, if in his opinion it would be impracticable to sell it, may dispose of it (or make arrangements for its disposal) otherwise as he thinks fit; but subject to subsection (1) above he shall not do so—
  - (a) before the expiry of a period of two months after the date on which the property was found in the possession or in the charge of the person taken into police custody; or
  - (b) if it would be inconvenient to keep the property until the expiry of that period, before the expiry of such shorter period as is reasonable in all the circumstances.
- (3) Sections 71, 72 and 77(1) of this Act shall apply to a disposal under this section as they apply to a disposal under section 68 of this Act.

#### **Textual Amendments**

**F6** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### **F<sup>7</sup>86F Retention of relevant property by police authority.**

- (1) Where a chief constable has power under section 86E(2) of this Act to sell or otherwise dispose of property and that property (not being money) has remained—
  - (a) for any continuous period of twelve months in his possession; or
  - (b) for part of any such period in his possession and for the rest of it in the possession of the prosecutor,
 the police authority may, if they are of the opinion that the property can be used for police purposes, determine that the property is to be retained by the authority; and the property shall vest in them on the making of the determination.
- (2) A determination under subsection (1) above shall be recorded in writing; and that record shall include the date on which the determination is made.
- (3) Any person who, immediately before the date on which a determination under subsection (1) above is made, owns the property in question, shall be entitled within one year after that date to recover possession of it as owner.
- (4) In subsection (1) above, “police authority” has the meaning assigned to it by section 2(1), as read with section 19(9)(a), of the <sup>M2</sup>Police (Scotland) Act 1967; and “the police authority” means the police authority for the area for which the chief constable’s force is maintained.

#### **Textual Amendments**

**F7** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

#### **Marginal Citations**

**M2** 1967 c. 77.

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### **<sup>F8</sup>86G Appeals.**

- (1) A claimant under section 86C(2) of this Act may appeal to the sheriff against any decision of the chief constable made under that section as respects the claim.
- (2) The previous owner of any property disposed of for value under section 86E of this Act may appeal to the sheriff against any decision of the chief constable made under section 72 of this Act as applied by subsection (3) of section 86E.
- (3) Subsections (3) to (5) of section 76 of this Act shall apply to an appeal under this section as they apply to an appeal under section 76.

#### **Textual Amendments**

**F8** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### **<sup>F9</sup>86H Crown application of Part VIIA.**

- (1) Subject to subsection (2) below, this Part of this Act binds the Crown.
- (2) Rights which the Crown has in lost or abandoned property shall be capable of being extinguished in accordance with the provisions of section 71 (as applied by section 86E(3)) or 86F(1) of this Act; but nothing in this Part of this Act otherwise affects the Crown's right of ownership in such property.

#### **Textual Amendments**

**F9** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### **<sup>F10</sup>86I Further financial provision.**

Subsection (2) of section 77 of this Act shall apply in respect of functions under this Part of this Act as that subsection applies in respect of functions under Part VI of this Act.

#### **Textual Amendments**

**F10** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

### **<sup>F11</sup>86J References in this Part to “chief constable”.**

In this Part of this Act, “chief constable” means the chief constable for the police area in which the person taken into custody, within the meaning of section 80 of this Act, is so taken; and includes a constable acting under the direction of the chief constable for the purposes of this Part of this Act.]

#### **Textual Amendments**

**F11** Pt. VIIA (ss. 86A-86J) inserted (19.5.1997) by 1997 c. 30, ss. 6(4), 7(2)

**Status:**

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**Changes to legislation:**

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