



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

### PART I

#### CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

##### *Restraint orders and interdict*

### 8 Cases in which restraint orders may be made

(1) Where—

- (a) warrant to arrest and commit a person suspected of or charged with an offence to which section 1 of this Act relates has been granted and either—
  - (i) notice has been served on him calling upon him to appear at a trial diet in the High Court or at a diet of that Court fixed for the purposes of section 102 of the 1975 Act (whether or not the trial has commenced, provided that the proceedings as regards the offence have not been concluded); or
  - (ii) the Court of Session is satisfied that it is intended that any trial diet in respect of the suspected offence (or as the case may be the offence with which he has been charged) shall proceed in the High Court; or
- (b) the Court of Session is satisfied that a procurator fiscal proposes to petition within twenty-eight days for warrant to arrest and commit a person suspected of such an offence, that the suspicion is reasonable and that it is intended that any trial diet in respect of the suspected offence shall proceed in the High Court; or
- (c) an interlocutor has been pronounced under section 104(1)(b) of the 1975 Act remitting a person to the High Court for sentence in respect of such an offence,

the Court of Session may, on the application of the Lord Advocate, make in respect of the person such order (in this Act referred to as a "restraint order") as is described in section 9 of this Act. Any such application shall be heard in chambers.

- (2) Subject to subsection (3) below, the Court of Session may, at the instance of—

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- (a) the Lord Advocate, at any time vary or recall a restraint order in relation to any person or to any property;
  - (b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property; and in particular may, on the application of a person named in a restraint order as having received an implicative gift, recall the order in relation to that person if satisfied—
    - (i) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the giver was in any way concerned in drug trafficking; and
    - (ii) that he is not, and has never been, an associate of the giver; and
    - (iii) that he would suffer hardship were the order not to be recalled.
- (3) The Court of Session may, where it has recalled a restraint order under subsection (2) above, order that property of the person at whose instance it was recalled shall cease to be realisable.
- (4) Rules of court may provide that any application under subsection (2) above shall be made within such period of the applicant receiving notice of the restraint order as may be specified in the rules; and in the period between such application and any decision of the Court as regards recalling that order the powers of any administrator appointed as regards property of the applicant shall be subject to the restriction that the administrator shall not realise the property.
- (5) Where, a restraint order having been made by virtue of—
- (a) paragraph (b) of subsection (1) above, the days mentioned in that paragraph expire without the petition having been presented; or
  - (b) paragraph (a), (b) or (c) of that subsection, the proceedings as regards the offence are concluded,
- the Lord Advocate shall forthwith apply to the Court of Session for recall of that order and the Court shall grant the application.

## 9 Restraint orders

- (1) A restraint order is an order interdicting—
- (a) the person in respect of whom it is made from dealing with his realisable property; or
  - (b) that person and any person named in the order as appearing to the Court of Session to have received from him an implicative gift from dealing with their own, or the other's, realisable property,
- (whenever that property was acquired and whether it is described in the order or not); but, subject to subsection (5) below, the order may contain conditions and exceptions to which such interdict shall be subject.
- (2) A restraint order shall provide for notice to be given to persons affected by the order.
- (3) In subsection (1) above, the reference to "dealing with" property shall (without prejudice to the generality of the expression) be construed as including a reference—
- (a) to making a payment in reduction of the amount of a debt; and
  - (b) to removing the property from Great Britain.
- (4) If the restraint order is made by virtue of section 8(1)(b) of this Act, references in the foregoing provisions of this section to "realisable property" shall, in relation to any

period before warrant to arrest and commit the person in respect of whom it was made is granted, be construed as references to property which would be realisable property had such warrant been granted immediately before the commencement of that period.

- (5) Without prejudice to the generality of subsection (1) above, property in so far as it comprises reasonable legal expenses payable in relation to proceedings as regards the offence by virtue of which the restraint order has been made or as regards a confiscation order made on conviction thereof shall be excepted under that subsection from the interdict.

## **10 Seizure of property affected by restraint order**

- (1) A constable or a person commissioned by the Commissioners of Customs and Excise may, for the purpose of preventing realisable property of a person subject to a restraint order (whether under this Act or under and within the meaning of the Drug Trafficking Offences Act 1986) from being removed from Great Britain, seize the property.
- (2) Property seized under subsection (1) above shall be dealt with in accordance with the directions of the court which made the order.

## **11 Inhibition and arrestment of property affected by restraint order or by interdict under section 12**

- (1) On the application of the Lord Advocate, the Court of Session may, in respect of—
- (a) heritable realisable property in Scotland affected by a restraint order (whether such property generally or particular such property) grant warrant for inhibition against any person interdicted by the order or, in relation to that property, under section 12 of this Act;
  - (b) moveable realisable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor;
- and, subject to the provisions of this Part of this Act, the warrant—
- (i) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
  - (ii) where granted under subsection (1)(a) above, shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the register of inhibitions and adjudications.
- (2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) That an inhibition or arrestment has been executed under subsection (1) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Act in respect of that property.
- (5) No inhibition or arrestment executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant

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for such inhibition or arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—

- (a) apply for the recall, or as the case may be restriction, of the inhibition or arrestment accordingly; and
  - (b) ensure that recall, or restriction, of an inhibition on such application is reflected in the register of inhibitions and adjudications.
- (6) The foregoing provisions of this section shall apply in relation to an order made under section 8 of the Drug Trafficking Offences Act 1986 and registered under section 28 of this Act (a "relevant order") as they apply to a restraint order; but as if—
- (a) for any reference to the Lord Advocate there were substituted a reference to the prosecutor or, in a case where the order was made by virtue of subsection (2) of section 7 of that Act and the information mentioned in that subsection has not yet been laid, to the person as regards whom the court which made the order was satisfied as is mentioned in subsection (3)(b) of that section;
  - (b) any reference to realisable property fell to be construed in accordance with section 5 of that Act (references in that section to the defendant, and to the time at which proceedings were instituted against him, being in such case as is mentioned in paragraph (a) above taken to be, respectively, references to the person as regards whom the court which made the order was satisfied as is mentioned in subsection (2) of the said section 7 and to the time immediately before the order was made);
  - (c) for any reference to a restraint order there were substituted a reference to a relevant order;
  - (d) in subsection (1)(a), for the words "interdicted by the order or, in relation to that property, under section 12 of this Act" there were substituted the words "with an interest in that property";
  - (e) in subsection (1), for the words "Part of this Act" there were substituted the word "section";
  - (f) in subsection (1)(i), after the word "and" there were inserted the words "subject to subsection (3A) below";
  - (g) after subsection (3) there were inserted the following subsection—
    - “(3A) Any power of the Court of Session to recall, loose or restrict inhibitions or arrestments shall, in relation to an inhibition or arrestment proceeding upon a warrant under this section and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 13 of the Drug Trafficking Offences Act 1986.”; and
  - (h) in subsection (4)—
    - (i) for the reference to an administrator there were substituted a reference to a receiver; and
    - (ii) for the words "this Part of this Act" there were substituted the words "section 8, 11 or 12 of the said Act of 1986".

## 12 Interdict of person not subject to restraint order

- (1) The Court of Session may, where it has granted a restraint order, interdict a person not subject to that order from dealing with realisable property affected by it while it is in

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force; and the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.

- (2) Subsection (2) of section 8 of this Act applies in relation to an interdict under subsection (1) above as the said subsection (2) applies in relation to a restraint order; and subsection (3) of section 9 thereof applies in relation to subsection (1) above as the said subsection (3) applies in relation to subsection (1) of the said section 9.
- (3) An interdict under subsection (1) above shall not be effective against a person unless and until he is served with a copy both of it and of the restraint order.