

SCHEDULES

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

PART II

AMENDMENTS RELATING TO PART II

The Trade Marks Act 1938 (c. 22)

- 180 In section 58B of the Trade Marks Act 1938 (delivery up of offending goods and material), in subsection (6) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Criminal Procedure (Scotland) Act 1975 (c. 21)

- 181 (1) The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.
- (2) Sections 223 and 436 (forfeiture of property) shall cease to have effect.
- (3) In section 231 (intimation of intention of appeal)—
- (a) in subsection (1) after “1987” there shall be inserted the words “and section 76(4) of the Criminal Justice (Scotland) Act 1995”; and
 - (b) in subsection (5) after “1987” there shall be inserted the words “and subsection (4) of section 76 of the said Act of 1995” and for the words “that section” there shall be substituted the words “the said section 2 or 76”.
- (4) In section 444 (manner and time of appeal), in subsection (1) at the beginning there shall be inserted the words “Subject to section 76(8) of the Criminal Justice (Scotland) Act 1995,”.

The Community Service by Offenders (Scotland) Act 1978 (c. 49)

- 182 In section 1(7) of the Community Service by Offenders (Scotland) Act 1978 (making of community service orders not to restrict making of certain other orders), at the end there shall be added the following paragraph—
- “(d) making a suspended forfeiture order under section 87 of the Criminal Justice (Scotland) Act 1995 in respect of the offence.”.

The Civil Jurisdiction and Judgments Act 1982 (c. 27)

- 183 In subsection (4A) of section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of U.K. judgments in other parts of U.K.)—

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- (a) after the words “Court of Session” there shall be inserted the words “or by the sheriff”; and
- (b) at the end there shall be added “or Part II of the Criminal Justice (Scotland) Act 1995”.

The Telecommunications Act 1984 (c. 12)

- 184 In Schedule 3 to the Telecommunications Act 1984 (penalties and mode of trial under the Wireless Telegraphy Act 1949), in paragraph 3(b) for the words “sections 223 and 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Bankruptcy (Scotland) Act 1985 (c. 66)

- 185 (1) The Bankruptcy (Scotland) Act 1985 shall be amended as follows.
- (2) In section 5(4) (meaning of qualified creditor), for the words “or by section 2(9) of the Drug Trafficking Act 1994” there shall be substituted the words “by section 2(9) of the Drug Trafficking Act 1994 or by section 114(1) of the Criminal Justice (Scotland) Act 1995”.
 - (3) In section 7(1) (meaning of apparent insolvency), in the definition of “confiscation order”, for the words “or by section 2(9) of the said Act of 1994” there shall be substituted the words “by section 2(9) of the Drug Trafficking Act 1994 or by section 114(1) of the Criminal Justice (Scotland) Act 1995”.

The Criminal Justice Act 1988 (c. 33)

- 186 (1) The Criminal Justice Act 1988 shall be amended as follows.
- (2) In section 74(2)(c) (meaning of realisable property) after the word “property” there shall be inserted the words “or Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 (suspended forfeiture orders)”.
 - (3) In section 77 (restraint orders)—
 - (a) in subsection (10) for the words “the High Court has made a restraint order” there shall be substituted the words “a restraint order has been made” and at the end of that subsection there shall be added the words—

“In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of Part II of the Criminal Justice (Scotland) Act 1995 and, in relation to such an order, “realisable property” has the same meaning as in that Part”; and
 - (b) in subsection (11), for the words “court’s directions” there shall be substituted the words “directions of the court which made the order”.
 - (4) In section 89(2)(b) (compensation), for the words “an order under this Part of this Act” there shall be substituted the following paragraphs—
 - “(i) an order under this Part of this Act; or
 - (ii) an order of the Court of Session under section 101, 102, 103 or 104 of the Criminal Justice (Scotland) Act 1995.”

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- (5) Sections 90 (recognition and enforcement of orders in Scotland), 91 (supplementary provision to section 90), 92 (inhibition and arrestment of property in Scotland), 93 (proof in Scotland of High Court orders) and 95 (enforcement of Northern Ireland order in Scotland) shall cease to have effect.
- (6) In section 93E (applications of provisions relating to money laundering and other offences to Scotland), after the word “summarily)” there shall be inserted the words “or an offence punishable on summary conviction by a fine of an amount greater than the amount corresponding to level 5 on the standard scale or by imprisonment for a period exceeding 3 months or by both such fine and imprisonment”.

The Copyright, Designs and Patents Act 1988 (c. 48)

- 187 (1) The Copyright, Designs and Patents Act 1988 shall be amended as follows.
- (2) In section 108(6) (order for delivery up in criminal proceedings) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.
- (3) In section 199(6) (order for delivery up in criminal proceedings) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Road Traffic Offenders Act 1988 (c. 53)

- 188 After section 33 of the Road Traffic Offenders Act 1988 (fine and imprisonment), there shall be inserted the following section—

“33A Forfeiture of vehicles: Scotland

- (1) Where a person commits an offence to which this subsection applies by—
- (a) driving, attempting to drive, or being in charge of a vehicle; or
 - (b) failing to comply with a requirement made under section 7 of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
 - (c) failing, as the driver of a vehicle, to comply with subsections (2) and (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),

the court may, on an application under this subsection make an order forfeiting the vehicle concerned; and any vehicle forfeited under this subsection shall be disposed of as the court may direct.

- (2) Subsection (1) above applies—
- (a) to an offence under the Road Traffic Act 1988 which is punishable with imprisonment; and
 - (b) to an offence of culpable homicide.
- (3) An application under subsection (1) above shall be at the instance of the prosecutor made when he moves for sentence or (if the person has been

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remitted for sentence under section 104 of the Criminal Procedure (Scotland) Act 1975) made before sentence is pronounced.

- (4) Where—
- (a) the court is satisfied, on an application under this subsection by the prosecutor—
 - (i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence to which subsection (1) above applies allegedly committed in the manner specified in paragraph (a), (b) or (c) of that subsection; and
 - (ii) that there is reasonable cause to believe that a vehicle specified in the application is to be found in a place or in premises so specified; and
 - (b) it appears to the court that there are reasonable grounds for thinking that in the event of the person being convicted of the offence an order under subsection (1) above might be made in relation to the vehicle, the court may grant a warrant authorising a person named therein to enter and search the place or premises and seize the vehicle.
- (5) Where the court has made an order under subsection (1) above for the forfeiture of a vehicle, the court or any justice may, if satisfied on evidence on oath—
- (a) that there is reasonable cause to believe that the vehicle is to be found in any place or premises; and
 - (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,
- issue a warrant of search which may be executed according to law.
- (6) In relation to summary proceedings, the reference in subsection (5) above to a justice includes a reference to the sheriff and to a magistrate.
- (7) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 shall not apply in respect of a vehicle in relation to which this section applies.
- (8) This section extends to Scotland only.”.

The Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4)

- 189 (1) Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders) shall be amended as follows.
- (2) In paragraph 16—
- (a) in sub-paragraph (1), paragraph (b) shall cease to have effect;
 - (b) in sub-paragraph (2)(b), the words “where granted under sub-paragraph (1) (a) above,” shall cease to have effect; and
 - (c) in sub-paragraphs (5) and (6), the words “or arrestment”, in each place where they occur, shall cease to have effect.
- (3) After paragraph 16 there shall be inserted the following paragraph—
- “16A (1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property

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generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

- (2) A warrant under sub-paragraph (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
 - (3) The fact that an arrestment has been executed under sub-paragraph (2) 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 Schedule in respect of that property.
 - (4) No arrestment executed under sub-paragraph (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.”.
- (4) In paragraph 19 (enforcement in Scotland of orders made elsewhere in the British Isles)—
- (a) in sub-paragraph (5), for the words “and 16” there shall be substituted “, 16 and (subject to sub-paragraph (5A) below) 16A”; and
 - (b) after sub-paragraph (5) there shall be inserted the following sub-paragraph—
 - “(5A) In its application by virtue of sub-paragraph (5) above paragraph 16A above shall have effect with the following modifications—
 - (a) for the references to the prosecutor there shall be substituted references to the Lord Advocate; and
 - (b) for the references to the court there shall be substituted references to the Court of Session.”.

The Criminal Justice (International Co-operation) Act 1990 (c. 5)

- 190 (1) In section 9(6) of the Criminal Justice (International Co-operation) Act 1990 (enforcement of overseas forfeiture orders), for the words from “or an” to the end there shall be substituted the words “an offence to which Part VI of the Criminal Justice Act 1988 applies, an offence to which Chapter I of Part II of the Criminal Justice (Scotland) Act 1995 applies or an offence in respect of which a suspended forfeiture order may be made under section 87 of the said Act of 1995.”.
- (2) In section 15(3) of that Act (interest on sums unpaid under confiscation orders), for the words “applicable to an award of damages in” there shall be substituted “payable under a decree of”.
- (3) Section 17 (increase in realisable property: Scotland) of that Act shall cease to have effect.

The Northern Ireland (Emergency Provisions) Act 1991 (c. 24)

- 191 In section 50(2) of the Northern Ireland (Emergency Provisions) Act 1991 (realisable property, value and gifts), for paragraph (e) there shall be substituted the following paragraph—

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“(e) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Road Traffic Act 1991 (c. 40)

192 Section 37 of the Road Traffic Act 1991 (forfeiture of vehicles: Scotland) shall cease to have effect.

The Drug Trafficking Act 1994 (c. 37)

- 193 (1) The Drug Trafficking Act 1994 shall be amended as follows.
- (2) In section 4(7) (assessing the proceeds of drug trafficking), after paragraph (b) there shall be inserted—
- “; or
- (c) Part II of the Criminal Justice (Scotland) Act 1995.”.
- (3) In section 6(3) (meaning of realisable property), after paragraph (d) there shall be inserted the following paragraph—
- “(e) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 (suspended forfeiture orders);”.
- (4) In section 18(2)(b)(ii) (compensation), for the words from “11” to “28” there shall be substituted “27, 28, 28A or 28B”.
- (5) In section 26(10) (restraint orders), after the words “1987” there shall be inserted “or Part II of the Criminal Justice (Scotland) Act 1995”.