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*Status: Point in time view as at 29/03/2001.*

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## SCHEDULES

### SCHEDULE 4

#### FORFEITURE ORDERS

##### PART II

##### SCOTLAND

##### *Restraint orders*

- 18 (1) The Court of Session, on an application made by the Lord Advocate, may make a restraint order under this paragraph where—
- (a) proceedings have been instituted in Scotland for an offence under any of sections 15 to 18,
  - (b) the proceedings have not been concluded, and
  - (c) a forfeiture order has been made, or it appears to the court that a forfeiture order may be made, in the proceedings for the offence.
- (2) The Court of Session may also, on such an application, make a restraint order under this paragraph where—
- (a) it is satisfied that a person is to be prosecuted in Scotland for an offence under any of sections 15 to 18, and
  - (b) it appears to the Court of Session that a forfeiture order may be made in proceedings for the offence.
- (3) A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with property in respect of which a forfeiture order has been or could be made in the proceedings referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made *ex parte* in chambers.
- (5) For the purposes of this paragraph, dealing with property includes removing the property from Great Britain.
- 19 (1) A restraint order shall provide for notice of it to be given to any person affected by the order.
- (2) A restraint order may be recalled or varied by the Court of Session on the application of any person affected by it.
- (3) A restraint order shall be recalled—

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- (a) in the case of an order made under paragraph 18(2), if the proceedings in respect of the offence are not instituted within such time as the Court of Session considers reasonable, or
  - (b) in the case of an order made under paragraph 18(1) or (2), when proceedings for the offence are concluded.
- (4) When proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the Court for recall of the order.
- 20 (1) A constable may seize any property subject to a restraint order for the purpose of preventing it from being removed from Great Britain.
- (2) Property seized under this paragraph shall be dealt with in accordance with the Court's directions.

**Modifications etc. (not altering text)**

**C1** Sch. 4 para. 20 applied (13.12.2001) by S.I. 2001/3927, art. 19

- 21 (1) On the application of the Lord Advocate, the Court of Session may, in respect of heritable 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.
- (2) Subject to this Part of this Schedule, a warrant under sub-paragraph (1)—
- (a) 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;
  - (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the register of inhibitions and adjudications.
- (3) Section 155 of the <sup>M1</sup>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 sub-paragraph (2)(a) as that section applies to an inhibition by separate letters or contained in a summons.
- (4) The execution of an inhibition under sub-paragraph (2) 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.
- (5) No inhibition executed under sub-paragraph (2) shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition 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.

**Modifications etc. (not altering text)**

**C2** Sch. 4 para. 20 applied (13.12.2001) by S.I. 2001/3927, art. 19

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#### **Marginal Citations**

**M1** 1868 c.101.

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- (1) On the application of the Lord Advocate, the court may, in respect of moveable property affected by a restraint order (whether such property 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) 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.
  - (3) The execution of an arrestment under sub-paragraph (2) 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) 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 Lord Advocate shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.

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