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*Changes to legislation: There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 1

Section 34.

#### ADMINISTRATORS

##### *Appointment of administrators*

- 1 (1) On the application of the prosecutor the <sup>M1</sup>court may as regards property—
- (a) affected by a restraint order or a suspended forfeiture order, appoint a person to manage, or otherwise deal with, the property; or
  - (b) where a suspended forfeiture order <sup>F1</sup> . . . has been made, appoint a person (or empower an appointee under paragraph (a) above) to realise the property, in accordance with the court's directions and may (whether on making the appointment or from time to time) require any person having possession of the property to give possession of it to the appointee (any such appointee being in this Act referred to as an "administrator").
- (2) A requirement under sub-paragraph (1) above—
- (a) <sup>F2</sup> . . . may relate to the property generally or to particular such property and may be subject to such exceptions and conditions as may be specified by the court;
  - (b) <sup>F3</sup> .....
- (3) On a requirement being imposed under sub-paragraph (1) above—
- (a) the clerk of court shall forthwith notify—
    - (i) the person in respect of whom the restraint order, or as the case may be the suspended forfeiture order <sup>F4</sup> . . . , has been made; and
    - (ii) any other person named in the requirement as being subject to it; and
  - (b) any dealing of or with such person in relation to the property shall be of no effect in a question with the administrator unless whoever dealt with the person had, at the time when the dealing occurred, no knowledge of the appointment.
- (4) The court, at the instance of any person having an interest, may at any time—
- (a) vary or withdraw a requirement imposed under sub-paragraph (1) above; or
  - (b) without prejudice to paragraph 4 below or to the powers and duties of an administrator pending a decision under this sub-sub-paragraph, on cause shown, remove the administrator from office.
- (5) On the death or resignation of the administrator, or on his removal from office under sub-paragraph (4)(b) above or paragraph 5 below, the court shall appoint a new administrator.
- (6) Such of the property (if any) as was, by virtue of paragraph 2(3) below, vested in the administrator who has died, resigned or been removed shall forthwith vest in the new administrator; and any requirement imposed under sub-paragraph (1) above shall, on

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the person subject to the requirement being notified in writing of the appointment by the appointee, apply in relation to the appointee instead of in relation to his predecessor.

- (7) The administration of property by an administrator shall be deemed continuous notwithstanding any temporary vacancy in that office.
- (8) Any appointment under this paragraph shall be on such conditions as to caution as the accountant of court may think fit to impose; but the premium of any bond of caution or other security thereby required of the administrator shall be treated as part of his outlays in his actings as such.
- (9) Without prejudice to paragraph 5 below, section 6 of the <sup>M2</sup>Judicial Factors (Scotland) Act 1889 (supervision of judicial factors) shall not apply in relation to an appointment under this section.

#### Textual Amendments

- F1** Words in Sch. 1 para. 1(1)(b) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss.456-458(1), Sch. 11 para. 28(3)(a), {Sch. 12}; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F2** Words in Sch. 1 para. 1(2)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(a), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F3** Sch. 1 para. 1(2)(b) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(a), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F4** Words in Sch. 1 para. 1(3)(a)(i) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(a), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

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

- C3** Sch. 1 para. 1 extended (E.W.) (17.4.2001) by S.I. 2001/953, art. 3(4)(a)(i)

#### Marginal Citations

- M1** 1995 c. 39.  
**M2** 1889 c. 39.

### *Functions of administrators*

- 2 (1) Subject to paragraph 5 below, an administrator—
- (a) shall be entitled to take possession of <sup>F5</sup>. . . shall as soon as practicable take possession of, the property as regards which he has been appointed and of any document which both—
- (i) is in the possession or control of the person (in this paragraph referred to as “A”) in whom the property is vested (or would be vested but for an order made under sub-paragraph (3) below); and
- (ii) relates to the property or to A’s assets, business or financial affairs;
- (b) shall be entitled to have access to, and to copy, any document relating to the property or to A’s assets, business or financial affairs and not in such possession or control as is mentioned in sub-sub-paragraph (a) above;
- (c) may bring, defend or continue any legal proceedings relating to the property;
- (d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;

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- (e) may, if the administrator considers that to do so would be beneficial for the management or realisation of the property—
  - (i) carry on any business of A;
  - (ii) exercise any right of A as holder of securities in a company;
  - (iii) grant a lease of the property or take on lease any other property; or
  - (iv) enter into any contract, or execute any deed, as regards the property or as regards A's business;
- (f) may, where any right, option or other power forms part of A's estate, make payments or incur liabilities with a view to—
  - (i) obtaining property which is the subject of; or
  - (ii) maintaining,the right, option or power;
- (g) may effect or maintain insurance policies as regards the property on A's business;
- (h) where he has been appointed under paragraph 1(1)(b) above may, where A has an uncompleted title to any heritable estate, complete title thereto;

Provided that completion of title in A's name shall not validate by accretion any unperfected right in favour of any person other than the administrator;

- (j) may sell, purchase or exchange property or discharge any security for an obligation due to A:

Provided that it shall be incompetent for the administrator or an associate of his (within the meaning of section [F6229 of the Bankruptcy (Scotland) Act 2016 ] ) to purchase any of A's property in pursuance of this paragraph;

- (k) may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor;
- (l) may discharge any of his functions through agents or employees;

Provided that the administrator shall be personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator by virtue of paragraph 6(1) and (3) below;

- (m) may take such professional advice as he may consider requisite for the proper discharge of his functions;
- (n) may at any time apply to the court for directions as regards the discharge of his functions;
- (o) may exercise any power specifically conferred on him by the court, whether such conferral was at the time of his appointment or on his subsequent application to the court in that regard; and
- (p) may do anything incidental to the above powers and duties.

- (2) Subject to the proviso to sub-paragraph (1)(j) above—
  - (a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that subsection; and
  - (b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.
- (3) The exercise of a power mentioned in any of sub-paragraphs (1)(c) to (k) above shall be in A's name except where and in so far as an order made by the court under this

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sub-paragraph (either on its own motion or on the application of the administrator) has vested the property in the administrator (or in his predecessor in that office).

#### Textual Amendments

- F5** Words in Sch. 1 para. 2(1)(a) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1), Sch. 11 para. 28(3)(b), [Sch. 12](#); S.S.I. 2003/210, [art. 2](#), Sch. (subject to arts. 3-7)
- F6** Words in Sch. 1 para. 2(1)(j) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 14](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

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

- C4** Sch. 1 para. 2(3) extended (E.W.) (17.4.2001) by [S.I. 2001/953](#), [art. 3\(4\)\(a\)\(i\)](#)

#### *Money received by administrator*

- 3 (1) Subject to sub-paragraph (2) below, all money received by an administrator in the exercise of his functions shall be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 2(3) above) of the holder of the property realised, in an appropriate bank or institution.
- (2) The administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Secretary of State by regulations made by statutory instrument.
- (3) In sub-paragraph (1) above, “appropriate bank or institution” means a bank or institution mentioned in section 2(1) of the <sup>M3</sup>Banking Act 1979 or for the time being specified in Schedule 1 to that Act.

#### Marginal Citations

- M3** 1979 c. 37.

#### *Application of proceeds of realisation and other sums*

- 4 **F7** .....

#### Textual Amendments

- F7** Sch. 1 para. 4 repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1), Sch. 11 para. 28(3)(c), [Sch. 12](#); S.S.I. 2003/210, [art. 2](#), Sch. (subject to arts. 3-7)

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

- C5** Sch. 1 para. 4 extended (E.W.) (17.4.2001) by [S.I. 2001/953](#), [art. 3\(4\)\(a\)\(i\)](#)

#### *Supervision of administrators*

- 5 (1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by <sup>F8</sup>. . . this Act; and in particular an administrator proposing to exercise functions conferred by any of paragraphs 2(1)(c) to (p) above shall first obtain the consent of the accountant of court to such exercise.

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- (2) If it appears to the accountant of court that an administrator has, without reasonable cause, failed to perform a duty imposed on him by any provision of section 16 of this Act or of this Schedule, he shall report the matter to the court which, after giving the administrator an opportunity to be heard as regards the matter, may remove the administrator from office, censure him or make such other order as the circumstances of the case may appear to the court to require.

#### Textual Amendments

- F8** Words in Sch. 1 para. 5(1) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(d), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

#### *Accounts and remuneration of administrator*

- 6 (1) The administrator shall keep such accounts in relation to his intromissions with the property as regards which he is appointed as the court may require and shall lodge these accounts with the accountant of court at such times as may be fixed by the court in that regard; and the accountant of court shall audit the accounts and issue a determination as to the amount of outlays and, on the basis mentioned in subparagraph (3) below, remuneration payable to the administrator in respect of those intromissions.
- (2) Not later than two weeks after the issuing of a determination under subparagraph (1) above, the administrator or the Lord Advocate may appeal against it to the court.
- (3) The basis for determining the amount of remuneration payable to the administrator shall be the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.
- (4) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

#### *Effect of appointment of administrator on diligence*

- 7 Without prejudice to sections 32 and 33 of this Act—
- (a) no arrestment or [<sup>F9</sup>attachment] of property executed on or after an appointment as regards the property under paragraph 1 above shall be effectual to create a preference for the arrester or poider and any such property so arrested or poided, or the proceeds of sale thereof, shall be handed over to the administrator;
- (b) no poiding of the ground in respect of property on or after such appointment shall be effectual in a question with the administrator except for the interest on the debt of a secured creditor, being interest for the current half-yearly term and arrears of interest for one year immediately before the commencement of that term;
- (c) it shall be incompetent on or after such appointment for any other person to <sup>F10</sup> . . . or to be confirmed as executor-creditor on that property; and
- (d) no inhibition on property which takes effect on or after such appointment shall be effectual to create a preference for the inhibitor in a question with the administrator.

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**Textual Amendments**

- F9** Word in Sch. 1 para. 7(a) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 para. 24**
- F10** Words in Sch. 1 para. 7(c) repealed (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227, **Sch. 6** (with s. 223); S.S.I. 2009/67, **art. 3**, Sch. 2 (with arts. 4-6)

*Further provision as to administrators*

- 8 (1) Where an administrator takes any action—
- (a) in relation to property as regards which he has not been appointed, being action which he would be entitled to take if he had been so appointed,
  - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of an administrator appointed under this Schedule shall <sup>F11</sup> . . . be paid by the Lord Advocate.
- (3) Any disposal of property under paragraph 1 above to a person taking in good faith shall vest the ownership of the property in that person.

**Textual Amendments**

- F11** Words in Sch. 1 para. 8(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(e), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

*Discharge of administrator*

- 9 After an administrator has lodged his final accounts under paragraph 6(1) above, he may apply to the accountant of court to be discharged from office; and such discharge, if granted, shall have the effect of freeing him from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising the functions conferred on him by this Act.

*Compensation*

- 10 (1) Where the court, on an application made to it by a person other than the accused <sup>F12</sup> . . . , is satisfied on the balance of probabilities that in relation to any property realised under paragraph 1 above he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.
- (2) <sup>F13</sup> . . . . .
- (3) <sup>F14</sup> . . . . .

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#### Textual Amendments

- F12** Words in Sch. 1 para. 10(1) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(f), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F13** Sch. 1 para. 10(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(f), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F14** Sch. 1 para. 10(3) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(f), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

#### *Rules of court as regards accountant of court's supervision etc of administrators*

- 11 Without prejudice to section 5 of the <sup>M4</sup>Court of Session Act 1988 (power to regulate procedure etc. by Act of Sederunt), provision may be made by rules of court as regards (or as regards any matter incidental to) the accountant of court's powers and duties under this Act in relation to the functions of administrators.

#### Marginal Citations

- M4** 1988 c.36.

#### *Power to facilitate realisation*

- 12 (1) Without prejudice to any enactment or rule of law in respect of the recording of deeds relating to heritable property or the registration of interests therein, the court, to facilitate realisation under paragraph 1 above, may—
- (a) order any person (in this paragraph referred to as “A”) holding an interest in property, not being such person (in this paragraph referred to as “B”) as is mentioned in <sup>F15</sup> . . . section 21 of this Act, to make such payment to an administrator appointed to realise estate comprising an interest of B in that property as the court may direct and may, subject to such payment being made—
- (i) authorise the administrator to transfer B's interest to A or to discharge it in favour of A; or
- (ii) itself by order transfer or discharge B's interest; or
- (b) by order—
- (i) transfer A's interest to B; or
- (ii) discharge it in favour of B,
- on the administrator making such payment to A out of that estate in respect of A's interest as the court may direct.
- (2) The court may make such incidental provision in relation to any exercise of powers conferred on it by sub-paragraph (1) above as it considers appropriate; but it shall not exercise those powers without giving such persons as hold an interest in the property reasonable opportunity to make representations to it in that regard.

#### Textual Amendments

- F15** Words in Sch. 1 para. 12(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(g), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

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

C6 Sch. 1 para. 12 extended (E.W.) (17.4.2001) by S.I. 2001/953, art. 3(4)(a)(i)

SCHEDULE 2

Section 44.

SEQUESTRATION ETC. OF PERSONS HOLDING REALISABLE OR FORFEITABLE PROPERTY

*Sequestration of person holding realisable or forfeitable property*

- 1 (1) Where the estate of a person who holds realisable or forfeitable property is sequestrated—
- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section [F1622(7) of the 2016] Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration; and
  - (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph,
- is excluded from the debtor's estate for the purposes of that Act.
- (2) Where an award of sequestration has been made, the powers conferred on the court by sections 28 to 33 [F17 . . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule shall not be exercised in relation to—
- (a) property comprised in the whole estate of the debtor (within the meaning of section [F1879 of the 2016] Act); or
  - [F19(b) any income of the debtor which has been ordered, under section 90 or 95 of that Act, to be paid to the trustee or any estate which, under subsection (4) of section 79, or subsection (5) of section 86, of that Act vests in the trustee,]
- and it shall not be competent to submit a claim in relation to the confiscation order to the [F20trustee in the sequestration in accordance with section 122] of that Act.
- (3) Nothing in the [F212016] Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) Where, during the period before sequestration is awarded, an interim trustee stands appointed under section [F2254(1) of the 2016] Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the interim trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (5) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by Part I of this Act or an implicative gift—
- (a) no decree shall, at any time when proceedings as regards an offence to which Part I of this Act applies or, as the case may be, a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint



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- order, be granted under section [F23]98 or 99 of the 2016] Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
- (b) any decree granted under either of the said sections [F24]98 and 99] after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

#### Textual Amendments

- F16** Words in Sch. 2 para. 1(1)(a) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(a)**
- F17** Words in Sch. 2 para. 1(2) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1), [Sch. 11 para. 28\(4\)\(a\)](#), **Sch. 12**; [S.S.I. 2003/210](#), art. 2, Sch. (subject to arts. 3-7)
- F18** Words in Sch. 2 para. 1(2)(a) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(b)(i)**
- F19** Words in Sch. 2 para. 1(2)(b) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(b)(ii)**
- F20** Words in Sch. 2 para. 1(2) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(b)(iii)**
- F21** Word in Sch. 2 para. 1(3) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(c)**
- F22** Words in Sch. 2 para. 1(4) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(d)**
- F23** Words in Sch. 2 para. 1(5) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(e)(i)**
- F24** Words in Sch. 2 para. 1(5) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(e)(ii)**

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

- C7** Sch. 2 para. 1(2)(3) modified (S.) (1.4.1996) by [1995 c. 40](#), ss. 4, 7(2), **Sch. 3 Pt. II para. 15(4)**

#### *Bankruptcy in England and Wales of person holding realisable or forfeitable property*

- 2 (1) Where a person who holds <sup>F25</sup>. . . forfeitable property is adjudged bankrupt—
- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made; and
- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph,
- is excluded from the bankrupt's estate for the purposes of Part IX of the <sup>M5</sup>Insolvency Act 1986.

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- (2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 28 to 33<sup>F26</sup> . . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt’s estate for the purposes of the said Part IX;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the Insolvency Act 1986 (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement and certain tenancies); and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the Insolvency Act 1986.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of the Insolvency Act 1986 and any property of the debtor is subject to a restraint order the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (5)<sup>F27</sup> . . . . .

#### Textual Amendments

- F25** Words in Sch. 2 para. 2(1) repealed (24.3.2003) by *Proceeds of Crime Act 2002 (c. 29)*, ss. 456-458(1), Sch. 11 para. 28(4)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)
- F26** Words in Sch. 2 para. 2(2) repealed (24.3.2003) by *Proceeds of Crime Act 2002 (c. 29)*, ss. 456-458(1), Sch. 11 para. 28(4)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)
- F27** Sch. 2 para. 2(5) repealed (24.3.2003) by *Proceeds of Crime Act 2002 (c. 29)*, ss. 456-458(1), Sch. 11 para. 28(4)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

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

- C8** Sch. 2 para. 2(2)-(5) modified (S.) (1.4.1996) *1995 c. 40*, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(5)**

#### Marginal Citations

- M5** *1986 c. 45*.

#### *Winding up of company holding realisable or forfeitable property*

- 3 (1) Where realisable or forfeitable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time; and

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- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 28 to 33<sup>F28</sup> . . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule shall not be exercised in relation to any realisable or forfeitable property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4)<sup>F29</sup> . . . . .
- (5)<sup>F30</sup> . . . . .
- (6) In this paragraph—
- “company” means any company which may be wound up under the Insolvency Act 1986; and
- “the relevant time” means—
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

**Textual Amendments**

- F28** Words in Sch. 2 para 3(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(c), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F29** Sch. 2 para. 3(4) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(c), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)
- F30** Sch. 2 para. 3(5) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(c), Sch. 12; S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

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

- C9** Sch. 2 para. 3(2)-(6) modified (S.) (1.4.1996) by 1995 c. 40, ss. 4, 7(2), Sch. 3 Pt. II para. 15(6)

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*Property subject to floating charge*

- 4 (1) Where any property held subject to a floating charge by a company is realisable or forfeitable property and a receiver has been appointed by, or on the application of, the holder of the charge, the powers of the receiver in relation to the property so held shall not be exercisable in relation to—
- (a) so much of it, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such appointment; and
  - (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph.
- (2) Where, in the case of a company, such an appointment has been made, the powers conferred on the court by sections 28 to 33<sup>F31</sup> . . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule shall not be exercised in relation to any realisable property held by the company in relation to which the powers of the receiver are exercisable—
- (a) so as to inhibit the receiver from exercising his powers for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of the receiver’s powers in respect of the property.
- (3) Nothing in the<sup>M6</sup> Insolvency Act 1986, shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) In this paragraph—
- “company” has the same meaning as in paragraph 3 above; and
- “floating charge” includes a floating charge within the meaning given by section 462 of the<sup>M7</sup> Companies Act 1985 (power of incorporated company to create floating charge).

**Textual Amendments**

**F31** Words in Sch. 2 para. 4(2) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1), Sch. 11 para. 28(4)(d), [Sch. 12](#); S.S.I. 2003/210, [art. 2](#), Sch. (subject to arts. 3-7)

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

**C10** Sch. 2 para. 4(2)-(4) modified (S.) (1.4.1996) by 1995 c. 40, ss. 4, 7(2), [Sch. 3 Pt. II para. 15\(7\)](#)

**Marginal Citations**

**M6** 1986 c. 45.

**M7** 1985 c. 6.

*Insolvency practitioners dealing with property subject to restraint order*

- 5 (1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in the [<sup>F32</sup>2016] Act, where

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- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are, because that property is for the time being subject to a restraint order, not exercisable; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the insolvency practitioner’s negligence; and the insolvency practitioner shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, sequestration or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his actings in connection with those proceedings.

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
  - (a) in respect of such realisable property as is mentioned in sub-paragraph (1) (a) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
  - (b) other than in respect of such realisable property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under sub-paragraph (1) above) to payment of those expenses under paragraph 4(2) or (4)(a) of Schedule 1 to this Act.

- (3) In the foregoing provisions of this paragraph, the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction <sup>F33</sup>... subsection (5) of that section shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

#### Textual Amendments

- F32** Word in [Sch. 2 para. 5\(1\)](#) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 14\(2\)\(f\)\(i\)](#)
- F33** Words in [Sch. 2 para. 5\(3\)](#) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 14\(2\)\(f\)\(ii\)](#)

#### Interpretation

- 6 (1) In this Schedule “the [<sup>F34</sup>2016] Act” means the <sup>M8</sup>Bankruptcy (Scotland) Act [<sup>F34</sup>2016].
- (2) References in this Schedule to the conclusion of proceedings, except for the purposes of paragraph 2(5) above, shall be construed—
  - (a) <sup>F35</sup>.....
  - (b) as regards property subject to a restraint order under section 28(1)(b) of this Act, in accordance with section 30(5) of this Act.

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- (3) References in this Schedule to property held by a person include a reference to property vested in the [<sup>F36</sup>trustee (or interim trustee)] in his sequestration or in his trustee in bankruptcy or liquidation.

#### Textual Amendments

- F34** Word in Sch. 2 para. 6(1) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(g)(i)**
- F35** Sch. 2 para. 6(2)(a) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1), Sch. 11 para. 28(4)(e), **Sch. 12**; [S.S.I. 2003/210](#), art. 2, Sch. (subject to arts. 3-7)
- F36** Words in Sch. 2 para. 6(3) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 14(2)(g)(ii)**

#### Marginal Citations

- M8** 1985 c. 66.

## TABLE OF DERIVATIONS

*Notes:*

- 1 This Table shows the derivation of the provisions of the Act.
- 2 The following abbreviations are used in the Table:—

### ACTS OF PARLIAMENT

1987	= Criminal Justice (Scotland) Act 1987 (c. 41)
1988	= Criminal Justice Act 1988 (c. 33)
1993	= Criminal Justice Act 1993 (c. 36)
1994	= Drug Trafficking Act 1994 (c. 37)
1995	= Criminal Justice (Scotland) Act 1995 (1995 c. 20)
1995CP	= Criminal Procedure (Consequential Provisions) (Scotland) Act (1995 c. 40)
1995CLC	= Criminal Law (Consolidation) (Scotland) Act 1995 (1995 c. 39)

Provision	Derivation
1(1)	1987 s.1(1); 1995 s.70(1), Sch.5 §.2
(2)	1987 s.1(2); 1995 s.70(2), Sch.5 §.2
(3)	1987 s.1(2B); 1995 s.70(3), Sch.5 §.2
(4)	1995 s.70(4)

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(5)	1987 s.1(1); 1995 s.70(5), Sch.5 §.2
(6)	1987 s.1(2A); 1995 s.70(6), Sch.5 §.2
(7)	1987 s.1(4); 1995 s.70(7)
2	1995 s.71
3	1987 s.3; 1994 Sch.1 §.12; 1995 Sch.5 §.4
4(1)	1987 s.5(1); 1995 s.72(1), Sch.5 §.6
(2)	1987 s.5(2); 1995 s.72(2), Sch.5 §.6
(3)	1987 s.5(4); 1995 s.72(3), Sch.5 §.6
(4)	1987 s.5(5); 1995 s.72(4), Sch.5 §.6
(5)	1987 s.5(5); 1995 s.72(5), Sch.5 §.6
(6)	1987 s.5(7); 1995 Sch.5 §.6
5(1)	1995 s.73(1)
(2)	1995 s.73(2)(part)
(3)	1995 s.73(6)
(4)	1995 s.73(7)
(5)	1995 s.73(8)
6(1)	1987 s.6(1); Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) Sch.8 §.37; 1995 Sch.5 §.7
(2)	1987 s.6(2)(part); 1995 Sch.5 §.7
(3)	1987 s.5(7A); 1995 Sch.5 §.6
(4)	1987 s.5(7B); 1995 Sch.5 §.6
(5)	1987 s.5(7C); 1995 Sch.5 §.6
7(1)	1987 s.6(2)(part); 1995 s.73(2)(part), Sch.5 §.7
(2)	1987 s.6(2)(part); 1995 s.73(2)(part), Sch.5 §.7
(3)	1987 s.6(2)(part); 1995 s.73(2)(part), Sch.5 §.7
(4)	1987 s.6(3); 1995 s.73(3), Sch.5 §.7
(5)	1987 s.6(3A); 1995 s.73(4), Sch.5 §.7
(6)	1995 s.73(5)
8(1)	1987 s.1(2C); 1995 s.74(1), Sch.5 §.2
(2)	1987 s.1(2D); 1995 s.74(2), Sch.5 §.2
(3)	1987 s.1(5); 1995 s.74(3), Sch.5 §.2

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(4)	1987 s.1(2E); 1995 s.74(4), Sch.5 §.2
9(1)	1987 s.4(1)(part); 1995 s.75(1), Sch.5 §.5
(2)	1987 s.4(1)(part); 1995 s.75(2), Sch.5 §.5
(3)	1987 s.4(2); 1995 s.75(3), Sch.5 §.5
(4)	1987 s.4(3); 1995 s.75(4)
(5)	1987 s.4(4); 1995 s.75(5), Sch.5 §.5
(6)	1987 s.4(6); 1995 s.75(6), Sch.5 §.5
(7)	1995 s.75(7)
(8)	1987 s.4(5)
10	1987 s.2; 1995 s.76, Sch.5 §.3
11	1987 s.6A; 1995 s.77, Sch.5 §.8
12	1987 s.25; 1995 s.78, Sch.23
13(1)	1987 s.6B(1); 1995 s.79(1), Sch.5 §.8
(2)	1987 s.6B(2); 1995 s.79(2), Sch.5 §.8
(3)	1987 s.6B(3); 1995 s.79(3), Sch.5 §.8
(4)	1987 s.6B(4); 1995 s.79(4), Sch.5 §.8
(5)	1987 s.6B(7); 1995 s.79(5), Sch.5 §.8
(6)	1987 s.6B(6); 1995 s.79(6), Sch.5 §.8
(7)	1987 s.6B(9); 1995 s.79(7), Sch.5 §.8
(8)	1987 s.6B(8); 1995 s.79(8), Sch.5 §.8
(9)	1987 s.6B(5); 1995 Sch.5 §.8
(10)	1987 s.6B(10); 1995 s.79(9), Sch.5 §.8
14	1987 s.7; 1994 Sch.1 §.13; 1995 s.80, Sch.5 §.9
15	Criminal Justice (International Co-operation) Act 1990 (c. 5) s.15; 1995 s.81
16	1987 s.23; 1995 s.82, Sch.5 §.21
17(1)	1987 s.26(1); 1995 s.83(1), Sch.5 §.24
(2)	1987 s.26(1A); 1995 s.83(2), Sch.5 §.24
(3)	1987 s.26(2); 1995 s.83(3), Sch.5 §.24
(4)	1987 s.26(3); 1995 s.83(4), Sch.5 §.24
(5)	1987 s.26(4); 1995 s.83(5), Sch.5 §.24
(6)	1987 s.26(6), 47(5); 1995 s.83(6), Sch.5 §.24



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(7)	1987 s.47(1); 1995 s.83(7), Sch.5 §.33
18	1995 s.18
19	1995 s.19
20	1995 s.20
21	1995 s.84
22	1995 s.85
23	1995 s.86
24	1995 s.87
25	1995 s.88
26	1995 s.89
27	1995 s.90
28(1)	1987 s.8(1); 1995 s.91(1), Sch.5 §.11
(2)	1987 s.8(2); 1995 s.91(2), Sch.5 §.11
(3)	1987 s.8(7); 1995 s.91(3), Sch.5 §.11
(4)	1987 s.8(8); 1995 s.91(4), Sch.5 §.11
(5)	1987 s.10(1); 1994 Sch.1 §.14; 1995 s.91(5)
(6)	1987 s.10(2); 1995 s.91(6)
(7)	1987 s.8(9); 1995 s.91(7), Sch.5 §.11
(8)	1987 s.12(1); 1995 s.91(8), Sch.5 §.14
(9)	1987 s.12(2); 1995 s.91(9)
(10)	1987 s.12(3); 1995 s.91(10), Sch.5 §.14
29(1)	1995 s.92(1); Drafting
(2)	1987 s.8(3); 1995 s.92(2), Sch.5 §.11
(3)	1987 s.8(4); 1995 s.92(3), Sch.5 §.11
(4)	1987 s.8(5); 1995 s.92(4), Sch.5 §.11
(5)	1987 s.8(6); 1995 s.92(5), Sch.5 §.11
(6)	1987 s.47(5); 1995 s.92(6), Sch.5 §.33
(7)	1987 s.8(10); 1995 s.92(7), Sch.5 §.11
30	1995 s.93
31	1987 s.9; 1995 s.94, Sch.5 §.11
32	1987 s.11; 1995 s.95, Sch.5 §.12
33	1987 s.11A; 1995 s.96, Sch.5 §.13
34	1995 s.97; Drafting
35	1987 s.27; 1994 Sch.1 §.18; 1995 s.98

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36	1987 s.28; 1994 Sch.1 §.19; 1995 s.99
37	1987 s.28A; 1995 s.100, Sch.5 §.25
38	1987 s.28B; 1995 s.101, Sch.5 §.25
39(1)	1987 s.29(1); 1995 s.102(1)
(2)	1987 s.29(2); 1995 s.102(2)
(3)	1987 s.29(3); 1995 s.102(3)
(4)	1987 s.29(3A); 1993 s.22(2)
(5)	1987 s.29(4); 1993 s.21(3); 1995 s.102(4)
40	1987 s.30; Law Reform Miscellaneous Provisions (Scotland) Act 1990 (c. 40) s.63; 1993 s.21(3); 1995 s.103
41	1987 s.30A; Law Reform Miscellaneous Provisions (Scotland) Act 1990 (c. 40) s.63; 1995 s.104
42	1995 s.105
43	1987 s.32; 1995 s.106, Sch.5 §.27
44	1995 s.107; Drafting
45	1987 s.7A; 1995 s.108, Sch.5 §.10
46	1987 s.37A; 1995 s.109, Sch.5 §.32
47(1)	1987 s.45(1); 1995 s.110(4)
(2)	1987 s.45(2); 1995 s.110(5)
(3)	1987 s.45(5); 1995 s.110(7)
(4)	1987 s.45(4); 1995 s.110(6)
48	1987 s.46
49(1)	1995 s.111(1)
(2)	1987 s.1(6); 1988 Sch.5 §.19; 1990 Sch.4 §.5; 1993 s.24(13)
(3)	1987 s.1(6)
(4)	1987 s.1(7); 1993 s.24(15)
(5)	1987 s.1(6); 1990 Sch.4 §.5; 1993 s.24(14)
(6)	1987 ss.5(3), 8(12); 1995 s.111(3), Sch.5 §s.6, 11
(7)	1987 s.47(6); 1995 s.111(4), Sch.5 §.33
50(1), (2)	Drafting
(3) — (5)	1995 s.115(4) — (6)
Sch. 1	

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§.1	1987 s.13; 1995 Sch.3 §.1, Sch.5 §.15
§.2	1987 s.14; 1995 Sch.3 §.2, Sch.5 §.16
§.3	1987 s.15; 1995 Sch.3 §.3
§.4	1987 s.16; 1988 Sch.5 §.21; 1995 Sch.3 §.4, Sch.5 §.17
§.5	1987 s.17; 1995 Sch.3 §.5, Sch.5 §.18
§.6	1987 s.18; 1995 Sch.3 §.6, Sch.5 §.19
§.7	1987 s.19; 1995 Sch.3 §.7
§.8	1987 s.20; 1995 Sch.3 §.8, Sch.5 §.20
§.9	1987 s.21; 1995 Sch.3 §.9
§.10	1987 s.26(5), (6), 47(5); 1995 Sch.3 §.10
§.11	1987 s.22; 1995 Sch.5 §.11
§.12	1987 s.24; 1995 Sch.5 §.12
Sch. 2	1
§.1	1987 s.33; Housing Act 1988 (c. 50) Sch.17 §.81; 1995 Sch.4 §.1, Sch.5 §.28
§.2	1987 s.34; 1988 Sch.5 §.22; Housing Act 1988 (c. 50) Sch.17 §.81; 1995 Sch.4 §.2, Sch.5 §.29
§.3	1987 s.35; 1995 Sch.4 §.3, Sch.5 §.30
§.4	1987 s.36; 1995 Sch.4 §.4, Sch.5 §.31
§.5	1987 s.37; 1995 Sch.4 §.5, Sch.5 §.32
§.6	1987 s.47(1), (4); 1995 Sch.4 §.6

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**Changes to legislation:**

There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995.