

*Status: Point in time view as at 18/06/2009.*

*Changes to legislation: Terrorism Act 2000, Cross Heading: Restraint orders is up to date with all changes known to be in force on or before 26 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 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—
- proceedings have been instituted in Scotland for [<sup>F1</sup>a relevant offence],
  - the proceedings have not been concluded, and
  - 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.
- [<sup>F2</sup>(2) The Court of Session may also make a restraint order on such an application where—
- a criminal investigation has been instituted in Scotland with regard to [<sup>F1</sup>a relevant offence], and
  - it appears to the Court of Session that a forfeiture order may be made in any 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 [<sup>F3</sup>any 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.
- [<sup>F4</sup>(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.]

#### Textual Amendments

- F1** Words in Sch. 4 para. 18(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), Sch. 3 para. 5(13) (with s. 101(2)); S.I. 2009/1256, art. 2(c)
- F2** Sch. 4 Pt. 2 para. 18(2) substituted (20.12.2001) by 2001 c. 24, s. 3, Sch. 2 Pt. 2 para. 3(2); S.I. 2001/4019, art. 2(1)(c)
- F3** Words in Sch. 4 Pt. 2 para. 18(3) substituted (20.12.2001) by 2001 c. 24, s. 3, Sch. 2 Pt. 2 para. 3(3); S.I. 2001/4019, art. 2(1)(c)

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**F4** Sch. 4 Pt. 2 para. 18(6) inserted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(4)**; S.I. 2001/4019, **art. 2(1)(c)**

- 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.
- [<sup>F5</sup>(3) A restraint order made under paragraph 18(1) shall in particular be recalled on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (3A) A restraint order made under paragraph 18(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of [<sup>F6</sup>relevant offences] are instituted within such time as the Court of Session considers reasonable, and
- (b) if all proceedings in respect of [<sup>F6</sup>relevant offences] have been concluded.]
- (4) When proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the Court for recall of the order.

#### Textual Amendments

- F5** Sch. 4 para. 19(3)(3A) substituted for Sch. 4 para. 19(3) (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(5)**; S.I. 2001/4019, **art. 2(1)(c)**
- F6** Words in Sch. 4 para. 19(3A)(a)(b) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(14)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 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

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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

**Marginal Citations**

**M1** 1868 c.101.

- 22 (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.
- <sup>x123</sup> (1) This paragraph applies where a restraint order is recalled under paragraph [F7]19(3A) (a).
- (2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for [F8]a relevant offence] which—
  - (a) do not result in conviction for an [F9]a relevant offence],
  - (b) result in conviction for [F9]a relevant offence] s in respect of which the person convicted is subsequently pardoned by Her Majesty, or
  - (c) result in conviction for [F9]a relevant offence] which is subsequently quashed.
- (3) A person who had an interest in any property which was subject to the order may apply to the Court of Session for compensation.

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- (4) The Court of Session may order compensation to be paid to the applicant if it is satisfied—
- (a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence,
  - (b) that the person in default was a constable of a police force or a constable acting with the powers of such a constable, or was a procurator fiscal or was acting on behalf of the Lord Advocate,
  - (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or the restraint order, and
  - (d) having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The Court of Session shall not order compensation to be paid where it appears to it that the proceedings for the offence would have been instituted even if the serious default had not occurred.
- (6) Compensation payable under this paragraph shall be paid—
- (a) where the person in default was a constable of a police force, out of the police fund out of which the expenses of that police force are met;
  - (b) where the person in default was a constable other than is mentioned in paragraph (a) above, but with the powers of such a constable, by the body under whose authority he acts; and
  - (c) where the person in default was a procurator fiscal or was acting on behalf of the Lord Advocate, by the Lord Advocate.
- (7) This paragraph is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) to (c) of sub-paragraph (2).

#### Editorial Information

- X1** The omission of the cross-heading "Compensation" on 18.6.2009 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under "Restraint Orders" cross-heading.

#### Textual Amendments

- F7** Word in Sch. 4 Pt. 2 para. 23(1) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(6)**; S.I. 2001/4019, **art. 2(1)(c)**
- F8** Words in Sch. 4 para. 23(2) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(16)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F9** Words in Sch. 4 para. 23(2)(a)(b)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(16)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- <sup>x2</sup><sub>24</sub> (1) This paragraph applies where—
- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for [<sup>F10</sup>a relevant offence], and
  - (b) the proceedings result in a conviction which is subsequently quashed on an appeal under section 7(2) or (5) as applied by section 8(1).

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- (2) A person who had an interest in any property which was subject to the order may apply to the Court of Session for compensation.
- (3) The Court of Session may order compensation to be paid to the applicant if satisfied—
  - (a) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order, and
  - (b) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (4) Compensation payable under this paragraph shall be paid by the Secretary of State.

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**Editorial Information**

- X2** The omission of the cross-heading "Compensation" on 18.6.2009 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under "Restraint Orders" cross-heading.

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**Textual Amendments**

- F10** Words in [Sch. 4 para. 24\(1\)\(a\)](#) substituted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 39, 100\(5\), Sch. 3 para. 5\(17\)](#) (with s. 101(2)); [S.I. 2009/1256, art. 2\(c\)](#)

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