



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—

Status: This is the original version (as it was originally enacted).

- (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.