Status: *Point in time view as at 01/02/1991.*
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SCHEDULES

SCHEDULE 5

Section 103.

DRUG TRAFFICKING AMENDMENTS

PART I

AMENDMENTS OF DRUG TRAFFICKING OFFENCES ACT 1986

1 The [M1]Drug Trafficking Offences Act 1986 shall be amended as follows.

Marginal Citations
M1 1986 c. 32.

2 In section 7 (cases in which restraint orders and charging orders may be made)—
(a) in subsection (2)(a) for the words from “an" to “committed" there shall be substituted the words “whether by the laying of an information or otherwise, a person is to be charged with"; and
(b) in subsection (4), for the words “the proposed proceedings are not instituted" there shall be substituted the words “proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise)".

3 (1) The following subsection shall be inserted after subsection (5) of section 8 (restraint orders)—

“(5A) An application for the discharge or variation of a restraint order may be made by any person affected by it.”.

(2) The following subsections shall be added at the end of that section—

“(10) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply—
(a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
(b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

(11) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any

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registered land to which a restraint order or an application for such an order relates.”.

4 (1) The following paragraphs shall be substituted for subsection (3)(a) and (b) of section 9 (charging orders in respect of land, securities etc.)—

“(a) may be made only on an application by the prosecutor;

(b) may be made on an ex parte application to a judge in chambers;

(c) shall provide for notice to be given to persons affected by the order; and

(d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective”.

(2) The following subsection shall be added at the end of that section—

“(8) An application for the discharge or variation of a charging order may be made by any person affected by it.”.

5 Subsection (1) of section 10 of that Act (charging orders: supplementary provisions) shall cease to have effect.

6 (1) Section 12 (application of proceeds of realisation and other sums) shall be amended as follows.

(2) In subsection (1), after the word “shall" there shall be inserted the words “first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 17A(2) of this Act and then shall,".

(3) In subsection (3), for the words from “sum", in the second place where it occurs, to “balance" there shall be substituted the words “justices’ clerk shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The justices’ clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 17A(2) of this Act but not already paid under subsection (1) above.

(5) If the money was paid to the justices’ clerk by a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order the justices’ clerk shall next pay the receiver’s remuneration and expenses.

(6) After making—

(a) any payment required by subsection (4) above; and

(b) in a case to which subsection (5) above applies, any payment required by that subsection,

the justices’ clerk shall reimburse any amount paid under section 18(2) of this Act.

(7) Any balance in the hands of the justices’ clerk after he has made all payments required by the foregoing provisions of this section”.

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7 In section 15 (bankruptcy of defendant etc.)—

(a) subsection (5)(b) and (c) shall cease to have effect; and

(b) the following paragraph shall be substituted for subsection (7)(d)—

"(d) subsection (2)(b) is omitted.".

8 (1) Section 16 (sequestration in Scotland of defendant etc.) shall be amended as follows.

(2) At the end of subsection (2) there shall be inserted the words "and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act".

(3) The following subsection shall be substituted for subsection (5)—

"(5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.".

9 In subsection (1) of section 17 (winding up of company holding realisable property) the words from "but" to the end shall cease to have effect.

10 The following section shall be inserted after that section—

"**17A Insolvency officers dealing with property subject to restraint order.**

(1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—

(a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; 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 an order of the court 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 his negligence in so acting; and a person so acting 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, bankruptcy 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 acting in connection with those proceedings.

(2) Any person who, acting as an insolvency practitioner, incurs expenses—

(a) in respect of such property as is mentioned in paragraph (a) of subsection (1) 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

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(b) other than in respect of such 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 that subsection) to payment of those expenses under section 12(1) or (3)(za) of this Act.

(3) In this Act, 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 the reference in subsection (2)(a) of that section to a permanent or interim trustee in sequestration shall be taken to include a reference to a trustee in sequestration and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.".

11 In subsection (2) of section 18 (receivers: supplementary provisions) for "(3)(a)" there shall be substituted "(3B)".

12 In section 19 (compensation)—

(a) in paragraph (b)(i) of subsection (1), the words "(and no conviction for any drug trafficking offence is substituted)" shall cease to have effect;

(b) at the end of that subsection there shall be added the words "if, having regard to all the circumstances, it considers it appropriate to make such an order";

(c) in subsection (2)—

(i) the words "and that, but for that default, the proceedings would not have been instituted or continued,"; and

(ii) in paragraph (b), the word "substantial",

shall cease to have effect; and

(d) the following subsection shall be inserted after that subsection—

"(2A) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued if the serious default had not occurred.".

F1 . . . . . .

13

Textual Amendments

F1 Sch. 5 para. 13 repealed by Police Officers (Central Service) Act 1989 (c. 11, SIF 95), s. 3, **Sch.**

14 (1) The following paragraph shall be substituted for subsection (1)(d) of section 25 (enforcement of Northern Ireland orders)—

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"(d) the references to the laying of an information in section 7(2) and (4) of this Act included references to making a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.".

(2) In subsection (3) of that section the words "varying or revoking a previous Order in Council" shall cease to have effect.

15 The following sections shall be substituted for section 26—

"**26 Enforcement of other external orders.**

(1) Her Majesty may by Order in Council—

(a) direct in relation to a country or territory outside the United Kingdom designated by the Order ("a designated country") that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

(b) make—

(i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and

(ii) such provision as to evidence or proof of any matter for the purposes of this section and section 26A below; and

(iii) such incidental, consequential and transitional provision,

as appears to Her Majesty to be expedient; and

(c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Act—

"external confiscation order" means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and

"modifications" includes additions, alterations and omissions.

(3) An Order in Council under this section may make different provision for different cases or classes of case.

(4) The power to make an Order in Council under this section includes power to modify this Act in such a way as to confer power on a person to exercise a discretion.

(5) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

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26A Registration of external confiscation orders.

(1) On an application made by or on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if—

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.

(2) In subsection (1) above "appeal" includes—

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.".

16 The following subsections shall be substituted for subsections (12) and (13) of section 38 (general interpretation)—

"(12) Proceedings for an offence are concluded—

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

(b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside."

17 In section 40(4) (effect of Act in Scotland), in paragraph (b), for "17" there shall be substituted "17A".

PART II

AMENDMENTS OF CRIMINAL JUSTICE (SCOTLAND) ACT 1987

18 The [M2]Criminal Justice (Scotland) Act 1987 shall be amended as follows.

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Marginal Citations
M2 1987 c. 41.

19 In section 1 (confiscation orders) in paragraph (b) of subsection (2) after the words "restriction on importation" there shall be inserted the words "and exportation".

20 In subsection (6)(a) of section 11 (which applies the provisions of that section to restraint orders under the [M3]Drug Trafficking Offences Act 1986 registered in Scotland) after the word "information" there shall be inserted the words "in respect of the charge".

Marginal Citations
M3 1986 c. 22.

21 In subsection (3) of section 16 (application of proceeds of realisation and other sums) for the words from "sum", in the second place where it occurs, to "applied", in the third place where it occurs, there shall be substituted the words "sheriff clerk shall apply the money received—

(a) first, in payment of any expenses to payment of which a person is entitled under section 37(2) of this Act but which were not paid to him under subsection (1) above;

(b) next, in payment of the administrator's remuneration and expenses;

(c) next,".

22 In section 34(6)(d) (bankruptcy in England and Wales of person holding realisable property) for the words "subsections (2)(b) and (4) are" there shall be substituted the words "subsection (2)(b) is".

23 In subsection (5) of section 38 (order to permit entry to premises) after the word "constable" there shall be inserted the words "or person commissioned as aforesaid".

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