Status: *Point in time view as at 31/03/1996.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995, SCHEDULE 3. (See end of Document for details)*

SCHEDULES

SCHEDULE 3

Section 100.

ADMINISTRATORS

Appointment of administrators

1 (1) On the application of the prosecutor the 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 or a confiscation order 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) subject to paragraph (b) below, 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) shall relate to property mentioned in paragraph (b) of section 72(1) of this Act only if expressly stated so to do and then only in so far as the person in whom such property is vested is named in the requirement as being subject to it.

(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 or confiscation order, 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 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 [M1]Judicial Factors (Scotland) Act 1889 (supervision of judicial factors) shall not apply in relation to an appointment under this section.

Marginal Citations

M1 1889 c. 39.

Functions of administrators

2 (1) Subject to paragraph 5 below, an administrator—

(a) shall be entitled to take possession of, and if appointed (or empowered) under paragraph 1(1)(b) above where a confiscation order has been made 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 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;

(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 74 of the [M2]Bankruptcy (Scotland) Act 1985) 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 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).

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Marginal Citations
M2 1985 c. 66.

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 [M3]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 (1) This paragraph applies only to an administrator appointed to realise property where a confiscation order has been made.

(2) Subject to sub-paragraph (3) below, sums in the hands of an administrator which are—

(a) proceeds of a realisation of property under paragraph 1 above, and

(b) other property held by the person in respect of whom the confiscation order was made,

shall first be applied in payment of any expenses to the payment of which a person is entitled under paragraph 5(2) of Schedule 4 to this Act and then shall, after such payments (if any) as the court may direct have been made out of those proceeds and sums, be applied on the person's behalf towards the satisfaction of the confiscation order.

(3) If, after the amount payable under the confiscation order has been fully paid, any such proceeds and sums remain in the hands of the administrator, he shall distribute them—

(a) among such of those who held property which has been realised under this Act, and

(b) in such proportions,

as the court may, after giving such persons an opportunity to be heard as regards the matter, direct.

(4) The receipt of any sum by a sheriff clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sheriff clerk shall apply the money—

(a) first, in payment of any expenses to the payment of which a person is entitled under paragraph 5(2) of Schedule 4 to this Act but which were not paid to him under sub-paragraph (2) above;

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

(c) next, in reimbursement of any sums paid by the Lord Advocate under paragraph 8(2) below;

(d) next, in accordance with any direction given by the court under section 74(4) or 79(7) of this Act,

and the balance shall be payable and recoverable (or as the case may be disposed of) under section 203 or 412 of the 1975 Act (destination of fines) as applied by section 80 of this Act.

Supervision of administrators

5 (1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by Part II of 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.

(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 82 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.

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 sub-paragraph (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 sub-paragraph (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 98 and 99 of this Act—

(a) no arrestment or poinding 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 poinder and any such property so arrested

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or poinded, or the proceeds of sale thereof, shall be handed over to the administrator;

(b) no poinding 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 raise or insist in an adjudication against the property 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.

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, unless in a case where a confiscation order has been made there are sums available to be applied in payment of it under paragraph 4(4)(b) above, 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.

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 or the recipient of a gift caught by Chapter I of Part II of this Act, 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) An application under this paragraph shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made.

(3) Subsection (6) of section 95 of this Act shall apply for the purpose of determining for the purposes of this paragraph whether proceedings are concluded as it applies for the purposes of that section.

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

11 Without prejudice to section 5 of the [M4]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 Part II of 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 paragraph (a) or (b) of section 72(1) or section 87 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.

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