



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

VALID FROM 31/03/1996

### PART I

#### CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

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

- C1 Pt. I modified (10.7.1991) by S.I. 1991/1467, art. 3(2), Schs. 2, 3 (with arts. 4-9) (as amended (S.) (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64, Sch. 3 para. 31 (with s. 63))
- C2 Power to extend conferred (E.W.) (3.2.1995) by 1994 c. 37, s. 37(2)(a)(ii)

#### *Confiscation orders*

### 1 Confiscation orders.

- (1) Subject to the provisions of this Part of this Act, where a person is convicted in the High Court of, or is under section 104(1) of the <sup>M1</sup>1975 Act remitted to that Court for sentence as regards, an offence to which this section relates the Court may, on the application of the prosecutor made when he moves for sentence (or, if the case is one so remitted, made before sentence is pronounced), make an order (in this Act referred to as a “confiscation order”) requiring the person to pay such amount as the Court considers appropriate, being an amount not exceeding—
- subject to paragraph (b) below, what it assesses to be the value of the proceeds of the person’s drug trafficking; or
  - if the Court is satisfied that the property that might be realised in terms of this Part of this Act at the time the confiscation order is made has a value less than that of the proceeds of the person’s drug trafficking. what it assesses to be the value of that property.

**Status:** Point in time view as at 15/02/1994. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the *Criminal Justice (Scotland) Act 1987, Part I.* (See end of Document for details)

- (2) This section relates to any of the following—
- (a) an offence under section 4(2) (production, or being concerned in production, of controlled drug), 4(3) (supply of, or offer to supply, or being concerned in supply of, controlled drug), 5(3) (possession of controlled drug with intent to supply) or 20 (assisting in, or inducing commission of, certain drug related offences punishable under foreign law) of the <sup>M2</sup>Misuse of Drugs Act 1971;
  - (b) in connection with a prohibition or restriction on importation [<sup>F1</sup>and exportation]having effect by virtue of section 3 of the said Act of 1971, an offence under section 50(2) or (3) (improper importation), 68(2)(improper exportation); or 170 (fraudulent evasion of duty etc.) of the <sup>M3</sup>Customs and Excise Management Act 1979;
  - (c) an offence under section 43 of this Act;
  - [<sup>F2</sup>(cc) an offence under sections 12, 14 or 19 of the Criminal Justice (International Co-operation) Act 1990;]
  - (d) an offence of conspiring, inciting or attempting to commit an offence to which,; by virtue of paragraph (a), (b) [<sup>F3</sup>(c) or (cc)]above, this section relates.
- (3) The Court shall take account of the provisions of any order made by it under subsection (1) above in determining the amount of any fine imposed on the person as regards the offence but not in determining any other matter as regards sentence.
- (4) For the purposes of any appeal or review, a confiscation order is a sentence.
- (5) No enactment restricting the power of a court dealing with a person in a particular way from dealing with him also in any other way shall by reason only of the making of an order under subsection (1) above (or the postponement of a decision as regards making such an order) restrict the High Court from dealing with a person in any way the Court considers appropriate in respect of an offence to which this section relates.
- (6) In this Part of this Act, “drug trafficking” means doing or being concerned in any of the following, whether in Scotland or elsewhere—
- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the said Act of 1971;
  - (b) transporting or storing such a drug where possession of it contravenes section 5(1) of that Act;
  - (c) importing or exporting such a drug where the importation or exportation is prohibited by section 3(1) of that Act;
  - (d) producing, supplying, transporting, storing, importing or exporting such a drug in contravention of a corresponding law (“corresponding law” having the meaning assigned by section 36(1)of that Act);
  - [<sup>F4</sup>(e) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section;]
- and includes, whether in Scotland or elsewhere, entering into or being otherwise concerned in an arrangement whereby—
- (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
  - (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment.

*Status: Point in time view as at 15/02/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

### Textual Amendments

- F1** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, [Sch. 5 para. 19](#), [Sch. 8 para. 16](#)
- F2** S. 1(2)(cc) inserted (01.07.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1), [Sch. 4 para. 5\(2\)\(a\)](#); S.I.1991/1072 art.2(b), Sch., Pt.II.
- F3** Words in 1(2)(d) substituted (01.07.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1), [Sch. 4 para. 5\(2\)\(a\)](#); S.I.1991/1072 art.2(b), Sch., Pt.II.
- F4** S. 1(6)(e) inserted (01.07.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1), [Sch. 4 para. 5\(2\)\(b\)](#); S.I.1991/1072 art.2(b), Sch.,Pt. II.

### Marginal Citations

- M1** 1975 c. 21.
- M2** 1971 c. 38.
- M3** 1979 c. 2.

## 2 Postponed confiscation orders.

- (1) The Court, if it considers that it requires further information before coming to any decision as regards making an order under section 1(1) of this Act, may subject to subsection (4) below postpone that decision for a period not exceeding six months after the date of conviction for the purpose of enabling that information to be obtained; but without prejudice to sections 179 and 219 of the <sup>M4</sup>1975 Act may notwithstanding such postponement proceed, on the prosecutor's motion therefor, to sentence or to otherwise deal with the person in respect of the conviction: Provided that no fine shall be imposed before the decision is taken.
- (2) Where under subsection (1) above a decision has been postponed for a period, any intention to appeal under section 228 of the 1975 Act against conviction or against both conviction and any sentence passed during that period in respect of the conviction, shall be intimated under section 231(1) of that Act not within two weeks of the final determination of the proceedings but within two weeks of—
- (a) in the case of an appeal against conviction where there has been no such sentence, the day on which the period of postponement commences;
- (b) in any other case, the day on which such sentence is passed in open court.
- (3) Notwithstanding any appeal of which intimation has been given by virtue of subsection (2) above, a person may appeal under the said section 228 against the confiscation order (if the decision is to make one) or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (4) If during the period of postponement—
- (a) intimation is given by virtue of subsection (2) above by the person, the Court may, on the application of the prosecutor, extend that period to a date up to three months after the date of disposal of the appeal;
- (b) the case is remitted under subsection (5) of section 3 of this Act, the Court may, on such application, extend that period to a date up to three months after the case is transmitted under that subsection by the Court of Session or, if there is an appeal against the decision of the Court of Session on such remit, the date of disposal of that appeal.

*Status: Point in time view as at 15/02/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the  
 Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

### Marginal Citations

M4 1975 c. 21.

## 3 Assessing the proceeds of drug trafficking.

- (1) For the purposes of this Act—
- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of section 1 of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and
  - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) Without prejudice to section 4 of this Act the Court may, in making an assessment as regards a person under section 1(1) of this Act, make the following assumptions, except in so far as any of them may be shown to be incorrect in that person's case—
- (a) that any property appearing to the Court—
    - (i) to have been held by him at any time since his conviction, or
    - (ii) to have been transferred to him at any time since a date six years before his being indicted,
 was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him,
  - (b) that any expenditure of his since the date mentioned in paragraph (a)(ii) above was met out of payments received by him in connection with drug trafficking carried on by him, and
  - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
- (3) Subsection (2) above does not apply if the only offence by virtue of which the assessment is being made is an offence under section [F542A or] 43 of this Act [F6 or section 14 of the Criminal Justice (International Co-operation) Act 1990].
- (4) The Court shall, in making an assessment as regards a person under section 1(1) of this Act, leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in a case where a confiscation order (whether under this Act or under and within the meaning of—
- (a) section 1 of the <sup>M5</sup>Drug Trafficking Offences Act 1986; or
  - (b) any corresponding provision in Northern Ireland),
- has previously been made against him.
- (5) Where in making an assessment as regards a person under section 1(1) of this Act the Court at any stage is of the opinion that a difficult question of law or a question of fact of exceptional complexity is involved, it may of its own accord, or on the application of the prosecutor or of the person (or on their joint application), remit the case to the Court of Session for a decision as regards that question; and the Court of Session shall on deciding the question transmit the case to the High Court.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

#### Textual Amendments

- F5** Words in s. 3(3) inserted (15.2.1994) by 1993 c. 36, **ss. 17(2)** (with s. 78(6)); S.I. 1994/71, art. 2, **Sch.**
- F6** Words in s. 3(3) inserted (01.07.1991) by **Criminal Justice (International Co-operation) Act 1990** (c. 5, SIF 39:1), s. 31(1), **Sch. 4 para. 5(3)**; S.I.1991/1072 art 2(b), Sch., Pt. II.

#### Marginal Citations

- M5** 1986 c. 32.

## 4 Statements relating to drug trafficking.

- (1) Without prejudice to section 150 of the <sup>M6</sup>1975 Act, where the prosecutor has, as regards a person, moved for an order under section 1(1) of this Act the prosecutor may lodge with the clerk of court a statement as to any matters relevant to the assessment of the value of that person's proceeds of drug trafficking and if the person accepts to any extent any allegation in the statement the Court may, for the purposes of that assessment, treat that acceptance as conclusive of the matters to which it relates.
- (2) Where—
- a statement is lodged under subsection (1) above, and
  - the Court is satisfied that a copy of that statement has been served on the person,
- the Court may require the person to indicate, within such period as the Court may specify, to what extent he accepts each allegation in the statement and, in so far as he does not accept any such allegation, to indicate the basis of such non-acceptance.
- (3) If the person fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement.
- (4) Without prejudice to section 150 of the 1975 Act, where—
- there is lodged with the clerk of court by the person a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and
  - the prosecutor accepts to any extent any allegation in the statement,
- the Court may, for the purposes of that determination, treat that acceptance as conclusive of the matters to which it relates.
- (5) No acceptance by the person under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings, whether in Scotland or elsewhere, in respect of an offence.

#### Marginal Citations

- M6** 1975 c. 21.

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*Changes to legislation: There are currently no known outstanding effects for the  
 Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

## **5 Realisable property.**

(1) Subject to subsection (3) below, the following property is realisable in terms of this Part of this Act—

- (a) the whole estate of a person suspected of, or charged with, an offence to which section 1 of this Act relates, being an offence in respect of which (either or both)—
  - (i) warrant to arrest and commit him has been granted;
  - (ii) a restraint order has been made against him; and
- (b) the whole estate of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or indirectly and whether in one transaction or in a series of transactions) made an implicative gift,

if the proceedings as regards the offence have not been concluded.

(2) In subsection (1) above, “the whole estate of a person” means his whole estate, wherever situated,<sup>F7</sup> . . . , and includes—

- (a) any income or estate vesting in the holder of the realisable property<sup>F7</sup> . . . ; and
- (b) the capacity to exercise, and to take proceedings for exercising, such powers in, over or in respect of any property as might have been exercised by the holder of the realisable property for his own benefit<sup>F7</sup> . . . .

(3) Property is not realisable if—

- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned; or
- (b) an order under—
  - (i) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders), or
  - (ii) section 223 or 436 of the 1975 Act (forfeiture of property), or
  - (iii) section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders),

[<sup>F8</sup>or

(iiia) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders),]or

(iv) any other statutory provision providing specifically for forfeiture in relation to an offence,

is in force in respect of the property.

(4) Subject to subsection (7) below, for the purposes of sections 1(1)(b) and 4(4)(a) of this Act, the amount that might be realised at the time a confiscation order is made in respect of a person is the total value at that time of all realisable property owned, and all implicative gifts which have been made, by him; except that where there are obligations having priority at that time the amount that might be realised is the aforesaid total value less the total amount payable in pursuance of those obligations.

(5) In assessing, for the purposes of section 1(1)(b) of this Act, the value—

- (a) of realisable property (other than money) owned by a person in respect of whom it proposes to make a confiscation order, the High Court shall have regard to the market value of the property at the date on which the order would be made; but it may also have regard to any security or real burden which would require to be discharged in realising the property or to any other factors which might reduce the amount recoverable by such realisation;



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- (b) of an implicative gift, the Court shall, subject to section 6(2) and (3) of this Act, take it to be—
- (i) the value of the gift when received, adjusted to take account of subsequent changes in the value of money, or
  - (ii) where subsection (6) below applies, the value there mentioned, whichever is the greater.
- (6) If at the date on which the order would be made the recipient holds—
- (a) the property which he received (not being cash), or
  - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,
- the value referred to in subsection (5)(b)(ii) above is, subject to section 6(2) and (3) of this Act, the value at that date of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it represents the property which he received.
- (7) Without prejudice to section 47(3) of this Act, the Court may, notwithstanding subsections (5)(b) and (6) above, for the purposes of section 1(1)(b) of this Act disregard the amount (or part of the amount) of an implicative gift if it considers it improbable that such amount (or part) could be realised.
- (8) For the purposes of subsection (4) above, an obligation has priority at any time if it is an obligation of the person in respect of whom the confiscation order is made to—
- (a) pay an amount due in respect of—
    - (i) a fine or order (not being a confiscation order or an order mentioned in sub-paragraph (ii) below) of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order;
    - (ii) a compensation order (within the meaning of the <sup>M7</sup>Criminal Justice (Scotland) Act 1980), made on conviction of an offence, where such order was made before, of in the same proceedings as, the confiscation order; or
  - (b) pay any sum which would be included among—
    - (i) the preferred debts (as defined in section 51(2) of the <sup>M8</sup>1985 Act) were his estate being sequestered in accordance with the provisions of that Act and were the date on which the confiscation order would be made the date of sequestration;
    - (ii) the preferential debts (within the meaning given by section 386 of the <sup>M9</sup>Insolvency Act 1986) in the person's bankruptcy or winding up were that bankruptcy commencing on the date of the confiscation order or as the case may be were the winding up under an order of the court made on that date.

#### Textual Amendments

**F7** Words in s. 5(2)(a)(b) repealed (01.07.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1)(3), Sch. 4 para. 5(4), **Sch. 5**; S.I.1991/1072 art.2(b), Sch., Pt.II.

**F8** S. 5(3)(b)(iiia) added by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 25(1), **Sch. 8 para. 9**

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*Changes to legislation: There are currently no known outstanding effects for the  
 Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

### Marginal Citations

- M7 1980 c. 62.  
 M8 1985 c. 66.  
 M9 1986 c. 45.

## 6 Implicative gifts.

- (1) Subject to subsection (4) below, in this Part of this Act references to an “implicative gift” are references to a gift (whether made before or after the commencement of section 1 of this Act)—
- (a) made not more than six years before the date [F<sup>9</sup>on which, in respect of a person suspected of, or charged with, an offence to which section 1 of this Act relates, the warrant to arrest and commit was granted, or a restraint order was made (whichever first occurs).]; or
  - (b) made at any time if the gift was—
    - (i) of property received by the giver in connection with drug trafficking carried on by him or another, or
    - (ii) of property which, in whole or in part, directly or indirectly represented in the giver’s hands property received by him in that connection.
- (2) For the purposes of subsection (1) above, the circumstances in which a person is to be treated as making a gift shall include those of a case where he transfers an interest in property to another person, directly or indirectly, for a consideration significantly less than the value of that interest at the time of transfer. In subsection (3) below the said consideration is referred to as “consideration A” (or as “A”) and the said value as “consideration B”.(or as “B”).
- (3) In the case mentioned in subsection (2) above, section 5 of this Act shall apply as if the reference in sub-paragraph (i) of subsection (5)(b) of that section to “the value of the gift when received” were a reference to the amount by which consideration A is exceeded by consideration B and as if in sub-paragraph (ii) of the said subsection (5)(b) the reference to “the value there mentioned” were a reference to a value determined in accordance with the formula—

$$\frac{C(B-A)}{B}$$

where C is what the value referred to in the said sub-paragraph (ii) would be had the gift been an outright gift.

- (4) A gift made for a charitable purpose to a person who is not an associate of the giver, being a gift which having regard to all the circumstances it was reasonable to make, is not an implicative gift.
- (5) In subsection (4) above, “charitable purpose” means any charitable, benevolent or philanthropic purpose whether or not it is charitable within the meaning of any rule of law.



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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part 1. (See end of Document for details)*

### Textual Amendments

- F9** Words substituted by [Law Reform \(Miscellaneous Provisions\) Act 1990 \(c. 40, SIF 39:1\), s. 74\(1\), Sch. 8 para. 37](#)

### **[<sup>F10</sup>6A Increase in value of proceeds of drug trafficking or realisable property.**

- (1) This section applies where the court which made a confiscation order is satisfied, on an application made by the prosecutor, that at the time the application is made the value of the proceeds of the person's drug trafficking, or the amount that might be realised, is greater than—
- (a) the value of the proceeds of the person's drug trafficking; or, as the case may be,
  - (b) the amount that might be realised,
- which was taken into account when the order was made.
- (2) The considerations by reference to which to court may be satisfied as mentioned in subsection (1) above shall include—
- (a) the value of the proceeds of the person's drug trafficking was greater than was taken into account when the confiscation order was made or has increased since the order was made; or
  - (b) further proceeds of drug trafficking have been obtained since the confiscation order was made; or
  - (c) the value of realisable property was greater than was taken into account when the confiscation order was made; or
  - (d) any realisable property taken into account at the time when the confiscation order was made has subsequently increased in value; or
  - (e) the amount, or part of the amount, of a gift which was disregarded under section 5(7) of this Act could now be realised.
- (3) An application under subsection (1) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) Where this section applies—
- (a) the court may make a new confiscation order for the payment of such sum as appears to the court to be appropriate having regard to what is now shown to be the value of the proceeds of drug trafficking or the amount that might be realised; and
  - (b) if the earlier confiscation order has not been satisfied, then the court, in making the new confiscation order, shall recall the earlier order and may take into account the amount unpaid (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the earlier order.
- (5) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.

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- (6) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.]

**Textual Amendments**

**F10** Ss. 6A and 6B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 8**; S.I. 1996/517, **arts. 3(2), 5**

**<sup>F11</sup>6B Confiscation orders where proceeds of crime discovered at later date.**

- (1) This section applies where no confiscation order has been made in relation to an offence under section 1 or 2 of this Act.
- (2) Where the court, on an application made to it by the prosecutor under this section, is satisfied—
  - (a) that a person convicted of an offence to which this Part of this Act relates was in receipt of the proceeds of drug trafficking in respect of that offence;
  - (b) that the information necessary to enable a confiscation order to be made on the date on which an application under section 1 of this Act was or could have been made was not available to the prosecutor,
 it may make a confiscation order in relation to that person.
- (3) An application under this section shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) In determining the sum to be payable under a confiscation order made in pursuance of this section, the court shall take into account—
  - (a) any order involving any payment by the offender;
  - (b) any order under section 87 of the Criminal Justice (Scotland) Act 1995 or an order for forfeiture under any other enactment made in respect of the offender,
 which forms part of the sentence already imposed for the offence concerned.
- (5) In determining such sum the court may take into account any payment or other reward received by the offender on or after the date of conviction, but only if the prosecutor satisfies the court that it was received by the offender in connection with drug trafficking carried on by the offender or another on or before that date.
- (6) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (7) Section 1(2B), (2C), (2D) and (2E) of this Act shall not apply in relation to a confiscation order made in pursuance of this section.
- (8) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.
- (9) Where the court makes a confiscation order in pursuance of this section and a compensation order has been made under section 58 of the Criminal Justice (Scotland) Act 1980 in respect of misappropriation of property by the offender,

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the court shall direct that compensation shall first be paid out of any sums applied towards the satisfaction of the confiscation order to the extent of any sums outstanding in respect of the compensation order.

- (10) In this section “the court” means the court which had jurisdiction in respect of the offence concerned to make a confiscation order under section 1 of this Act.

#### Textual Amendments

**F11** Ss. 6A and 6B inserted (31.3.1996) by 1995 c. 20, s. 113(3), Sch. 5 para. 8; S.I. 1996/517, arts. 3(2), 5

## 7 Application of provisions relating to fines to enforcement of confiscation

- (1) Section 196 and 203 of the 1975 Act and, as applied by section 194 of that Act, the provisions of that Act specified in subsection (2) below shall, subject to the qualifications mentioned in subsection (2) below, apply in relation to confiscation orders as they apply in relation to fines; and section 91 of the <sup>M10</sup>Magistrates’ Courts Act 1980 and Article 96 of the <sup>M11</sup>Magistrates’ Courts (Northern Ireland) Order 1981 (provisions relating to transfer of fines from Scotland etc.) shall be construed accordingly.

- (2) The provisions mentioned in subsection (1) above are—

section 396:

Provided that any allowance under that section (or section 397) of time (or further time) for payment shall be without prejudice to the exercise by any administrator appointed in relation to the confiscation order of his powers and duties under this Act; and the court may, pending such exercise, postpone any decision as to refusing or allowing time (or further time) for payment;

section 397;

section 398;

section 399;

Provided that any order of payment by instalments shall be without prejudice to such exercise as is above mentioned;

section 400;

section 401(2) and (3);

section 403, except that for the purposes of subsections (4) and (6) of that section “confiscation order” in subsection (1) above shall be construed as including such an order within the meaning of the <sup>M12</sup>Drug Trafficking Offences Act 1986 or of any corresponding provision in Northern Ireland;

section 404;

section 406;

section 407;

Provided that where a court imposes a period of imprisonment both in respect of a fine and of a confiscation order the amounts in respect of which the period is imposed shall, for the purposes of subsection (1A) of that section, be aggregated:

Provided also that before imposing a period of imprisonment to which there is a liability by virtue of that section the court shall, if an administrator has been appointed in relation to the confiscation order, require a report from him as to

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whether and in what way he is likely to exercise his powers and duties under this Act and shall take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition;

section 408;

section 409, except that the reference in subsection (1) of that section to the person paying a sum to the governor of the prison under conditions prescribed by rules made under the <sup>M13</sup>Prisons (Scotland) Act 1952 shall be construed as including a reference to an administrator appointed in relation to the confiscation order making such payment under this Act in respect of the person;

section 411, except the proviso to subsection (3):

Provided that an order for recovery by civil diligence shall not be made under the section where an administrator is appointed in relation to the confiscation order;

Schedule 7.

- (3) Where in any proceedings an order has been made under section 1(1) of this Act as regards a person and a period of imprisonment or detention is imposed on him in default of payment of its amount (or as the case may be of an instalment thereof), that period shall run from the expiry of any other period of imprisonment or detention (not being one of life imprisonment or detention for life) imposed on him in the proceedings.
- (4) The reference in subsection (3) above to “any other period of imprisonment or detention imposed” includes (without prejudice to the generality of the expression) a reference to such a period on default of payment of a fine (or instalment thereof); but only where that default has occurred before the warrant for imprisonment is issued for the default in relation to the order.

#### Marginal Citations

**M10** 1980 c. 43.

**M11** 1981/1675 (N.I. 26.)

**M12** 1986 c. 32.

**M13** 1952 c. 61.

#### [<sup>F12</sup>7A Disposal of family home.

Section 111 of the Criminal Justice (Scotland) Act 1995 shall apply in respect of a person’s family home if a confiscation order has been made in relation to that person as it applies in respect of a person’s family home if a confiscation order has been made in relation to that person under section 70(1) of that Act but as if for subsection (1) there were substituted the following subsection—

- (1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person’s interest in his family home has been acquired by means of the proceeds of drug trafficking.]

#### Textual Amendments

**F12** S. 7A inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 10**; S.I. 1996/517, **arts. 3(2), 5**

*Status: Point in time view as at 15/02/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part 1. (See end of Document for details)*

### *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—

- (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—

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- (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.

## **9 Restraint orders.**

- (1) A restraint order is an order interdicting—
  - (a) the person in respect of whom it is made from dealing with his realisable property; or
  - (b) that person and any person named in the order as appearing to the Court of Session to have received from him an implicative gift from dealing with their own, or the other's, realisable property,
 (whenever that property was acquired and whether it is described in the order or not); but, subject to subsection (5) below, the order may contain conditions and exceptions to which such interdict shall be subject.
- (2) A restraint order shall provide for notice to be given to persons affected by the order.
- (3) In subsection (1) above, the reference to “dealing with” property shall (without prejudice to the generality of the expression) be construed as including a reference—
  - (a) to making a payment in reduction of the amount of a debt; and
  - (b) to removing the property from Great Britain.
- (4) If the restraint order is made by virtue of section 8(1)(b) of this Act, references in the foregoing provisions of this section to “realisable property” shall, in relation to any period before warrant to arrest and commit the person in respect of whom it was made is granted, be construed as references to property which would be realisable property had such warrant been granted immediately before the commencement of that period.
- (5) Without prejudice to the generality of subsection (1) above, property in so far as it comprises reasonable legal expenses payable in relation to proceedings as regards the offence by virtue of which the restraint order has been made or as regards a confiscation order made on conviction thereof shall be excepted under that subsection from the interdict.

## **10 Seizure of property affected by restraint order.**

- (1) A constable or a person commissioned by the Commissioners of Customs and Excise may, for the purpose of preventing realisable property of a person subject to a restraint order (whether under this Act or under and within the meaning of the <sup>M14</sup>Drug Trafficking Offences Act 1986) from being removed from Great Britain, seize the property.
- (2) Property seized under subsection (1) above shall be dealt with in accordance with the directions of the court which made the order.



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*Changes to legislation:* There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part 1. (See end of Document for details)

## Marginal Citations

M14 1986 c.32.

### 11 Inhibition and arrestment of property affected by restraint order or by interdict under section 12.

- (1) On the application of the Lord Advocate, the Court of Session may, in respect of—
  - (a) heritable realisable 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 or, in relation to that property, under section 12 of this Act;
  - (b) moveable realisable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor;and, subject to the provisions of this Part of this Act, the warrant—
  - (i) 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;
  - (ii) where granted under subsection (1)(a) above, shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the register of inhibitions and adjudications.
- (2) Section 155 of the Titles <sup>M15</sup>to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) That an inhibition or arrestment has been executed under subsection (1) above in respect of property shall not prejudice the exercise of an administrator’s powers under or for the purposes of this Part of this Act in respect of that property.
- (5) No inhibition or arrestment executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such inhibition or arrestment 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.
- (6) The foregoing provisions of this section shall apply in relation to an order made under section 8 of the <sup>M16</sup>Drug Trafficking Offences Act 1986 and registered under section 28 of this Act (a “relevant order”) as they apply to a restraint order; but as if—
  - (a) for any reference to the Lord Advocate there were substituted a reference to the prosecutor or, in a case where the order was made by virtue of subsection (2) of section 7 of that Act and the information [F13] in respect of the charge] mentioned in that subsection has not yet been laid, to the person as

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regards whom the court which made the order was satisfied as is mentioned in subsection (3)(b) of that section;

- (b) any reference to realisable property fell to be construed in accordance with section 5 of that Act (references in that section to the defendant, and to the time at which proceedings were instituted against him, being in such case as is mentioned in paragraph (a) above taken to be, respectively, references to the person as regards whom the court which made the order was satisfied as is mentioned in subsection (2) of the said section 7 and to the time immediately before the order was made);
- (c) for any reference to a restraint order there were substituted a reference to a relevant order;
- (d) in subsection (1)(a), for the words “interdicted by the order or, in relation to that property, under section 12 of this Act” there were substituted the words “with an interest in that property”;
- (e) in subsection (1), for the words “Part of this Act” there were substituted the word “section”;
- (f) in subsection (1)(i), after the word “and” there were inserted the words “subject to subsection (3A) below”;
- (g) after subsection (3) there were inserted the following subsection—
  - “(3A) Any power of the Court of Session to recall, loose or restrict inhibitions or arrestments shall, in relation to an inhibition or arrestment proceeding upon a warrant under this section and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 13 of the Drug Trafficking Offences Act 1986.”; and
- (h) in subsection (4)—
  - (i) for the reference to an administrator there were substituted a reference to a receiver; and
  - (ii) for the words “this Part of this Act” there were substituted the words “section 8, 11 or 12 of the said Act of 1986”.

#### Textual Amendments

**F13** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 20, **Sch. 8 para. 16**

#### Marginal Citations

**M15** 31 & 32Vict.c.101.

**M16** 1986 c.32.

#### <sup>F14</sup>11A Arrestment of property affected by restraint order.

- (1) On the application of the prosecutor, 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.

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- (2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Act in respect of that property.
- (4) No arrestment executed under subsection (2) above 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 prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.]

#### Textual Amendments

**F14** S. 11A inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 13**; S.I. 1996/517, **arts. 3(2), 5**

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

**C3** S. 11A(2) modified (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 9(c)**; S.I. 1996/517, **arts. 3(2), 5**

## 12 Interdict of person not subject to restraint order.

- (1) The Court of Session may, where it has granted a restraint order, interdict a person not subject to that order from dealing with realisable property affected by it while it is in force; and the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.
- (2) Subsection (2) of section 8 of this Act applies in relation to an interdict under subsection (1) above as the said subsection (2) applies in relation to a restraint order; and subsection (3) of section 9 thereof applies in relation to subsection (1) above as the said subsection (3) applies in relation to subsection (1) of the said section 9.
- (3) An interdict under subsection (1) above shall not be effective against a person unless and until he is served with a copy both of it and of the restraint order.

### *Administrators*

## 13 Administrators.

- (1) On the application of the Lord Advocate the Court of Session may as regards realisable property—
  - (a) affected by a restraint order, appoint a person to manage, or otherwise deal with, the property; or
  - (b) where 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").

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- (2) A requirement under subsection (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 5(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 subsection (1) above—
- (a) the clerk of court shall forthwith so notify—
    - (i) the person in respect of whom the restraint order, or as the case may be the 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 of Session, at the instance of any person having an interest, may at any time—
- (a) vary or withdraw a requirement imposed under subsection (1) above; or
  - (b) without prejudice to section 16 of this Act or to the powers and duties of an administrator pending a decision under this 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 subsection (4)(b) above or section 17 of this Act, the Court of Session shall appoint a new administrator. Such of the property (if any) as was, by virtue of section 14(3) of this Act, vested in the administrator who has died, resigned or been removed shall forthwith vest in the new administrator; and any requirement imposed under subsection (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.
- (6) The administration of property by an administrator shall be deemed continuous notwithstanding any temporary vacancy in that office.
- (7) Any appointment under this section 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.
- (8) Without prejudice to section 17 of this Act, section 6 of the Judicial <sup>M17</sup>Factors (Scotland) Act 1889 (supervision of judicial factors) shall not apply in relation to an appointment under this section.

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

C4 S. 13: Power to extend conferred (E.W.) (3.2.1995) by 1994 c. 37, s. 37(2)(a)(i)

**Marginal Citations**

M17 52 & 53 Vict. c. 39.

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## **14 Functions of administrators.**

(1) Subject to section 17 of this Act, an administrator—

- (a) shall be entitled to take possession of, and if appointed (or empowered) under paragraph (b) of section 13(1) of this Act 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 section referred to as “A”) in whom the property is vested (or would be vested but for an order made under subsection (3) of this section); 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 and, without prejudice to the generality of this paragraph, may sist himself in any case in the Court of Session which has been remitted under section 3(5) of this Act if the restraint order by virtue of which the administrator has been appointed interdicts the person whose case has been so remitted from dealing with 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 or A’s business;
- (h) 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 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;

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- (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 section 18(1) and (3) of this Act;

- (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 of Session for directions as regards the discharge of his functions;
- (o) may exercise any power specifically conferred on him by the Court of Session, 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 paragraph (j) of subsection (1) 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 paragraphs (c) to (k) above shall be in A's name except where and in so far as an order made by the Court of Session under this subsection (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).

## **15 Money received by administrator.**

- (1) Subject to subsection (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 subsection (3) of section 14 of this Act) 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 subsection (1) above, “appropriate bank or institution” means a bank or institution mentioned in section 2(1) of the <sup>M18</sup>Banking Act 1979 or for the time being specified in Schedule 1 to that Act.

### **Marginal Citations**

**M18** 1979 c. 37.

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

- (1) Subject to subsection (2) below, sums in the hands of an administrator which are—
- (a) proceeds of a realisation of property under section 13 of this Act, and
- (b) other property held by the person in respect of whom the confiscation order was made,



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shall first be applied in payment of such expenses as are payable under section 37(2) of this Act and then shall, after such payments (if any) as the Court of Session 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.

(2) 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 of Session may, after giving such persons an opportunity to be heard as regards the matter, direct.

(3) 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 <sup>F15</sup>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, in reimbursement of any sums paid by the Lord Advocate under section 20(2) of this Act,

and the balance shall be payable and recoverable (or as the case may be disposed of) under section 203 of the <sup>M19</sup>1975 Act (fines payable to H.M. Exchequer) as applied by section 7 of this Act.

#### Textual Amendments

**F15** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 21, [Sch. 8 para. 16](#)

#### Marginal Citations

**M19** [1975 c. 21](#).

## 17 Supervision of administrators.

(1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by this Act; and in particular an administrator proposing to exercise functions conferred by any of paragraphs (c) to (p) of subsection (1) of section 14 of this Act 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 this Part of this Act, he shall report the matter to the Court of Session 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.

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## **18 Accounts and remuneration of administrator.**

- (1) The administrator shall keep such accounts in relation to his intromissions with the property as regards which he is appointed as the Court of Session 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 subsection (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 subsection (1) above, the administrator or the Lord Advocate may appeal against it to the Court of Session.
- (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.

## **19 Effect of appointment under section 13 on diligence.**

Without prejudice to section 11 of this Act—

- (a) no arrestment or poinding of realisable property executed on or after an appointment as regards the property under section 13 of this Act shall be effectual to create a preference for the arrester or poinder and any such property so arrested or poinded, or the proceeds of sale thereof, shall be handed over to the administrator;
- (b) no poinding of the ground in respect of realisable 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 realisable property or to be confirmed as executor-creditor on that property; and
- (d) no inhibition on realisable 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.

## **20 Further provision as to administrators.**

- (1) Where an administrator takes any action—
  - (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property,
  - (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.

*Status: Point in time view as at 15/02/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

- (2) Any amount due in respect of the remuneration and expenses of an administrator so appointed shall, if no sum is available to be applied in payment of it under section 16(3)(b) of this Act, be paid by the Lord Advocate.

## **21 Discharge of administrator.**

After an administrator had lodged his final accounts under section 18 (1) of this Act, 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.

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

Without prejudice to section 16(i) of the <sup>M20</sup>Administration of Justice (Scotland) Act 1933 (power, in relation to certain statutory powers and duties, 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**

**M20** 1933 c. 41.

### *Exercise of powers*

## **23 Exercise of powers by Court of Session or administrator.**

- (1) The following provisions apply to the powers conferred on the Court of Session by sections 8, 11(1) to (5), 12 to 13, 16 and 24 of this Act, or on an administrator appointed under subsection (1) of the said section 13.
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying a confiscation order the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of a person who holds realisable property by virtue only of having received an implicative gift, the powers shall, so far as is reasonably attainable, be exercised so as to realise, interdict dealing with, or permit the seizure or taking possession of, property of a value no greater than the value for the time being of that gift.
- (4) The powers shall be exercised with a view to allowing any person other than one mentioned in paragraph (a) or (b) of section 5(1) of this Act to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owned by the Crown.
- (6) Subject to subsection (4) above and without prejudice to the power of the Court of Session to make an exception under section 9(1) or 13(2)(a) of this Act for the protection of a person or his family, in exercising those powers no account shall be taken of an obligation (other than an obligation having priority, within the meaning

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of section 5(8) of this Act) of a person holding realisable property if that obligation conflicts with the obligation to satisfy a confiscation order.

- (7) Subsections (2) to (6) of section 13 of the <sup>M21</sup>Drug Trafficking Offences Act 1986 (exercise of powers by High Court etc.) shall apply as regards the powers conferred on the Court of Session by sections 27 and 28, or by virtue of section 11(6), of this Act as those subsections apply as regards the powers conferred on the High Court (within the meaning that expression has in relation to England and Wales) by the sections mentioned in subsection (1) of the said section 13.

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

**C5** S. 23(2)–(6) extended by S.I. 1988/593, art. 5

**Marginal Citations**

**M21** 1986 c. 32.

**24 Power to facilitate realisation.**

- (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 of Session, to facilitate realisation under section 13 of this Act, may—
- (a) order any person (in this section referred to as “A”) holding an interest in property, not being such person (in this section referred to as “B”) as is mentioned in paragraph (a) or (b) of section 5(1) 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 so 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 subsection (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.

*Variation of confiscation orders*

**25 Variation of confiscation order.**

- (1) If, on an application by a person in respect of whom a confiscation order has been made, the Court of Session is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under that order, the Court shall issue a certificate to that effect giving the Court’s reasons for being so satisfied.

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- (2) For the purposes of subsection (1) above the Court of Session—
- (a) in the case of realisable property held by a person whose estate has been sequestrated, or who has been adjudged bankrupt in England and Wales or in Northern Ireland, shall take into account the extent to which any property held by him may be distributed among creditors; and
  - (b) may disregard any inadequacy in the realisable property if that inadequacy appears to the Court to be attributable wholly or partly to anything done by the person for the purpose of preserving such property from realisation under this Act.
- (3) Where a certificate has been issued under subsection (1) above, the person may apply to the High Court for the amount to be recovered under the order to be reduced.
- (4) The High Court shall, on an application under subsection (3) above—
- (a) substitute for the amount to be recovered under the order such lesser amount as the High Court thinks just in all the circumstances of the case; and
  - (b) substitute for any period of imprisonment imposed under section 407 of the <sup>M22</sup>1975 Act (or period of detention imposed under section 415(2) of that Act by virtue of the said section 407) in respect of the amount to be recovered under the order a shorter period, determined in accordance with subsection (1A) of the said section 407 (as it has effect by virtue of section 7 of this Act), in respect of the lesser amount.

#### Marginal Citations

M22 1975 c. 21.

### Compensation

#### 26 Compensation.

- (1) Subject to subsection (2) below, if proceedings are instituted against a person for an offence to which section 1 of this Act relates and either—
- (a) the proceedings do not result in his conviction for any such offence, or
  - (b) where he is convicted of one or more such offences, the conviction or convictions concerned are quashed (and no conviction for any such offence is substituted),
- the Court of Session may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant; but this subsection 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) and (b) of that subsection.
- (2) The Court of Session shall not order compensation to be paid under subsection (1) above in any case unless satisfied—
- (a) that there has been some serious default on the part of a person concerned in the investigation of the offence or offences concerned, being a person mentioned in subsection (4) below, and that, but for that default, the proceedings would not have been instituted or continued; and

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- (b) that the applicant has suffered substantial loss or damage in consequence of anything done in relation to the property under section 8, 11, 12, 13, or 24 of this Act or by virtue of section 24A of the <sup>M23</sup>Drug Trafficking Offences Act 1986 (recognition and enforcement in England and Wales of orders and functions under this part of this Act).
- (3) The amount of compensation to be paid under this section shall be such as the Court of Session thinks just in all the circumstances of the case.
- (4) Compensation payable under this section shall be paid, where the person in default was—
- (a) a constable of a police force, by the police authority or joint police committee for the police area for which that force is maintained (“constable”, “police force”, “police authority”, “joint police committee” and “police area” having the meanings assigned to these terms by the <sup>M24</sup>Police (Scotland) Act 1967);
  - (b) 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;
  - (c) a procurator fiscal or was acting on behalf of the Lord Advocate, by the Lord Advocate; and
  - (d) a person commissioned by the Commissioners of Customs and Excise, by those Commissioners.

#### **Marginal Citations**

**M23** 1986 c. 32.

**M24** 1967 c. 77.

#### *Reciprocal arrangements for enforcement of confiscation orders*

### **27 Recognition and enforcement of orders under Drug Trafficking Offences Act 1986.**

- (1) An order to which this section applies shall, subject to this section and section 28 of this Act, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.
- (2) A receiver’s functions under or for the purposes of section 8, 11 or 12 of the Drug Trafficking Offences Act 1986 shall, subject to this section and section 28 of this Act, have effect in the law of Scotland.
- (3) If an order to which this section applies is registered under this section—
- (a) the Court of Session shall have, in relation to its enforcement, the same power,
  - (b) proceedings for or with respect to its enforcement may be taken, and
  - (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,
- as if the order had originally been made in that Court.
- (4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 11(3)(a) of the said Act of 1986 to have effect in the law of Scotland.



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- (5) The orders to which this section applies are orders of the High Court (within the meaning that expression has in relation to England and Wales)—
  - (a) made under sections 8, 11, 12 or 30 of the said Act of 1986,
  - (b) relating to the exercise by that Court of its powers under those sections, or
  - (c) relating to receivers in the performance of their functions under section 8, 11 or 12 of that Act,but not including an order in proceedings for enforcement of any such order.
- (6) References in this section to an order under section 8 of the said Act of 1986 include references to a discharge under section 7(4) of that Act of such an order.
- (7) In this section and in section 28 of this Act, “order” means any order, direction or judgment (by whatever name called).
- (8) Nothing in any order of the High Court (within the meaning mentioned in subsection (5) above) under section 11(6) of the said Act of 1986 prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

## **28 Provisions supplementary to section 27.**

- (1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 27 of this Act applies, direct that the order shall, in accordance with such rules, be registered in that Court.
- (2) Subsections (1) and (3) of section 27 of this Act and subsection (1) above are subject to any provision made by rules of court—
  - (a) as to the manner in which and conditions subject to which orders to which that section applies are to be enforced in Scotland,
  - (b) for the sisting of proceedings for enforcement of such an order,
  - (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.
- (3) This section and section 27 of this Act are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court (within the meaning mentioned in section 27(5) of this Act).
- (4) The Court of Session shall have the like power to make an order under section 1 of the <sup>M25</sup>Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents etc.) in relation to proceedings brought or likely to be brought under the <sup>M26</sup>Drug Trafficking Offences Act 1986 in the High Court (within the meaning mentioned in section 27(5) of this Act) as if those proceedings had been brought or were likely to be brought in the Court of Session.
- (5) The Court of Session may, additionally, for the purpose of—
  - (a) assisting the achievement in Scotland of the purposes of orders to which section 27 of this Act applies, or
  - (b) assisting receivers performing functions there under or for the purposes of section 8, 11 or 12 of the said Act of 1986,make such orders and do otherwise as seems to it appropriate.
- (6) A document purporting to be a copy of an order under or for the purposes of the <sup>M27</sup>Drug Trafficking Offences Act 1986 by the High Court (within the meaning

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mentioned in section 27(5) of this Act) and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

#### **Marginal Citations**

**M25** 1972 c. 59.

**M26** 1986 c. 32.

**M27** 1986 c. 32.

#### **[<sup>F16</sup>28A Inhibition of Scottish property affected by order registered under section 27.**

- (1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property; and the warrant—
  - (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.
- (2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (5) No inhibition executed under subsection (1) above 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; and
  - (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.
- (6) Any power of the Court of Session to recall, loose or restrict inhibitions shall, in relation to an order containing an inhibition under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.]

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#### Textual Amendments

**F16** Ss. 28A and 28B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 26**; S.I. 1996/517, **arts. 3(2), 5**

#### **[<sup>F17</sup>28B Arrestment of Scottish property affected by order registered under section 27.**

- (1) On the application of the Lord Advocate, the Court of Session may, in respect of moveable property affected by a restraint order registered under section 27 of this Act (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 subsection (1) above 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 fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (4) No arrestment executed under subsection (2) above 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 of Session for an order recalling, or as the case may be, restricting the arrestment accordingly.
- (5) Any power of the Court of Session to recall, loose or restrict arrestments shall, in relation to an arrestment proceeding upon a warrant under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.]

#### Textual Amendments

**F17** Ss. 28A and 28B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 26**; S.I. 1996/517, **arts. 3(2), 5**

#### **29 Enforcement of Northern Ireland orders.**

- (1) Her Majesty may by Order in Council provide that, for the purposes of sections 8 to 25 and 33 to 35 of this Act, this Act shall have effect as if—
  - (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
  - (b) references to offences to which section 1 of this Act relates included a reference to any offence under the law of Northern Ireland (not being an offence to which that section relates) which appears to Her Majesty to correspond to such an offence; and
  - (c) such other modifications were made as may be specified in the Order in Council, being modifications which appear to Her Majesty to be requisite

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or desirable having regard to procedural differences which may for the time being exist between Scotland and Northern Ireland; and without prejudice to the generality of this paragraph modifications may include provision as to the circumstances in which proceedings in Northern Ireland are to be treated for the purposes of those sections as instituted or as concluded.

- (2) An Order in Council under this section may provide for the sections mentioned in subsection (1) above to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the order.
- (3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- [<sup>F18</sup>(3A) An Order in Council under this section may, in particular, provide for section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply in relation to such orders as may be prescribed by the Order.]
- [<sup>F19</sup>(4) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F18** S. 29(3A) inserted (1.12.1993) by 1993 c. 36, s. 22(2) (with s. 78(6)); S.I. 1993/2734, arts. 2, 3(4), Sch.
- F19** S. 29(4) substituted (1.12.1993) by 1993 c. 36, s. 21(2)(3)(c) (with s. 78(6)); S.I. 1993/2734, arts. 2, 3(4), Sch.

#### [<sup>F20</sup>30 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 Part of 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 30A of this Act; 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.

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- (2) In this Part of 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 Part of this Act in such a way as to confer power on a person to exercise a discretion.

[ An Order in Council under this section shall be subject to annulment in pursuance <sup>F21</sup>(5) of a resolution of either House of Parliament. ]]

#### Subordinate Legislation Made

**P1** [S. 30](#): s. 30 power exercised by [S.I. 1991/1467](#)

#### Textual Amendments

**F20** [Ss. 30, 30A](#) substituted for s. 30 by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 63](#)

**F21** [S. 30\(5\)](#) substituted (1.12.1993) by [1993 c. 36, s. 21\(2\)\(3\)\(d\)](#) (with [s. 78\(6\)](#)); [S.I. 1993/2734, art. 2, Sch.](#)

#### [<sup>F22</sup>30A Registration of external confiscation orders.

- (1) On an application made by or on behalf of the Government of a designated country, the Court of Session 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 Scotland 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 Court of Session 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.]

#### Textual Amendments

**F22** [Ss. 30, 30A](#) substituted for s. 30 by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 63](#)

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### **31 Enforcement in England and Wales.**

The following section shall be inserted before section 25 of the Drug Trafficking Offences Act 1986—

#### **“24A Recognition and enforcement of orders and functions under Part I of the Criminal Justice (Scotland) Act 1987.**

- (1) Her Majesty may by Order in Council make such provision as Her Majesty considers expedient for the purpose—
  - (a) of enabling property in England and Wales which is realisable property for the purposes of Part I of the Criminal Justice (Scotland) Act 1987 to be used or realised for the payment of any amount payable under a confiscation order made under that Part of that Act; and
  - (b) of securing that, where no confiscation order has been made under that Part of that Act, property in England and Wales which is realisable property for the purposes of that Part of that Act is available, in the event that such an order is so made, to be used or realised for the payment of any amount payable under it.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an Order in Council under this section may—
  - (a) provide that, subject to any specified conditions—
    - (i) the functions of a person appointed under section 13 of the Criminal Justice (Scotland) Act 1987; and
    - (ii) such description of orders made under or for the purposes of Part I of the Criminal Justice (Scotland) Act 1987 as may be specified;
 shall have effect in the law of England and Wales;
  - (b) make provision—
    - (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of that Part of that Act as may be specified; and
    - (ii) for the High Court to have in relation to the enforcement of orders made under or for the purposes of that Part of that Act which are so registered such powers as may be specified; and
  - (c) make provision as to the proof in England and Wales of orders made under or for the purposes of that Part of that Act.
- (3) In subsection (2) above “specified” means specified in an Order in Council under this section.
- (4) An Order in Council under this section may amend or apply, with or without modifications, any enactment.
- (5) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.



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(6) 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.”.

### **32 Order in Council as regards taking of action in designated country.**

- (1) Her Majesty may by Order in Council make such provision in connection with the taking of action in a designated country in consequence of the making of a restraint order or of a confiscation order as appears to Her Majesty to be expedient; and without prejudice to the generality of this subsection such provision may include a direction that in such circumstances as may be specified proceeds arising out of action taken in that country with a view to satisfying a confiscation order which are retained there shall nevertheless be treated as reducing the amount payable under the confiscation order to such extent as may be specified.
- (2) Subsections (9)(a), (10), (11) and (12) of section 30 of this Act shall apply in respect of Orders in Council under this section as they apply in respect of Orders in council under that section.

*Sequestration etc. of estate comprising realisable property*

### **33 Sequestration of person holding realisable property.**

- (1) Where the estate of a person who holds reliable property is sequestrated—
  - (a) property for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the <sup>M28</sup>1985 Act); and
  - (b) any proceeds of property realised by virtue of section 13(1) of this Act for the time being in the hands of an administrator appointed under that section, 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 of Session by sections 8, 11 to 13, 16, 24, 27 and 28 of this Act or on an administrator appointed under subsection (1) of the said section 13 shall not be exercised in relation to—
  - (a) property comprised in the whole estate of the debtor (within the meaning of section 31(8) of the 1985 Act); or
  - (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, [<sup>F23</sup>under subsection (10) of section 31 of that Act or subsection (6) of the said section 32 of that Act], vests in the permanent trustee, 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) Nothing in the 1985 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 the proviso to section 13(1) of the 1985 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.

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- (5) Where the estate of a person is sequestrated and he has directly or indirectly made an implicative gift—
- (a) no decree shall, at any time when proceedings as regards an offence to which section 1 of this Act relates 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 order, be granted under section 34 or 36 of the 1985 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 34 and 36 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.
- (6) In any case in which, notwithstanding the coming into force of the 1985 Act, the <sup>M29</sup>Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
  - (b) any income of the bankrupt which has been ordered, under subsection (2) of section 98 of that Act, to be paid to the trustee or any estate which, under subsection (1) of that section, vests in the trustee,”
- and subsection (3) above shall have effect as if, for the reference in it to the <sup>M30</sup>1985 Act, there were substituted a reference to the said Act of 1913.

#### Textual Amendments

**F23** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140, Sch. 17 para. 81](#)

#### Marginal Citations

**M28** 1985 c. 66.

**M29** 1913 c. 20.

**M30** 1985 c. 66.

### 34 Bankruptcy in England and Wales of person holding realisable property.

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of section 13(1) of this Act for the time being in the hands of an administrator appointed under that section, is excluded from the bankrupt’s estate for the purposes of Part IX of the <sup>M31</sup>Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the Court of Session by sections 8, 11 to 13, 16, 24, 27 and 28 of this Act or on an administrator appointed under subsection (1) of the said section 13 shall not be exercised in relation to—

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- (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 [F24 308 or 308A] of the Insolvency Act 1986 (after-acquired property and tools, clothes etc. exceeding value of reasonable replacement [F24 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) Where a person is adjudged bankrupt and has directly or indirectly made an implicative gift—
- (a) no order shall, at any time when proceedings for 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 order, be made under section 339 or 423 of the Insolvency Act 1986 (avoidance of certain transactions) in respect of the making of the gift, and
  - (b) any order made under either of those sections 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.
- (6) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the date on which the Insolvency Act 1986 came into force, subsections (2) to (5) above have effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there are substituted references to the property of the bankrupt for the purposes of the <sup>M32</sup>Bankruptcy Act 1914.
  - (b) for references to the said Act of 1986 and to sections 280(2)(c), 286, 339, and 423 of that Act there are respectively substituted references to the said Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act,
  - (c) the references in subsection (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the said Act of 1914, and
  - (d) [F25 subsections (2)(b) and (4) are] [F25 subsection (2)(b) is] omitted.

#### Textual Amendments

**F24** Words substituted and inserted respectively by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 82](#)

**F25** In s. 34(6)(d) for “subsections (2)(b) and (4) are” there is substituted (S.) “subsection (2)(b) is” by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, [Sch. 5 para. 22](#), [Sch. 8 para. 16](#)

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### Marginal Citations

M31 1986 c. 45.

M32 1914 c. 59.

## 35 Winding up company holding realisable property.

- (1) Where realisable 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 for the time being subject to a restraint order made before the relevant time, and
  - (b) any proceeds of property realised by virtue of section 13(1) of this Act for the time being in the hands of an administrator appointed under that section.
- (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 of Session by sections 8, 11 to 13, 16, 24, 27 and 28 of this Act or on an administrator appointed under subsection (1) of the said section 13 shall not be exercised in relation to any realisable 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 <sup>M33</sup>Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) For the purposes of the application of Parts IV and V of the <sup>M34</sup>Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order (whether under this Act or under and within the meaning of section 1 of the Drug Trafficking Offences Act 1986 or any corresponding provision in Northern Ireland).
- (5) In this Section—
 

“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.
- (6) In any case in which a winding up of a company commenced, or is treated as having commenced, before the date on which the Insolvency Act 1986 came into force,

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subsections (2) to (5) above have effect with the substitution for references to that Act of references to the <sup>M35</sup>Companies Act 1985.

#### Marginal Citations

M33 1986 c. 45.

M34 1986 c. 32.

M35 1985 c. 6.

### 36 Property subject to floating charge.

- (1) Where any property held subject to a floating charge by a company is realisable 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 as is for the time being subject to a restraint order made before the appointment of the receiver, and
  - (b) any proceeds of property realised by virtue of section 13(1) of this Act for the time being in the hands of an administrator appointed under that section.
- (2) Where, in the case of a company, such an appointment has been made, the powers conferred on the Court of Session by sections 8, 11 to 13, 16 and 24 of this Act or on an administrator appointed under subsection (1) of the said section 13 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 Insolvency Act 1986, shall be taken as restricting, or enabling the restriction of, the exercise of the receiver's powers so conferred.
- (4) In this section—

“company” has the same meaning as in section 35 of this Act; and

“floating charge” includes a floating charge within the meaning given by section 462 of the Companies Act 1985 (power of incorporated company to create floating charge).
- (5) In any case in which a receiver was appointed as is mentioned in subsection (1) above before the date on which the Insolvency Act 1986 came into force, subsections (2) to (4) above have effect with the substitution for references to that Act of references to the Companies Act 1985.

### 37 Insolvency practitioners dealing with property subject to restraint order.

- (1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in the 1985 Act, where—
  - (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

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- (b) at the time of the seizure or disposal he believes, and had 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 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
- (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 16(1) or (3)(a) of this Act.

- (3) In the foregoing provisions of this section, 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 purpose of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in a sequestration and subsection (5) of that section<sup>F26</sup> . . . shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

#### Textual Amendments

**F26** Words in s. 37(3) repealed (1.4.1993 subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), **Sch.2** (with s. 12(6)); S.I. 1993/438, **arts.3, 4, 5**.

#### *[<sup>F27</sup> Forfeiture of property where accused has died]*

#### Textual Amendments

**F27** Crossheading and s. 37A inserted (31.3.1996) by 1995 c. 20, s. 113(3), SCh. 5 para. 33; S.I. 1996/517, art. 2(1), **Sch. 2**

#### **[<sup>F28</sup> 37A Forfeiture of property where accused has died.**

- (1) Section 112 of the Criminal Justice (Scotland) Act 1995 shall, subject to any necessary modifications, apply in respect of an offence to which Part I of this Act relates as it applies to an offence to which Chapter I of Part II of that Act applies.



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- (2) Without prejudice to subsection (1) above, in the application of subsection (2) of that section, in paragraph (b)(i) for the words “in connection with the commission of the offence” there shall be substituted the words “in connection with drug trafficking”.]

#### Textual Amendments

- F28** Crossheading and s. 37A inserted (S.) (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 33**; S.I. 1996/517, **arts. 3(2), 5**

### *Investigations and disclosure of information*

#### **38 Order to make material available.**

- (1) The procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to the sheriff for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If on such an application the sheriff is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
- (a) produce it to a constable or person commissioned by the Commissioners of Customs and Excise for him to take away, or
  - (b) give a constable or person so commissioned access to it,
- within such period as the order may specify.

This subsection is subject to section 41(11) of this Act.

- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking,
  - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
    - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
    - (ii) does not consist of or include items subject to legal privilege, and
  - (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
    - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
    - (ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.
- (5) Where the sheriff makes an order under subsection (2)(b) above in relation to material in any premises he may, on application of the procurator fiscal, order any person who appears to him to be entitled to grant entry to the premises to allow a constable

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[<sup>F29</sup>or person commissioned as aforesaid]to enter the premises to obtain access to the material.

- (6) Provision may be made by rules of court as to—
- (a) the discharge and variation of orders under this section, and
  - (b) proceedings relating to such orders.
- (7) Where the material to which an application under this section relates consists of information contained in a computer—
- (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
  - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (8) An order under subsection (2) above—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege,
  - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
  - (c) may be made in relation to material in the possession of an authorised government department.

#### Textual Amendments

**F29** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 23, [Sch. 8 para. 16](#)

### 39 Authority for search.

- (1) The procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to the sheriff for a warrant under this section in relation to specified premises.
- (2) On such application the sheriff may issue a warrant authorising a constable, or person commissioned by the Commissioners of Customs and Excise, to enter and search the premises if the sheriff is satisfied—
  - (a) that an order made under section 38 of this Act in relation to material on the premises has not been complied with, or
  - (b) that the conditions in subsection (3) below are fulfilled, or
  - (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—
  - (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking, and
  - (b) that the conditions in section 38(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises, and
  - (c) that it would not be appropriate to make an order under that section in relation to the material because—

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- (i) it is not practicable to communicate with any person entitled to produce the material, or
  - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
  - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable or person commissioned as aforesaid could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking, and
  - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
  - (c) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises, or
    - (ii) entry to the premises will not be granted unless a warrant is produced, or
    - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable or person commissioned as aforesaid arriving at the premises could secure immediate entry to them.
- (5) Where a constable or person commissioned as aforesaid has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

#### **40 Interpretation of sections 38 and 39.**

In sections 38 and 39 of this Act—

“items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications; and

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation within the meaning of section 1 of the <sup>M36</sup>Mineral Workings (Offshore Installations) Act 1971, and
- (c) any tent or movable structure.

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### Marginal Citations

**M36** 1971 c.61.

## <sup>F30</sup> 40A Prosecution by order of the Commissioners of Customs and Excise.

- (1) Summary proceedings for a specified offence may be instituted by order of the Commissioners and shall, if so instituted, be commenced in the name of an officer.
- (2) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings for a specified offence were commenced, those proceedings may be continued by another officer.
- (3) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—
  - (a) whether there are grounds for believing that a specified offence has been committed, or
  - (b) whether a person should be prosecuted for a specified offence,
 that matter shall be treated as an assigned matter within the meaning of the <sup>M37</sup>Customs and Excise Management Act 1979.
- (4) Nothing in this section shall be taken—
  - (a) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a specified offence from doing so; or
  - (b) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a specified offence, even though the proceedings have not been instituted by an order made under subsection (1) above.
- (5) In this section—
 

“the Commissioners” means the Commissioners of Customs and Excise;  
 “officer” means a person commissioned by the Commissioners; and  
 “specified offence” means—

  - (a) an offence under section 42, 42A, 43, 43A or 43B of this Act or section 14 of the <sup>M38</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking);
  - (b) attempting to commit, conspiracy to commit or incitement to commit, any such offence; or
  - (c) any other offence of a kind prescribed in regulations made by the Secretary of State for the purposes of this section.
- (6) Regulations under subsection (5) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

### Textual Amendments

**F30** S. 40A inserted (1.12.1993) by 1993 c. 36, s. 20(2) (with s. 78(6)); S.I. 1993/2734, art. 2, Sch.

### Marginal Citations

**M37** 1979 c. 2.

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M38 1990 c. 5.

#### **41 Disclosure of information held by government departments.**

- (1) Subject to subsection (4) below, the Court of Session may on an application by the Lord Advocate order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.
- (2) The power to make an order under subsection (1) above is exercisable if—
  - (a) the powers conferred on the Court by subsection (1) of section 8 of this Act are exercisable by virtue of paragraph (a) thereof, or
  - (b) those powers are exercisable by virtue of paragraph (b) of subsection (1) of that section and the Court has made a restraint order which has not been recalled;but, where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (4) of section 9 of this Act shall for the purposes of this section apply in relation to that order as the said subsection (4) applies, for the purposes of that section, in relation to a restraint order made by virtue of paragraph (b) of subsection (1) of the said section 8.
- (3) The material referred to in subsection (1) above is any material which—
  - (a) has been submitted to an officer of an authorised government department by a person who holds, or has at any time held, realisable property,
  - (b) has been made by an officer of an authorised government department in relation to such a person, or
  - (c) is correspondence which passed between an officer of an authorised government department and such a person;and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.
- (4) An order under subsection (1) above shall not require the production of any material unless it appears to the Court of Session that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by section 8, 13 or 24 of this Act or on an administrator appointed under subsection (1) of the said section 13.
- (5) The Court may by order authorise the disclosure to such an administrator of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.
- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the administrator or the High Court.
- (7) The Court of Session may by order authorise the disclosure to a person mentioned in subsection (8) below of any material; produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless—
  - (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court, and

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- (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.
- (8) The persons referred to in subsection (7) above are—
- (a) a constable,
  - (b) the Lord Advocate or any procurator fiscal, and
  - (c) a person commissioned by the Commissioners of Customs and Excise.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 38(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with such order; and any such order shall be served as if the proceedings were civil proceedings against the department.
- (12) The person on whom an order under subsection (1) above is served—
- (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
  - (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the Court of Session;
- and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.

### *Offences*

#### **42 Offence of prejudicing investigation.**

- (1) A person who, knowing or suspecting that an investigation into drug trafficking is taking place, does anything which is likely to prejudice the investigation is guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it is a defence to prove—
  - (a) that he did not know or suspect, or have reasonable grounds to suspect, that by acting as he did he was likely to prejudice the investigation, or
  - (b) that he had lawful authority or reasonable excuse for acting as he did.
- (3) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both, and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.



*Status: Point in time view as at 15/02/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

#### **43 Offence of assisting another to retain the proceeds of drug trafficking.**

- (1) Subject to subsection (3)(b) below, a person shall be guilty of an offence if, knowing or suspecting that another person (in this section referred to as “A”) is a person who carries on, or has carried on, or has derived financial or other rewards from, drug trafficking, he enters into, or is otherwise concerned in, an arrangement whereby—
  - (a) the retention or control, by or on behalf of A, of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
  - (b) A’s proceeds of drug trafficking—
    - (i) are used to secure that funds are placed at A’s disposal, or
    - (ii) are used for A’s benefit to acquire property by way of investment.
- (2) In this section, references to proceeds of drug trafficking shall be construed as including any property which, whether in whole or in part, directly or indirectly constitutes such proceeds.
- (3) Where a person discloses to a constable or to a person commissioned by the Commissioners of Customs and Excise a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based—
  - (a) the disclosure shall not be treated as a breach of any restriction imposed by contract on the disclosure of information; and
  - (b) if the disclosure relates to an arrangement entry into which, or concern in which, by the person would (but for this paragraph) contravene subsection (1) above, he does not commit an offence under that subsection if—
    - (i) the disclosure is made before, with the consent of the constable or as the case may be of the person so commissioned, he enters into, or becomes concerned in, that arrangement, or
    - (ii) though made after he enters into, or becomes concerned in, that arrangement, it is made on his own initiative and as soon as it is reasonable for him to do so.
- (4) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
  - (a) that he did not know or suspect that the arrangement related to any person’s proceeds of drug trafficking; or
  - (b) that he did not know or suspect that the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1) above; or
  - (c) that—
    - (i) he intended to disclose to a constable or to a person commissioned as aforesaid such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement, but
    - (ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (b) of that subsection.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both; and
  - (b) on summary conviction, to

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imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

#### **44 Offences relating to controlled drugs: fines.**

- (1) Without prejudice to section 395(1) of the <sup>M39</sup>1975 Act (fines) as applied by section 194 of that Act but subject to the proviso to subsection (1) of section 2 of this Act, where a person is convicted on indictment of an offence to which this section relates and sentenced in respect of that offence to a period of imprisonment or detention, the Court where—
  - (a) paragraph (b) below does not apply shall, unless it is satisfied that for any reason it would be inappropriate to do so, also impose a fine;
  - (b) it makes an order under section 1(1) of this Act as regards the person, may also impose a fine.
- (2) In determining the amount of a fine imposed under paragraph (a) of subsection (1) above, the Court shall have regard to any profits likely to have been made by the person from the crime in respect of which he has been convicted.
- (3) This section relates to the same offences as does section 1 of this Act.
- (4) Where in any proceedings a fine has been imposed by virtue of subsection (1) above as regards a person and a period of imprisonment or detention is imposed on him in default of payment of its amount (or as the case may be of an instalment thereof), that period shall run from the expiry of any other period of imprisonment or detention (not being one of life imprisonment or detention for life) imposed on him in the proceedings.
- (5) The reference in subsection (4) above to “any other period of imprisonment or detention imposed” includes (without prejudice to the generality of the expression) a reference to such a period imposed on default of payment of a fine (or instalment thereof) or of a confiscation order (or instalment thereof); but only where that default has occurred before the warrant for imprisonment is issued for the default in relation to the fine imposed by virtue of subsection (1) of this section.

#### **Marginal Citations**

**M39** 1975 c. 21.

#### *Minor amendments, service, notice and interpretation*

#### **45 Minor amendments in relation to drug trafficking. 4 & 5 Geo. 5 c. 59.**

- (1) Section 28 of the Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.
- (2) In section 1(2)(a) of the <sup>M40</sup>Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or on a conviction does not include a reference to an amount payable under a confiscation order.

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(3) In subsection (4A) of section 18 of the <sup>M41</sup>Civil Jurisdiction and Judgments Act 1982 (exceptions as to enforcement of U.K. judgments in other parts of U.K.), at the end there shall be added the following words—

“; or as respects the enforcement in England and Wales of orders made by the Court of Session under or for the purposes of Part I of the Criminal Justice (Scotland) Act 1987”.

(4) Section 281(4) of the <sup>M42</sup>Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

(5) In the <sup>M43</sup>1985 Act—

(a) in section 5(4) (interpretation)—

(i) after the words “future debts” there shall be inserted the words “or amounts payable under a confiscation order” and

(ii) at the end there shall be added the words “; and in the foregoing provisions of this subsection “confiscation order” has the meaning assigned by section 1(1) of the Criminal Justice (Scotland) Act 1987 or by section 1(8) of the Drug Trafficking Offences Act 1986”;

(b) in section 7(1) (constitution of apparent insolvency)—

(i) in paragraph (b), at the beginning there shall be inserted the words “not being a person whose property is for the time being affected by a restraint order or subject to a confiscation, or charging order,”;

(ii) in paragraph (c), after the words “became due” there shall be inserted the words “or that but for his property being affected by a restraint order or subject to a confiscation, or charging, order he would be able to do so”;

(iii) at the end there shall be added the words “In paragraph (d) above, “liquid debt” does not include a sum payable under a confiscation order; and in the foregoing provisions of this subsection—

“charging order” has the meaning assigned by section 9(2) of the Drug Trafficking Offences Act 1986;

“confiscation order” has the meaning assigned by section 1(1) of the Criminal Justice (Scotland) Act 1987 or by section 1(8) of the said Act of 1986; and

“restraint order” has the meaning assigned by section 9 of the said Act of 1987 or by section 8 of the said Act of 1986.”; and

(c) section 55(2) (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

(6) In section 231 of the <sup>M44</sup>1975 Act (intimation of intention to appeal)—

(a) in subsection (1), after the words “236B(2) of this Act” there shall be inserted the words “and to section 2(2) of the Criminal Justice (Scotland) Act 1987 (postponed confiscation orders)”;

(b) in subsection (4), at the beginning there shall be inserted the words “Subject to subsection (5) below,”; and

(c) after subsection (4) there shall be added the following subsection—

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“(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987, the reference in subsection (4) above to “the day on which sentence is passed in open court” shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made (whether or not a confiscation order is then made or any other sentence is then passed).”.

(7) In the Drug Trafficking Offences Act 1986—

(a) at the end of section 2(5) (assessing the proceeds of drug trafficking) there shall be inserted the words—

“References in this subsection to a confiscation order include a reference to a confiscation order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987”;

(b) in section 8 (restraint orders)—

(i) in subsection (8), for the words “the High Court has made a restraint order” there shall be substituted the words “a restraint order has been made” and at the end of that subsection there shall be added the words—

“In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987, and, in relation to such an order, “realisable property” has the same meaning as in that Part”; and

(ii) in subsection (9), for the words “court’s directions” there shall be substituted the words “directions of court which made the order”;

(c) in section 16 (sequestration of person holding realisable property)—

(i) in subsection (2), at the end there shall be added 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,”; <sup>F31</sup>and

(ii) in subsection (5), in paragraph (b)(ii), after the word “disposal” there shall be inserted the words “and for so much of his remuneration as may reasonably be assigned for his actings in that connection”; and in paragraph (c), for the words “a lien for any expenses (including his remuneration) properly incurred in respect of the property” there shall be substituted the words “any such lien as is mentioned in paragraph (b)(ii) above”;

(d) in section 19(2)(b)(ii) (compensation for loss in consequence of anything done in relation to realisable property by or in pursuance of order of Court of Session), for the words “20, 21 or 22 of this Act” there shall be substituted the words “11 (as applied by subsection (6) of that section), 27 or 28 of the Criminal Justice (Scotland) Act 1987 (inhibition and arrestment of property affected by restraint order and recognition and enforcement of orders under this Act)”;

(e) in section 33 (power to inspect Land Register etc.)—

(i) in subsection (2), after paragraph (c) there shall be inserted the words—

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“, or

(d) the Lord Advocate or any person conducting a prosecution in Scotland on his behalf;”;

(ii) in subsection (4)—

after the words “8 or 11 of this Act” there shall be inserted the words “or by an administrator appointed under section 13 of the Criminal Justice (Scotland) Act 1987 (comparable Scottish provisions)”; and

in each of paragraphs (a) and (b), after the word “receiver” there shall be inserted the words “(or administrator)”; and

(f) in section 40(4)(b) (effect in Scotland), at the beginning there shall be inserted the words “section 3(6)”.

#### Textual Amendments

**F31** S. 45(7)(c)(ii) and the word “and” immediately preceding it repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 170, 171, Sch. 8 para. 16, Sch. 16

#### Marginal Citations

**M40** 1974 c. 53.

**M41** 1982 c. 27.

**M42** 1986 c. 45.

**M43** 1985 c. 66.

**M44** 1975 c. 21.

## 46 Service and notice for purposes of Part I.

Subject to the provisions of this Part of this Act, provision may be made by rules of court as to the giving of notice required for the purposes of this Part of this Act or the effecting of service so required; and different provision may be so made for different cases or classes of case and for different circumstances or classes of circumstance.

VALID FROM 01/04/1994

### [<sup>F32</sup>46A Extension of certain offences to Crown servants and exemptions for regulators etc.

- (1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, [<sup>F33</sup>sections 42 to 43B of this Act] shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.
- (2) Section [<sup>F33</sup>43A] of this Act shall not apply to—
  - (a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or
  - (b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part I. (See end of Document for details)*

- (3) The Secretary of State may designate, for the purpose of paragraph (a) of subsection (2) above, any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person prescribed by the Secretary of State, for the purpose of paragraph (b) of subsection (2) above, shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.
- (5) In this section—
  - “the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland; and
  - “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument.
- (7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F32** S. 46A inserted (1.4.1994) by 1993 c. 36, ss. 77, Sch. 4 paras. 1,2.

**F33** Words in s. 46A substituted (1.4.1994) by 1993 c. 36, ss. 77, Sch. 4 para. 2(a)(b).

#### 47 Interpretation of Part I.

- (1) In this Part of this Act (except where the context otherwise requires)—
  - “administrator” shall be construed in accordance with section 13 of this Act;
  - “associate” shall be construed in accordance with section 74 of the 1985 Act;
  - “authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947;
  - “confiscation order” has the meaning assigned by section 1(1) of this Act;
  - “designated country” shall be construed in accordance with section 30(2) of this Act;
  - “drug trafficking” has the meaning assigned by section 1(6) of this Act;
  - “implicative gift” shall be construed in accordance with section 6 of this Act;
  - “realisable property” shall be construed in accordance with section 5 of this Act;
  - “restraint order” has the meaning assigned by section 9 of this Act; and
  - “the 1985 Act” means the <sup>M45</sup>Bankruptcy (Scotland) Act 1985.
- (2) This Part of this Act shall (except where the context otherwise requires) be construed as one with the <sup>M46</sup>1975 Act.



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- (3) This Part of this Act applies to property whether it is situated in Scotland or elsewhere.
- (4) References in this Part of this Act—
- (a) to offences include a reference to offences committed before the commencement of section 1 of this Act; but nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence to which that section relates instituted before the commencement of that section;
  - (b) to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection; and
  - (c) to property held by a person include a reference to property vested in the interim or permanent trustee in his sequestration or in his trustee in bankruptcy or liquidator.
- (5) For the purposes of this Part of this Act (and subject to subsections (8) and (9) of section 30 of this Act), proceedings are concluded as regards an offence where—
- (a) the trial diet is deserted *simpliciter*;
  - (b) the accused is acquitted or, under section 101 of the 1975 Act, discharged or liberated;
  - (c) the High Court sentences or otherwise deals with him without making a confiscation order and without postponing a decision as regards making such an order;
  - (d) after such postponement as is mentioned in paragraph (c) above, the High Court decides not to make a confiscation order;
  - (e) his conviction is quashed; or
  - (f) either the amount of a confiscation order made has been paid or there remains no liability to imprisonment in default of so much of that amount as is unpaid.

#### Marginal Citations

**M45** 1985 c. 66

**M46** 1975 c. 21.

**Status:**

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**Changes to legislation:**

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