



Proceeds of Crime (Scotland) Act 1995

1995 CHAPTER 43

PART IV

RECIPROCAL ARRANGEMENTS FOR ENFORCEMENT OF ORDERS

35 Recognition and enforcement of orders made in England and Wales.

- (1) An order to which this section applies shall, subject to this section and section 36 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 77, 80 or 81 of the 1988 Act or section 26, 29 or 30 of the 1994 Act shall, subject to this section and section 36 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 80(3)(a) of the 1988 Act or section 29(3)(a) of the 1994 Act to have effect in the law of Scotland.
- (5) The orders to which this section applies are orders of the High Court—
 - (a) made under section 77, 78 or 81 of the 1988 Act or section 26, 29, 30 or 59 of the 1994 Act;
 - (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 the said section 77, 78 or 81 of the 1988 Act or the said section 26, 29 or 30 of the 1994 Act,but not including an order in proceedings for enforcement of any such order.

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- (6) References in this section to an order under—
- (a) section 77 of the 1988 Act include references to a discharge under section 76(4) of that Act; or
 - (b) section 26 of the 1994 Act include references to a discharge under section 25(5) of that Act,
- of such an order.
- (7) In this section and in section 36 of this Act, “order” means any order, direction or judgment (by whatever name called).
- (8) Nothing in any order of the High Court under section 80(6) of the 1988 Act or section 29(6) of the 1994 Act 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.
- (9) In this Part, “High Court” means the High Court of England and Wales.

36 Provisions supplementary to section 35.

- (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 35 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 35 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 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 35 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.
- (4) The Court of Session shall have the like power to make an order under section 1 of the ^{MI}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—
- (a) Part VI of the 1988 Act; or
 - (b) the 1994 Act,
- in the High Court as if those proceedings were 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 35 of this Act applies;
 - (b) assisting receivers performing functions thereunder or for the purposes of section 77, 80 or 81 of the 1988 Act or section 26, 29 or 30 of the 1994 Act,
- 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—
- (a) Part VI of the 1988 Act; or
 - (b) the 1994 Act,

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by the High Court and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

Marginal Citations

M1 1972 c.59.

37 Inhibition of Scottish property affected by order registered under section 35.

- (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 35 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 ^{M2}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—
 - (a) section 77, 80 or 81 of the 1988 Act; or
 - (b) section 26, 29 or 30 of the 1994 Act,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 80 of the 1988 Act or, as the case may be, section 31 of the 1994 Act.

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Marginal Citations

M2 1868 c.101.

38 Arrestment of Scottish property affected by order registered under section 35.

- (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 35 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—
 - (a) section 77, 80 or 81 of the 1988 Act; or
 - (b) section 26, 29 or 30 of the 1994 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 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 80 of the 1988 Act or, as the case may be, section 31 of the 1994 Act.

39 Enforcement of Northern Ireland orders.

- (1) Her Majesty may by Order in Council provide that, for the purposes of Part III of and Schedules 1 and 2 to 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—
 - (i) offences to which Part I of this Act applies; or
 - (ii) drug trafficking offences,
 included a reference to any offence under the law of Northern Ireland (not being an offence to which that Part applies) 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 or desirable having regard to procedural differences which may for the time being exist between Scotland and Northern Ireland; and without prejudice to

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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 provisions 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.
- (4) An Order in Council under this section may, in particular, provide for section 18 of the ^{M3}Civil Jurisdiction and Judgements Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply in relation to such orders made in connection with drug trafficking offences as may be prescribed by the Order.
- (5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M3 1982 c.27.

40 Enforcement of orders made outside United Kingdom.

- (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 that, subject to such modifications as may be specified, Part I of this Act and Part III of this Act so far as it relates to realisable property shall apply in relation 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 as to evidence or proof of any matter for the purposes of this section and section 41 of this Act; and
 - (ii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient.
- (2) In this Part of this Act—

“designated country” means a country or territory designated by an Order in Council made under this section; and

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards or property or other economic advantage received in connection with—

 - (a) an offence corresponding with or similar to an offence to which Part I of this Act applies; or
 - (b) drug trafficking,

or the value of such payments, property, reward or economic advantage.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.

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- (4) The power to make an Order in Council under this section includes power to modify Part I of this Act or Part III of this Act so far as it relates to realisable property in such a way as to confer power on a person to exercise a discretion.
- (5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

41 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.

42 Enforcement of Scottish orders in England and Wales.

- (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 to be used or realised for the payment of any amount payable under a confiscation order made in connection with an offence to which Part I of this Act applies;
 - (b) of securing that, where no such confiscation order has been made, property in England and Wales which is realisable property 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; and
 - (c) of enabling the enforcement in England and Wales of restraint orders, suspended forfeiture orders and forfeiture orders under any enactment other than the 1989 Act.
- (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 specific conditions, such description of orders made under or for the purposes of Part I, II or III of this Act so far as it relates to realisable property shall have effect in the law of England and Wales;
 - (b) provide that, subject to any specified conditions, the functions of a person appointed under Schedule 1 to this Act shall have effect in the law of England and Wales;

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- (c) make provision—
 - (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of Part I, II or III of this Act so far as it relates to realisable property 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 Part I, II or III of this Act so far as it so relates which are so registered, such powers as may be specified; and
 - (d) make provision as to the proof in England and Wales of orders made under or for the purposes of Part I, II or III of this Act so far as it so relates.
- (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.
 - (6) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

43 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, confiscation order or suspended forfeiture order under this Act or a forfeiture order under any other enactment as appears to Her Majesty to be expedient.
- (2) Without prejudice to the generality of subsection (1) above, the provision contained in an Order in Council made under this section may include a direction that in such circumstances as may be specified proceeds arising out of action taken in a designated 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.
- (3) An Order in Council under this section may amend or apply, with or without modifications, any enactment.
- (4) Subsections (1)(b), (3) and (5) of section 40 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.

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