



# Proceeds of Crime (Scotland) Act 1995

## 1995 CHAPTER 43

### PART V

#### MISCELLANEOUS AND GENERAL

#### **46 Forfeiture of property where accused has died.**

- (1) This section applies where at any time after criminal proceedings have been instituted against an accused for an offence to which Part I of this Act applies and before the accused has been sentenced or otherwise dealt with in the proceedings he dies.
- (2) The Court of Session, if it is satisfied beyond reasonable doubt on an application being made to it by the Lord Advocate—
  - (a) that the accused committed the offence; and
  - (b) that there is property—
    - (i) which the accused had obtained, directly or indirectly, in connection with the commission of the offence or, as the case may be, in connection with drug trafficking; or
    - (ii) which is a gift caught by Part I of this Act or, as the case may be, an implicative gift,may, subject to subsection (5) below, make an order which shall have the effect of forfeiting that property.
- (3) The Court of Session may, without prejudice to any other power available to it, at any time before the determination of the case, allow an amendment of the application under subsection (2) above if the amendment is of a type which could competently have been made in an indictment or complaint under section 96 or 159 of the 1995 Act in the criminal proceedings.
- (4) An application under subsection (2) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the Lord Advocate, but, in any event, within 6 years commencing with the date of death of the accused.

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*Changes to legislation: There are currently no known outstanding effects for the  
 Proceeds of Crime (Scotland) Act 1995, Section 46. (See end of Document for details)*

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- (5) An application under subsection (2) above in relation to property such as is mentioned in paragraph (b)(ii) of that subsection shall be served on the recipient of the gift and, if he satisfies the Court on the balance of probabilities—
- (a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or, if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and
  - (b) that he was not associated with the giver in the commission of the offence; and
  - (c) that he would suffer hardship if the application were granted,
- the Court may refuse to make an order as mentioned in that subsection; and in the application of this subsection to an implicative gift, any reference to the commission of the offence shall be construed as a reference to the drug trafficking and the reference in paragraph (b) above to the earlier or earliest of more than one offence shall be construed as a reference to the beginning of the drug trafficking.
- (6) Where property has been forfeited under this section, then, if the Court of Session, on an application being made to it is satisfied by the applicant on the balance of probabilities that he was the owner of, or otherwise had an interest in, the property immediately before such forfeiture, it shall make an order under subsection (7) below.
- (7) An order under this subsection shall direct the Crown, if the applicant—
- (a) was the owner of the property, to return it to him if it is reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (8) below; or
  - (b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.
- (8) For the purposes of subsection (7) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.
- (9) Property which has been forfeited under this section shall be dealt with by the Crown in such manner as seems to it to be appropriate.
- (10) Where a restraint order is not in force in respect of a person when he dies in the circumstances mentioned in subsection (1) above, the Court of Session may, on the application of the Lord Advocate, in so far as the property concerned is—
- (a) heritable property in Scotland, make an order inhibiting any person; and
  - (b) moveable property, grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (11) Paragraphs (a) and (b) of subsection (1) and subsections (2) to (5) of section 32 of this Act shall, subject to any necessary modifications, apply for the purposes of subsection (10)(a) above as they apply for the purposes of that section.
- (12) Subsections (2) to (4) of section 33 of this Act shall, subject to any necessary modifications, apply for the purposes of subsection (10)(b) above as they apply for the purposes of that section.
- (13) Proceedings under this section are civil proceedings for the purposes of section 10 of the <sup>M1</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

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**Marginal Citations**

**M1** [1968 c.70.](#)

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