



# Proceeds of Crime (Scotland) Act 1995

## 1995 CHAPTER 43

### PART V

#### MISCELLANEOUS AND GENERAL

#### 49 Interpretation.

(1) In this Act, unless the context otherwise requires—

F1  
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F2  
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F3  
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“the 1995 Act” means the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995;  
“accused” includes a person against whom criminal proceedings have been instituted in relation to the commission of an offence and a person convicted of an offence;  
“clerk of court” includes the sheriff clerk;  
F4  
.....  
“interest”, in relation to property, includes right;  
“property” has the meaning assigned by section 2 of this Act;  
“realisable property” has the meaning assigned by section 4 of this Act;  
“restraint order” means an order made under section 28 of this Act;  
“suspended forfeiture order” means an order made under section 21(2) of this Act.

(2) In this Act, “drug trafficking” means, subject to subsections (3) and (4) below, 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 <sup>M2</sup>Misuse of Drugs Act 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;

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*Changes to legislation: There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 49. (See end of Document for details)*

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- (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);
  - (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;
  - (f) acquiring, having possession of or using property in contravention of section 37 of the <sup>M3</sup>Criminal Law (Consolidation) (Scotland) Act 1995;
  - (g) concealing or transferring the proceeds of drug trafficking in contravention of section 14 of the said Act of 1990;
  - (h) using any ship for illicit traffic in controlled drugs in contravention of section 19 of the said Act of 1990.
- (3) Drug trafficking also includes, whether in Scotland or elsewhere, entering into or being otherwise concerned in any arrangement whereby—
- (a) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
  - (b) 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.
- (4) <sup>F5</sup>.....
- (5) In this Act a “drug trafficking offence” means any of the following—
- (a) an offence under—
    - (i) section 4(2) (production, or being concerned in production, of controlled drug);
    - (ii) section 4(3) (supply of, or offer to supply, or being concerned in supply of, controlled drug);
    - (iii) section 5(3) (possession of controlled drug with intent to supply); or
    - (iv) section 20 (assisting in, or inducing commission of, certain drug related offences punishable under foreign law),
 of the <sup>M4</sup>Misuse of Drugs Act 1971;
  - (b) in connection with a prohibition or restriction on importation 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>M5</sup>Customs and Excise Management Act 1979;
  - (c) an offence under section 37 of the Criminal Law (Consolidation) (Scotland) Act 1995;
  - (d) an offence under section 38 of the said Act of 1995;
  - (e) an offence under section 12, 14 or 19 of the <sup>M6</sup>Criminal Justice (International Co-operation) Act 1990;
  - (f) an offence of conspiring, inciting or attempting to commit an offence mentioned in paragraph (a), (b), (c) or (e) above.
- (6) For the purposes of this Act proceedings for an offence are instituted against a person—
- (a) on his arrest without warrant;
  - (b) when he is charged with the offence without being arrested;
  - (c) when a warrant to arrest him is granted;

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- (d) when a warrant to cite him is granted;
- (e) in summary proceedings, on the first calling of the case; or
- (f) when a petition is intimated to him or an indictment or a complaint is served on him,

and, where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to be instituted at the earliest of those times.

- (7) Any reference in this Act to a conviction of an offence includes a reference to a finding that the offence has been committed.

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#### Textual Amendments

- F1** In s. 49(1) the definition of "the 1988 Act" repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1)(3), [Sch. 11 para. 28\(2\)\(k\)](#), [Sch. 12](#); S.S.I. 2003/210, {art. 2}, Sch. (subject to arts. 3-7)
- F2** S. 49(1): definition of "the 1989 Act" repealed (19.2.2001) by [2000 c. 11, s. 125](#), [Sch. 15 paras. 11\(4\)](#), [Sch. 16 Pt. I](#); S.I. 2001/421, [art. 2](#) (with art. 3)
- F3** In s. 49(1) the definition of "the 1994 Act" repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1)(3), [Sch. 11 para. 28\(2\)\(k\)](#), [Sch. 12](#); S.S.I. 2003/210, {art. 2}, Sch. (subject to arts. 3-7)
- F4** In s. 49(1) the definition of "confiscation order" repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1)(3), [Sch. 11 para. 28\(2\)\(k\)](#), [Sch. 12](#); S.S.I. 2003/210, {art. 2}, Sch. (subject to arts. 3-7)
- F5** S. 49(4) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1)(3), [Sch. 11 para. 28\(2\)\(k\)](#), [Sch. 12](#); S.S.I. 2003/210, [art. 2](#), Sch. (subject to arts. 3-7)

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#### Marginal Citations

- M1** 1995 c.46.  
**M2** 1971 c.38.  
**M3** 1995 c.39.  
**M4** 1971 c.38.  
**M5** 1979 c.2.  
**M6** 1990 c.5.

**Changes to legislation:**

There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 49.