



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 9

INSOLVENCY ETC.

Sequestration in Scotland

420 Modifications of the 1985 Act

- (1) This section applies if an award of sequestration is made in Scotland.
- (2) The following property is excluded from the debtor's estate for the purposes of the 1985 Act—
 - (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the award of sequestration;
 - (b) any property in respect of which an order under section 50 or 52 is in force;
 - (c) any property in respect of which an order under section 128(3) is in force;
 - (d) any property in respect of which an order under section 198 or 200 is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the award of sequestration.
- (4) It shall not be competent to submit a claim in relation to a confiscation order to the permanent trustee in accordance with section 48 of the 1985 Act; and the reference here to a confiscation order is to any confiscation order that has been or may be made against the debtor under Part 2, 3 or 4 of this Act.
- (5) If at any time in the period before the award of sequestration is made an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is at that time subject to a restraint order made under section 41, 120 or 190, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order.

421 Restriction of powers

- (1) If an award of sequestration is made in Scotland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).
- (2) These are the powers—
- (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48, 50 or 52;
 - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
 - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196, 198 or 200.
- (3) This is the property—
- (a) property which is for the time being comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act;
 - (b) any income of the debtor which has been ordered under section 32(2) of that Act to be paid to the permanent trustee;
 - (c) any estate which under section 31(10) or 32(6) of that Act vests in the permanent trustee;
 - (d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50, 52, 198 or 200 of this Act after the amount required to be paid under the confiscation order has been fully paid;
 - (e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.
- (4) But nothing in the 1985 Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).
- (5) In a case where (despite the coming into force of the 1985 Act) the 1913 Act applies to a sequestration, subsection (3) above has effect as if for paragraphs (a) to (c) there were substituted—
- “(a) property which is for the time being comprised in the whole property of the debtor which vests in the trustee under section 97 of the 1913 Act;
 - (b) any income of the bankrupt which has been ordered under section 98(2) of that Act to be paid to the trustee;
 - (c) any estate which under section 98(1) of that Act vests in the trustee.”
- (6) In a case where subsection (5) applies, subsection (4) has effect as if for the reference to the 1985 Act there were substituted a reference to the 1913 Act.

422 Tainted gifts

- (1) This section applies if a person whose estate is sequestrated in Scotland has made a tainted gift (whether directly or indirectly).

Status: This is the original version (as it was originally enacted).

- (2) No decree may be granted under the Bankruptcy Act [1621 \(c. 18\)](#) or section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when—
 - (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
 - (b) there is in force in respect of such property an order under section 50, 52, 128(3), 198 or 200.
- (3) Any decree made under the Bankruptcy Act [1621 \(c. 18\)](#) or section 34 or 36 of the 1985 Act, or otherwise, after an order mentioned in subsection (2)(a) or (b) is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.