



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

### <sup>F1</sup>PART I

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

##### Textual Amendments

- F1** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

##### 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.

<sup>F2</sup> .....

##### Textual Amendments

- F2** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

<sup>F3</sup>2 .....

<sup>F4</sup> .....

*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**

- F3** S. 2 substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, **arts. 3(2), 5**
- F4** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**3 Assessing the proceeds of drug trafficking.**

**F5** .....

**Textual Amendments**

- F5** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**[<sup>F6</sup>4 Statements relating to drug trafficking.**

<sup>F6</sup>(1) .....

<sup>F6</sup>(2) .....

<sup>F6</sup>(3) .....

<sup>F6</sup>(4) .....

(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.

<sup>F6</sup>(6) .....

<sup>F6</sup>(7) .....]

**Textual Amendments**

- F6** Pt. 1 (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16, 17)

**5 Realisable property.**

**F7** .....

**Textual Amendments**

- F7** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*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)*

## 6 Implicative gifts.

F8 .....

### Textual Amendments

F8 Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## 6A F9 Increase in value of proceeds of drug trafficking or realisable property.

F10 .....

### Textual Amendments

F9 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

F10 Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## F11 6B Confiscation orders where proceeds of crime discovered at later date.

F12 .....

### 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

F12 Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

F13 .....

### Textual Amendments

F13 Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## F14 7A Disposal of family home.

F15 .....

### Textual Amendments

F14 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

*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)*

**F15** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*Restraint orders and interdict*

**8** <sup>F16</sup> **Restraint orders.**

<sup>F17</sup> .....

**Textual Amendments**

**F16** S. 8 substituted (31.3.1996) by 1995 c. 20, s. 113(3), Sch. 5 para. 11; S.I. 1996/517, arts. 3(2), 5

**F17** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**9** <sup>F18</sup> **Variation and recall of restraint orders.**

<sup>F19</sup> .....

**Textual Amendments**

**F18** S. 9 substituted (31.3.1996) by 1995 c. 20, s. 113(3), Sch. 5 para. 11; S.I. 1996/517, arts. 3(2), 5

**F19** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

<sup>F20</sup> .....

**Textual Amendments**

**F20** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

<sup>F21</sup> .....

**Textual Amendments**

**F21** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

<sup>F22</sup> **11A** **Arrestment of property affected by restraint order.**

<sup>F23</sup> .....

*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**

- F22** 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**  
**F23** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

**F24** .....

**Textual Amendments**

- F24** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*Administrators*

**13 Administrators.**

**F25** .....

**Textual Amendments**

- F25** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

- C3** Power to extend conferred (3.2.1995) by 1994 c. 37, **s. 37(2)(a)(i)**

**14 Functions of administrators.**

**F26** .....

**Textual Amendments**

- F26** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**15 Money received by administrator.**

**F27** .....

**Textual Amendments**

- F27** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*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)*

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

F28 .....

### Textual Amendments

**F28** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## 17 Supervision of administrators.

F29 .....

### Textual Amendments

**F29** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## 18 Accounts and remuneration of administrator.

F30 .....

### Textual Amendments

**F30** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

F31 .....

### Textual Amendments

**F31** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## [<sup>F32</sup>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.

<sup>F32</sup>(2) .....

<sup>F32</sup>(3) .....]

*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**

**F32** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16, 17)

**21 Discharge of administrator.**

**F33** .....

**Textual Amendments**

**F33** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

**F34** .....

**Textual Amendments**

**F34** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*Exercise of powers*

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

**F35** .....

**Textual Amendments**

**F35** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**24 Power to facilitate realisation.**

**F36** .....

**Textual Amendments**

**F36** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*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)*

### *Variation of confiscation orders*

#### **F37 25 Realisable property inadequate to meet payments under confiscation order.**

F38 .....

##### **Textual Amendments**

**F37** S. 25 substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 24**; S.I. 1996/517, **arts. 3(2), 5**

**F38** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

### *Compensation*

#### **26 Compensation.**

F39 .....

##### **Textual Amendments**

**F39** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

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

F40 .....

##### **Textual Amendments**

**F40** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

F41 .....

##### **Textual Amendments**

**F41** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

#### **28A F42 Inhibition of Scottish property affected by order registered under section 27.**

F43 .....



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**Textual Amendments**

- F42** 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**
- F43** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**F44** **28B Arrestment of Scottish property affected by order registered under section 27.**

**F45** .....

**Textual Amendments**

- F44** 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**
- F45** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**29 Enforcement of Northern Ireland orders.**

**F46** .....

**Textual Amendments**

- F46** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**30** **F47** **Enforcement of other external orders.**

**F48** .....

**Subordinate Legislation Made**

- P1** S. 30: s. 30 power exercised by S.I. 1991/1467

**Textual Amendments**

- F47** Ss. 30, 30A substituted for s. 30 by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 63**
- F48** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**30A** **F49** **Registration of external confiscation orders.**

**F50** .....

*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**

- F49** Ss. 30, 30A substituted for s. 30 by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 39:1), [s. 63](#)
- F50** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by [1995 c. 40, ss. 6, 7\(2\), Sch. 5](#) (with Sch. 3 paras. 1, 3, 6, 16 and 17)

<sup>F51</sup>**31** .....

<sup>F52</sup> .....

**Textual Amendments**

- F51** S. 31 repealed (3.2.1995) by [1994 c. 37, ss. 67, 69\(2\), Sch. 3](#)
- F52** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by [1995 c. 40, ss. 6, 7\(2\), Sch. 5](#) (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

<sup>F53</sup> .....

**Textual Amendments**

- F53** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by [1995 c. 40, ss. 6, 7\(2\), Sch. 5](#) (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*Sequestration etc. of estate comprising realisable property*

[<sup>F54</sup>**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>M1</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>F55</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,

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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.
- (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>M2</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>M3</sup>1985 Act, there were substituted a reference to the said Act of 1913.]

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#### Textual Amendments

**F54** Pt. 1 (ss. 1-47) repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3** paras. 1, 3, 6, 16, 17)

**F55** Words substituted by **Housing Act 1988** (c. 50, SIF 61), s. 140, **Sch. 17 para. 81**

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#### Marginal Citations

**M1** 1985 c. 66.

**M2** 1913 c. 20.

**M3** 1985 c. 66.

#### [<sup>F56</sup>34 Bankruptcy in England and Wales of person holding realisable property.

- (1) Where a person who holds realisable property is adjudged bankrupt—

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- (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>M4</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—
- (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 [<sup>F57</sup>308 or 308A] of the Insolvency Act 1986 (after-acquired property and tools, clothes etc. exceeding value of reasonable replacement [<sup>F57</sup>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>M5</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

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(d) subsections (2)(b) and (4) are omitted.]

#### Textual Amendments

- F56** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch.5** (with **Sch. 3** paras. 1, 3, 6, 16, 17)
- F57** Words substituted and inserted respectively by **Housing Act 1988 (c. 50, SIF 61)**, s. 140, **Sch. 17 para. 82**

#### Marginal Citations

- M4** 1986 c. 45.  
**M5** 1914 c. 59.

### [<sup>F58</sup>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—
- property for the time being subject to a restraint order made before the relevant time, and
  - 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—
- 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
  - 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>M6</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>M7</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 [<sup>F59</sup>section 2 of the Drug Trafficking Act 1994] 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—

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- (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, subsections (2) to (5) above have effect with the substitution for references to that Act of references to the <sup>M8</sup>Companies Act 1985.]

#### Textual Amendments

- F58** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3** paras. 1, 3, 6, 16, 17)
- F59** Words in s. 35(4) substituted (E.W.) (3.2.1995) by 1994 c. 37, ss. 65, 69(2), **Sch. 1 para. 20**

#### Marginal Citations

- M6** 1986 c. 45.  
**M7** 1986 c. 32.  
**M8** 1985 c. 6.

### [<sup>F60</sup>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

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“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.]

#### Textual Amendments

**F60** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7, Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16, 17)

#### [<sup>F61</sup>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
- (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>F62</sup> . . . shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.]

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#### Textual Amendments

- F61** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16, 17)
- F62** 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>F63</sup> Forfeiture of property where accused has died]*

#### Textual Amendments

- F63** 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>F64</sup> 37A Forfeiture of property where accused has died.

<sup>F65</sup> .....

#### Textual Amendments

- F64** 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**
- F65** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

### *Investigations and disclosure of information*

### 38 Order to make material available.

<sup>F66</sup> .....

#### Textual Amendments

- F66** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

### 39 Authority for search.

<sup>F67</sup> .....

#### Textual Amendments

- F67** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)



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

F68 .....

##### Textual Amendments

**F68** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

#### 40A <sup>F69</sup> Prosecution by order of the Commissioners of Customs and Excise.

F70 .....

##### Textual Amendments

**F69** S. 40A inserted (1.12.1993) by 1993 c. 36, s. 20(2) (with s. 78(6)); S.I. 1993/2734, art. 2, Sch.

**F70** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

#### [<sup>F71</sup>41 Disclosure of information held by government departments.

<sup>F71</sup>(1) .....

<sup>F71</sup>(2) .....

<sup>F71</sup>(3) .....

<sup>F71</sup>(4) .....

<sup>F71</sup>(5) .....

<sup>F71</sup>(6) .....

<sup>F71</sup>(7) .....

<sup>F71</sup>(8) .....

<sup>F71</sup>(9) .....

(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

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- (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.]

**Textual Amendments**  
**F71** S. 41 repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16, 17)

*Offences*

**42 Offence of prejudicing investigation.**

**F72** .....

**Textual Amendments**  
**F72** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

**F73** .....

**Textual Amendments**  
**F73** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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

**F74** .....

**Textual Amendments**  
**F74** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*Minor amendments, service, notice and interpretation*

**[<sup>F75</sup>45 Minor amendments in relation to drug trafficking. 4 & 5 Geo. 5 c. 59.**

**F75**(1) .....

- (2) In section 1(2)(a) of the <sup>M9</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

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adjudged to be paid by or on a conviction does not include a reference to an amount payable under a confiscation order.

<sup>F76</sup>(3) .....

<sup>F75</sup>(4) .....

<sup>F75</sup>(5) .....

<sup>F75</sup>(6) .....

<sup>F76</sup>(7) .....]

#### Textual Amendments

**F75** Pt. 1 (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16, 17)

**F76** S. 45(3)(7) repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**

#### Marginal Citations

**M9** 1974 c. 53.

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

[<sup>F77</sup>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.<sup>F77</sup>]

#### Textual Amendments

**F77** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## 46A <sup>F78</sup> Extension of certain offences to Crown servants and exemptions for regulators etc.

<sup>F79</sup> .....

#### Textual Amendments

**F78** S. 46A inserted (1.4.1994) by 1993 c. 36, ss. 77, **Sch. 4 paras. 1,2.**

**F79** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

## [<sup>F80</sup>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;

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“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>M10</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>M11</sup>1975 Act.
- (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.]

#### Textual Amendments

**F80** Pt. I (ss. 1-47) repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3** paras. 1, 3, 6, 16, 17)

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**Marginal Citations**

**M10** 1985 c. 66

**M11** 1975 c. 21.

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part I.