



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART I

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

Minor amendments, service, notice and interpretation

45 Minor amendments in relation to drug trafficking

- (1) Section 28 of the Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.
- (2) In section 1(2)(a) of the Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or on a conviction does not include a reference to an amount payable under a confiscation order.
- (3) In subsection (4A) of section 18 of the Civil Jurisdiction and Judgments Act 1982 (exceptions as to enforcement of U.K. judgments in other parts of U.K.), at the end there shall be added the following words—

“; or as respects the enforcement in England and Wales of orders made by the Court of Session under or for the purposes of Part I of the Criminal Justice (Scotland) Act 1987”.
- (4) Section 281(4) of the Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.
- (5) In the 1985 Act—
 - (a) in section 5(4) (interpretation)—
 - (i) after the words "future debts" there shall be inserted the words "or amounts payable under a confiscation order"; and

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- (ii) at the end there shall be added the words "; and in the foregoing provisions of this subsection "confiscation order" has the meaning assigned by section 1(1) of the Criminal Justice (Scotland) Act 1987 or by section 1(8) of the Drug Trafficking Offences Act 1986";
 - (b) in section 7(1) (constitution of apparent insolvency)—
 - (i) in paragraph (b), at the beginning there shall be inserted the words "not being a person whose property is for the time being affected by a restraint order or subject to a confiscation, or charging, order,";
 - (ii) in paragraph (c), after the words "became due" there shall be inserted the words "or that but for his property being affected by a restraint order or subject to a confiscation, or charging, order he would be able to do so"; and
 - (iii) at the end there shall be added the words "In paragraph (d) above, "liquid debt" does not include a sum payable under a confiscation order; and in the foregoing provisions of this subsection—
 - “charging order" has the meaning assigned by section 9(2) of the Drug Trafficking Offences Act 1986;
 - "confiscation order" has the meaning assigned by section 1(1) of the Criminal Justice (Scotland) Act 1987 or by section 1(8) of the said Act of 1986; and
 - "restraint order" has the meaning assigned by section 9 of the said Act of 1987 or by section 8 of the said Act of 1986.”; and
 - (c) section 55(2) (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.
- (6) In section 231 of the 1975 Act (intimation of intention to appeal)—
- (a) in subsection (1), after the words "236B(2) of this Act" there shall be inserted the words "and to section 2(2) of the Criminal Justice (Scotland) Act 1987 (postponed confiscation orders)";
 - (b) in subsection (4), at the beginning there shall be inserted the words "Subject to subsection (5) below,"; and
 - (c) after subsection (4) there shall be added the following subsection—
 - “(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987, the reference in subsection (4) above to "the day on which sentence is passed in open court" shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made (whether or not a confiscation order is then made or any other sentence is then passed).”.
- (7) In the Drug Trafficking Offences Act 1986—
- (a) at the end of section 2(5) (assessing the proceeds of drug trafficking) there shall be inserted the words—
 - “References in this subsection to a confiscation order include a reference to a confiscation order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987”;
 - (b) in section 8 (restraint orders)—
 - (i) in subsection (8), for the words "the High Court has made a restraint order" there shall be substituted the words "a restraint order has been

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made" and at the end of that subsection there shall be added the words—

“In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987, and, in relation to such an order, "realisable property" has the same meaning as in that Part”; and

- (ii) in subsection (9), for the words "court's directions" there shall be substituted the words "directions of the court which made the order";
- (c) in section 16 (sequestration of person holding realisable property)—
 - (i) in subsection (2), at the end there shall be added the words ", 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."; and
 - (ii) in subsection (5), in paragraph (b)(ii), after the word "disposal" there shall be inserted the words "and for so much of his remuneration as may reasonably be assigned for his actings in that connection"; and in paragraph (c), for the words "a lien for any expenses (including his remuneration) properly incurred in respect of the property" there shall be substituted the words "any such lien as is mentioned in paragraph (b)(ii) above";
- (d) in section 19(2)(b)(ii) (compensation for loss in consequence of anything done in relation to realisable property by or in pursuance of order of Court of Session), for the words "20, 21 or 22 of this Act" there shall be substituted the words "11 (as applied by subsection (6) of that section), 27 or 28 of the Criminal Justice (Scotland) Act 1987 (inhibition and arrestment of property affected by restraint order and recognition and enforcement of orders under this Act)";
- (e) in section 33 (power to inspect Land Register etc.)—
 - (i) in subsection (2), after paragraph (c) there shall be inserted the words—

“, or

 - (d) the Lord Advocate or any person conducting a prosecution in Scotland on his behalf;”;
 - (ii) in subsection (4)—

after the words "8 or 11 of this Act" there shall be inserted the words "or by an administrator appointed under section 13 of the Criminal Justice (Scotland) Act 1987 (comparable Scottish provisions)"; and

in each of paragraphs (a) and (b), after the word "receiver" there shall be inserted the words "(or administrator)"; and
- (f) in section 40(4)(b) (effect in Scotland), at the beginning there shall be inserted the words "section 3(6)".

46 Service and notice for purposes of Part I

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

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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.

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;
 - "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 Bankruptcy (Scotland) Act 1985.
- (2) This Part of this Act shall (except where the context otherwise requires) be construed as one with the 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

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- (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.