



Criminal Justice Act 1988

1988 CHAPTER 33

PART VI

CONFISCATION OF THE PROCEEDS OF AN OFFENCE

71 Confiscation orders

- (1) The Crown Court and a magistrates' court shall each have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as the court thinks fit.
- (2) The Crown Court may make such an order against an offender where—
 - (a) he is found guilty of any offence to which this Part of this Act applies; and
 - (b) it is satisfied—
 - (i) that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and
 - (ii) that his benefit is at least the minimum amount.
- (3) A magistrates' court may make such an order against an offender where—
 - (a) he is convicted of an offence listed in Schedule 4 to this Act; and
 - (b) it is satisfied—
 - (i) that he has benefited from that offence or from that offence taken together with some other offence listed in that Schedule of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence; and
 - (ii) that his benefit is at least the minimum amount.
- (4) For the purposes of this Part of this Act a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

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- (5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Part of this Act as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.
- (6) The sum which an order made by a court under this section requires an offender to pay must be at least the minimum amount, but must not exceed—
- (a) the benefit in respect of which it is made; or
 - (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,
- whichever is the less.
- (7) For the purposes of this Part of this Act the minimum amount is £10,000 or such other amount as the Secretary of State may specify by order made by statutory instrument.
- (8) A statutory instrument containing an order made by the Secretary of State under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this Part of this Act—
- (a) an order made by a court under this section is referred to as a “confiscation order”;
 - (b) “drug trafficking offence” has the same meaning as in the Drug Trafficking Offences Act 1986;
 - (c) references to an offence to which this Part of this Act applies are references to any offence which—
 - (i) is listed in Schedule 4 to this Act; or
 - (ii) if not so listed, is an indictable offence, other than a drug trafficking offence; and
 - (d) a person against whom proceedings have been instituted for an offence to which this Part of this Act applies is referred to (whether or not he has been convicted) as “the defendant”.

72 Making of confiscation orders

- (1) A court shall not make a confiscation order unless the prosecutor has given written notice to the court to the effect that it appears to him that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.
- (2) If the prosecutor gives the court such a notice, the court shall determine whether it ought to make a confiscation order.
- (3) When considering whether to make a confiscation order the court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.
- (4) If the court determines that it ought to make such an order, the court shall, before sentencing or otherwise dealing with the offender in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered

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in his case by virtue of this section and make a confiscation order for that amount specifying the offence or offences.

(5) Where a court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, other than an order under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders); or
- (c) making any order under—
 - (i) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
 - (ii) section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders),

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Part of this Act applies.

(7) Where—

- (a) a court makes both a confiscation order and an order for the payment of compensation under section 35 of the Powers of Criminal Courts Act 1973 against the same person in the same proceedings; and
- (b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

73 Statements, etc. relevant to making confiscation orders

(1) Where—

- (a) a defendant has been convicted of an offence to which this Part of this Act applies and the prosecutor tenders to the court a statement as to any matters relevant—
 - (i) to determining whether the defendant has benefited from the offence or from any other offence to which this Part of this Act applies of which he is convicted in the same proceedings or which is taken into consideration in determining his sentence; or
 - (ii) to an assessment of the value of the defendant's benefit from the offence or any other offence to which this Part of this Act applies of which he is so convicted or which is so taken into consideration; and
 - (b) the defendant accepts to any extent any allegation in the statement;
- the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

- (a) a statement is tendered under subsection (1)(a) above, and

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- (b) the court is satisfied that a copy of that statement has been served on the defendant,
- the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.
- (3) If the defendant fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from—
- (a) any allegation in respect of which he has complied with the requirement; and
 - (b) any allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.
- (4) Where—
- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) the prosecutor accepts to any extent any allegation in the statement;
- the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.
- (5) An allegation may be accepted or a matter indicated for the purposes of this section either—
- (a) orally before the court; or
 - (b) in writing in accordance with rules of court.
- (6) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

74 Definition of principal terms used

- (1) In this Part of this Act, “realisable property” means, subject to subsection (2) below—
- (a) any property held by the defendant; and
 - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act.
- (2) Property is not realisable property if—
- (a) an order under section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders);
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
 - (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property),
- is in force in respect of the property.

- (3) For the purposes of this Part of this Act the amount that might be realised at the time a confiscation order is made is—
- (a) the total of the values at that time of all the realisable property held by the defendant, less
 - (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,
- together with the total of the values at that time of all gifts caught by this Part of this Act.
- (4) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—
- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first-mentioned person’s beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
 - (b) in any other case, is its market value.
- (5) References in this Part of this Act to the value at any time (referred to in subsection (6) below as “the material time”) of any property obtained by a person as a result of or in connection with the commission of an offence are references to—
- (a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (6) below applies, the value there mentioned,
- whichever is the greater.
- (6) If at the material time he holds—
- (a) the property which he obtained (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,
- the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above, so far as it so represents the property which he obtained, but disregarding any charging order.
- (7) Subject to subsection (12) below, references in this Part of this Act to the value at any time (referred to in subsection (8) below as “the material time”) of a gift caught by this Part of this Act are references to—
- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (8) below applies, the value there mentioned,
- whichever is the greater.
- (8) Subject to subsection (12) below, if at the material time he holds—
- (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;
- the value referred to in subsection (7) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property

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mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding any charging order.

- (9) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.
- (10) A gift (including a gift made before the commencement of this Part of this Act) is caught by this Part of this Act if—
- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
 - (b) the court considers it appropriate in all the circumstances to take the gift into account.
- (11) The reference in subsection (10) above to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.
- (12) For the purposes of this Part of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

Enforcement, etc. of confiscation orders

75 Application of procedure for enforcing fines

- (1) Where the Crown Court orders the defendant to pay an amount under this Part of this Act, sections 31(1) to (3C) and 32(1) and (2) of the Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if that amount were a fine imposed on him by the Crown Court.
- (2) Where a magistrates' court orders the defendant to pay an amount under this Part of this Act, that amount shall be treated as a fine for the purposes of section 31(3) of the Magistrates' Courts Act 1980 (general limit on the power of a magistrates' court to impose imprisonment not to apply in the case of imprisonment in default).
- (3) Where—

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- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Part of this Act in respect of an offence; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence;

the term of imprisonment or of detention under section 9 of the Criminal Justice Act 1982 (detention of persons aged 17 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.

- (4) The reference in subsection (3) above to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or detention in a young offender institution which he is liable to serve in respect of the offence; and for the purposes of this subsection—
 - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded—
 - (i) any sentence suspended under section 22(1) of the Powers of Criminal Courts Act 1973 which has not taken effect at the time the warrant is issued;
 - (ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977, any part of the sentence which the defendant has not at that time been required to serve in prison; and
 - (iii) any term of imprisonment or detention fixed under section 31(2) of the Powers of Criminal Courts Act 1973 for which a warrant of commitment has not been issued at that time.
- (5) In the application of Part III of the Magistrates' Courts Act 1980 to amounts payable under confiscation orders—
 - (a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines); and
 - (b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.
- (6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1) above to the Crown Court shall be construed accordingly.

76 Cases in which restraint orders and charging orders may be made

- (1) The powers conferred on the High Court by sections 77(1) and 78(1) below are exercisable where—
 - (a) proceedings have been instituted in England and Wales against the defendant for an offence to which this Part of this Act applies;
 - (b) the proceedings have not been concluded; and
 - (c) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them.
- (2) Those powers are also exercisable where—

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- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with an offence to which this Part of this Act applies; and
 - (b) it appears to the court that a confiscation order may be made in proceedings for the offence.
- (3) For the purposes of sections 77, 78 and 92 below at any time when those powers are exercisable before proceedings have been instituted—
- (a) references in this Part of this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a) above;
 - (b) references in this Part of this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and
 - (c) references in this Part of this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) above for an offence to which this Part of this Act applies.
- (4) Where the court has made an order under section 77(1) or 78(1) below by virtue of subsection (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.

77 Restraint orders

- (1) The High Court may by order (referred to in this Part of this Act as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.
- (3) A restraint order may apply—
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.
- (5) A restraint order—
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order—
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

- (8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—
- (a) to take possession of any realisable property, and
 - (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Great Britain.
- (10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property.
- (11) Property seized under subsection (10) above shall be dealt with in accordance with the court's directions.
- (12) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
 - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

78 Charging orders in respect of land, securities, etc

- (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
 - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Part of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and

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- (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act—
 - (i) in any asset of a kind mentioned in subsection (5) below; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or
 - (b) securities of any of the following kinds—
 - (i) government stock;
 - (ii) stock of any body (other than a building society) incorporated within England and Wales;
 - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.
- (8) An application for the discharge or variation of a charging order may be made by any person affected by it.

79 Charging orders: supplementary provisions

- (1) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgments.
- (2) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.
- (3) Subject to any provision made under section 80 below or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person

holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

- (4) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 78(7) above discharging the charging order may direct that the entry be cancelled.
- (5) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament amend section 78 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- (6) In this section and section 78 above, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the Charging Orders Act 1979.

80 Realisation of property

- (1) Where—
 - (a) a confiscation order is made;
 - (b) the order is not subject to appeal; and
 - (c) the proceedings in which it was made have not been concluded,the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.
- (2) The court may appoint a receiver in respect of realisable property.
- (3) The court may empower a receiver appointed under subsection (2) above, under section 77 above or in pursuance of a charging order—
 - (a) to enforce any charge imposed under section 78 above on realisable property or on interest or dividends payable in respect of such property; and
 - (b) in relation to any realisable property other than property for the time being subject to a charge under section 78 above, to take possession of the property subject to such conditions or exceptions as may be specified by the court.
- (4) The court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.
- (6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 78 above.
- (8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

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81 Application of proceeds of realisation and other sums

- (1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under this Part of this Act or in pursuance of a charging order, that is—
- (a) the proceeds of the enforcement of any charge imposed under section 78 above;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 77 or 80 above; and
 - (c) any other sums, being property held by the defendant;
- shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 87(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—
- (a) among such of those who held property which has been realised under this Part of this Act, and
 - (b) in such proportions,
- as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.
- (3) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.
- (4) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 87(2) below but not already paid under subsection (1) above.
- (5) If the money was paid to the justices' clerk by a receiver appointed under this Part of this Act or in pursuance of a charging order, the justices' clerk shall next pay the receiver's remuneration and expenses.
- (6) After making—
- (a) any payment required by subsection (4) above; and
 - (b) in a case to which subsection (5) above applies, any payment required by that subsection,
- the justices' clerk shall reimburse any amount paid under section 88(2) below.
- (7) The justices' clerk shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 72(7) above.
- (8) Any balance in the hands of the justices' clerk after he has made all payments required by the foregoing provisions of this section shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 (application of fines, etc.) as if it were a fine imposed by a magistrates' court.
- (9) Where under subsection (3) above a sum falls to be applied in payment both of compensation and of other outgoings—
- (a) the person entitled to the compensation shall be liable to pay to the Secretary of State such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under

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section 72(7) above bears to the total amount payable under the confiscation order;

- (b) the justices' clerk shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a) above;
- (c) notwithstanding the deduction under paragraph (b) above, the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 as if it were a fine imposed by a magistrates' court.

- (10) In this section, “justices' clerk” has the same meaning as in the Justices of the Peace Act 1979.

82 Exercise of powers by High Court or receiver

- (1) This section applies to the powers conferred on the High Court by sections 77 to 81 above or on the Court of Session by sections 90 to 92 below, or on a receiver appointed under this Part of this Act or in pursuance of a charging order.
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Crown.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

83 Variation of confiscation orders

- (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.
- (2) For the purposes of subsection (1) above—
 - (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by

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the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part of this Act from any risk of realisation under this Part of this Act.

- (3) Where a certificate has been issued under subsection (1) above, the defendant may apply—
- (a) where the confiscation order was made by the Crown Court, to that court; and
 - (b) where the confiscation order was made by a magistrates' court, to a magistrates' court for the same area,
- for the amount to be recovered under the order to be reduced.
- (4) The Crown Court shall, on an application under subsection (3) above—
- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.
- (5) A magistrates' court shall, on an application under subsection (3) above, substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

84 Bankruptcy of defendant etc

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (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 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Act;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 or 308 of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); 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 that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or

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- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act 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.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part of this Act—
- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies 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 or charging order; and
 - (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.
- (7) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the Insolvency Act 1986 came into force), this section shall have effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914;
 - (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
 - (c) the references in subsection (5) 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 Act of 1914; and
 - (d) subsection (2)(b) shall be omitted.

85 Sequestration in Scotland of defendant etc

- (1) Where the estate of a person who holds realisable property is sequestrated—
- (a) property for the time being subject to a restraint order made before the award of sequestration, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985.
- (2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below 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 that Act, and

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- (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, under subsection (6) of that section, vests in the permanent trustee 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 that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the award of sequestration; or
 - (b) on property which was subject to a restraint order when the award of sequestration was made.
- (5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Part of this Act—
- (a) no decree shall be granted under section 34 or 36 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies 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 or charging order, and
 - (b) any decree 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.
- (7) In any case in which, notwithstanding the coming into force of the Bankruptcy (Scotland) Act 1985, the 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 of 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 therein to the Act of 1985 there were substituted a reference to the Act of 1913.

86 Winding up of 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—

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- (a) property for the time being subject to a restraint order made before the relevant time, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above.
- (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 High Court by sections 77 to 80 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below 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—
- (a) so as to inhibit him from exercising those functions 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 liquidator or any provisional liquidator) properly incurred in the winding up 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 those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (5) For the purposes of the application of Parts IV and V of the 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.
- (6) In this section—
- “company” means any company which may be wound up under the Insolvency Act 1986; and
 - “the relevant time” means—
 - (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.
- (7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the Companies Act 1985.

87 Insolvency officers dealing with property subject to restraint order

- (1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—

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- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court 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 his negligence in so acting; and a person so acting 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, bankruptcy 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 acting 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 81(1) or (4) above.
- (3) In this Part of this Act 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 purposes 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 sequestration and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

88 Receivers: supplementary provisions

- (1) Where a receiver appointed under this Part of this Act or in pursuance of a charging order 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.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 81(5) above, be paid by the prosecutor or, in a case where proceedings for an offence to which this Part of this Act applies are not instituted, by the person on whose application the receiver was appointed.

89 Compensation

- (1) If proceedings are instituted against a person for an offence or offences to which this Part of this Act applies and either—
 - (a) the proceedings do not result in his conviction for any such offence, or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—
 - (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in subsection (5) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Act.
- (3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.
- (4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this section shall be paid—
 - (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met;
 - (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions;
 - (c) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
 - (d) where the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and
 - (e) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.

Enforcement in Scotland

90 Recognition and enforcement of orders in Scotland

- (1) An order to which this section applies shall, subject to this section and section 91 below, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.
- (2) A receiver's functions under or for the purpose of section 77, 80 or 81 above shall, subject to this section and section 91 below, have effect in the law of Scotland.

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- (3) If an order to which this section applies is registered under this section—
 - (a) the Court of Session shall have, in relation to its enforcement, the same power;
 - (b) proceedings for or with respect to its enforcement may be taken; and
 - (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,as if the order had originally been made in that Court.
- (4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 80(3)(a) above to have effect in the law of Scotland.
- (5) The orders to which this section applies are orders of the High Court—
 - (a) made under section 77, 78 or 81 above;
 - (b) relating to the exercise by that Court of its powers under those sections; or
 - (c) relating to receivers in the performance of their functions under any of them, but not including an order in proceedings for enforcement of any such order.
- (6) References in this section to an order under section 77 above include references to a discharge under section 76(4) above of such an order.
- (7) In this section and in sections 91 and 93 below, “order” means any order, direction or judgment by whatever name called.
- (8) Nothing in any order of the High Court under section 80(6) above prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

91 Supplementary

- (1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 90 above applies, direct that the order shall, in accordance with such rules, be registered in that Court.
- (2) Subsections (1) and (3) of that section and subsection (1) above are subject to any provision made by rules of court—
 - (a) as to the manner in which and conditions subject to which orders to which that section applies are to be enforced in Scotland;
 - (b) for the sisting of proceedings for enforcement of such an order;
 - (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.
- (3) This section and that section are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court.
- (4) The Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents, etc.) in relation to proceedings brought or likely to be brought under this Part of this Act in the High Court as if those proceedings had been brought or were likely to be brought in the Court of Session.
- (5) The Court of Session may, additionally, for the purpose of—
 - (a) assisting the achievement in Scotland of the purposes of orders to which section 90 above applies,

- (b) assisting receivers performing functions thereunder or for the purposes of section 77, 80 or 81 above,
make such orders and do otherwise as seems to it appropriate.

92 Inhibition and arrestment of property in Scotland

- (1) On the application of the prosecutor, the Court of Session may, in respect of—
 - (a) heritable realisable property in Scotland affected by a restraint order registered under section 90 above (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property;
 - (b) moveable realisable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor;and, subject to the provisions of this section, the warrant—
 - (i) shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly;
 - (ii) where granted under subsection (1)(a) above, shall have the effect of letters of inhibition and shall forthwith be registered by the prosecutor in the register of inhibitions and adjudications.
- (2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) Any power of the Court of Session to recall, loose or restrict inhibitions or arrestments shall, in relation to an inhibition or arrestment proceeding upon a warrant under this section and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 80 above.
- (5) That an inhibition or arrestment has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 77, 80 or 81 above in respect of that property.
- (6) No inhibition or arrestment executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such inhibition or arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall—
 - (a) apply for the recall, or as the case may be restriction, of the inhibition or arrestment accordingly; and
 - (b) ensure that recall, or restriction, of an inhibition on such application is reflected in the register of inhibitions and adjudications.

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93 Proof in Scotland of High Court orders

A document purporting to be a copy of an order under or for the purposes of this Part of this Act by the High Court and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

Enforcement of external orders

94 Enforcement of Northern Ireland orders

- (1) Her Majesty may by Order in Council provide that for the purposes of sections 76 to 89 above, this Part of this Act shall have effect as if—
 - (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
 - (b) references to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings included a reference to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings, as the case may be; and
 - (c) the references to the laying of an information in section 76(2) and (4) above included references to making a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.
- (2) An Order in Council under this section may provide for those sections to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the Order.
- (3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (4) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

95 Enforcement of Northern Ireland order in Scotland

- (1) Her Majesty may by Order in Council provide that for the purposes of any part of the law of Northern Ireland which appears to Her Majesty to correspond to this Part of this Act sections 90 to 93 above shall have effect as they have effect for the purposes of this Part subject to such modifications as may be specified in the Order.
- (2) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (3) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

96 Enforcement of other external orders

- (1) Her Majesty may by Order in Council—
 - (a) direct in relation to a country or territory outside the United Kingdom designated by the Order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted

- in the designated country and may result in an external confiscation order being made there;
- (b) make—
- (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 97 below; and
 - (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this Part of this Act—
- “external confiscation order” means an order made by a court in a designated country for the purpose—
- (a) of recovering—
 - (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Part of this Act applies; or
 - (ii) the value of property so obtained; or
 - (b) of depriving a person of a pecuniary advantage so obtained; and
- “modifications” includes additions, alterations and omissions.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.
- (5) An Order in Council under this section shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

97 Registration of external confiscation orders

- (1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—
- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
 - (c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
- (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.

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- (3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Miscellaneous and supplemental

98 Disclosure of information subject to contractual restriction upon disclosure

- (1) Where a person discloses to a constable—
- (a) a suspicion or belief that any property—
 - (i) has been obtained as a result of or in connection with the commission or an offence to which this Part of this Act applies; or
 - (ii) derives from property so obtained; or
 - (b) any matter on which such a suspicion or belief is based,
- the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract.
- (2) In subsection (1) above “constable” includes a police officer engaged on central service (as defined in section 43(5) of the Police Act 1964).

99 Authorisation of delay in notifying arrest etc

- (1) The Police and Criminal Evidence Act 1984 shall be amended as follows.
- (2) In section 56(5A) (which authorises delay in notifying arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies (offences in respect of which confiscation orders under that Part may be made)”; and
 - (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
 - “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by telling the named person of the arrest; and
 - (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest.”
- (3) In section 58(8A) (which authorises delay in access to legal advice on arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies”; and

- (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
- “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above; and
 - (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by subsection (1) above.”
- (4) Without prejudice to section 20(2) of the Interpretation Act 1978, the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 shall apply to sections 56 and 58 of the Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

100 Power to inspect Land Register, etc

- (1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (2) or (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the Land Registration Act 1925 which relates to the person or property so specified.
- (2) An application may be made by—
- (a) any police officer not below the rank of superintendent;
 - (b) any Crown Prosecutor; or
 - (c) any member of the Serious Fraud Office designated for the purposes of section 1 of the Criminal Justice Act 1987; or
 - (d) any person commissioned by the Commissioners of Customs and Excise not below the rank of senior executive officer; or
 - (e) any person authorised in that behalf by the Commissioners of Inland Revenue not below the rank of senior executive officer;
- and on an application under this subsection an appropriate certificate shall be given to the registrar.
- (3) In subsection (2) above “appropriate certificate” means a certificate—
- (a) that a person specified in the certificate has committed or that there are reasonable grounds for suspecting that a person so specified has committed an offence to which this Part of this Act applies; and
 - (b) that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to be of substantial value (whether by itself or together with other information) to an investigation into whether the person so specified has benefited from the commission of the offence or in facilitating the recovery of the value of the property obtained by that person from or in connection with the offence.
- (4) An application may be made by a receiver appointed under this Part of this Act and on an application under this subsection there shall be given to the registrar—

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- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver; and
 - (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.
- (5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.
- (6) The references to senior executive officers in subsection (2) above include references to equivalent departmental grades.
- (7) This section shall cease to have effect on the day appointed under section 3(2) of the Land Registration Act 1988 for the coming into force of that Act.

101 Abolition of power to make criminal bankruptcy order

- (1) The power to make a criminal bankruptcy order which section 39 of the Powers of Criminal Courts Act 1973 confers on the Crown Court is abolished.
- (2) Nothing in subsection (1) above—
- (a) shall affect any criminal bankruptcy order made before this section comes into force; or
 - (b) shall prevent the taking of any step following such an order.

102 Part VI— Interpretation

- (1) In this Part of this Act—
- “constable” includes a person commissioned by the Commissioners of Customs and Excise;
 - “interest”, in relation to property, includes right;
 - “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

| <i>Expression</i> | <i>Relevant provision</i> |
|--------------------------------------|---------------------------|
| Benefited from an offence | Section 71(4) |
| Charging order | Section 78(2) |
| Confiscation order | Section 71(9)(a) |
| Dealing with property | Section 77(9) |
| Defendant | Section 71(9)(d) |
| Gift caught by this Part of this Act | Section 74(10) |
| Making a gift | Section 74(12) |

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| <i>Expression</i> | <i>Relevant provision</i> |
|--|---------------------------|
| Offence to which this Part of this Act applies | Section 71(9)(c) |
| Realisable property | Section 74(1) |
| Restraint order | Section 77(1) |
| Value of gift | Section 74(7) and (8) |
| Value of property | Section 74(4) to (6) |

- (3) This Part of this Act applies to property wherever situated.
- (4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.
- (5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Part of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator.
- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of that offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;
- 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 have been instituted at the earliest of those times.
- (12) Proceedings are concluded—
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

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- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

103 Amendments of Drug Trafficking Offences Act 1986 and Criminal Justice (Scotland) Act 1987

- (1) The amendments of the Drug Trafficking Offences Act 1986 specified in Part I of Schedule 5 to this Act (which make certain provisions of that Act correspond to provisions of this Part of this Act) shall have effect.
- (2) The amendments of the Criminal Justice (Scotland) Act 1987 specified in Part II of that Schedule shall also have effect.