Proceeds of Crime (Scotland) Act 1995

1995 CHAPTER 43

An Act to consolidate as regards Scotland certain enactments relating to the confiscation of the proceeds of, and forfeiture of property used in, crime. [8th November 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 For the extent of this Act see s. 50 and the commentary in ss. 16, 20, 28-31, 33, 34, Sch. 1 and Sch. 1 paras. 1, 2, 4, 12

Modifications etc. (not altering text)

C1 Act modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 3**, Sch.

C2 Act extended (S.) (1.4.1996) by 1995 c. 40, **ss. 1**, 2(2), 7(2)

Commencement Information

I1 Act wholly in force at 1.4.1996, see s. 50(2)

[F1 PART I]

CONFISCATION OF THE PROCEEDS OF CRIME

Textual Amendments

F1 Pt. I (ss. 1-20) (except s. 2(7)) repealed (24.2.2003 in so far as repeals ss. 18-20 and otherwise 24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(a), **Sch. 12**; S.I. 2003/120, **art. 2(1)**, Sch. (subject to arts. 3-7 (as amended by S.I. 2003/333, **art. 14**)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C3 Pt. I (ss. 1-20) excluded (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(1)**
Pt. I (ss. 1-20) applied (with modifications) (1.5.1999) by S.I. 1999/673, art. 4, **Sch. 3 paras. 1-12**

Confiscation orders

2 Benefit from commission of offence

(1) F3 . . . . . .

(2) F3 . . . . . .

(3) F3 . . . . . .

(4) F3 . . . . . .

(5) F3 . . . . . .

(6) F3 . . . . . .

(7) In this Act, "property" means any property wherever situated, whether heritable or moveable or whether corporeal or incorporeal.

Textual Amendments

F3 Pt. I (ss. 1-20) (except s. 2(7)) repealed (24.2.2003 in so far as repeals ss. 18-20 and otherwise 24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(a), **Sch. 12**; S.I. 2003/120, **art. 2(1)**, Sch. (subject to arts. 3-7 (as amended by S.I. 2003/333, **art. 14**)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Exercise of powers

Compensation

Investigation and disclosure of information

PART II

FORFEITURE OF PROPERTY USED IN CRIME

Modifications etc. (not altering text)

C9 Pt. 2 excluded (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 103, 126(2), **Sch. 5 para. 7(b)**

C10 Pt. II (ss. 21-27) restricted (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(2)**
Pt. II (ss. 21-27) restricted (1.4.1996) by 1998 c. 53, **s. 33A** (as inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 71(6)**
Pt. II (ss. 21-27) applied (with modifications) (1.5.1999) by S.I. 1999/675, art. 4, **Sch. 3 paras. 2-7**

21 Suspended forfeiture order.

(1) This section applies where in respect of any offence—
- (a) the accused is convicted, whether in solemn or summary proceedings; or
- (b) in the case of summary proceedings, (without proceeding to conviction) an order is made discharging him absolutely.

(2) Where this section applies, the court may, if it is satisfied on the application of the prosecutor that any property which was at the time of the offence or of the accused's apprehension in his ownership or possession or under his control—
- (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
- (b) was intended to be used for that purpose,

make an order (a "suspended forfeiture order") in respect of that property.

(3) Any application under this section shall be made—
- (a) in proceedings on indictment, when the prosecutor moves for sentence or if the accused is remitted for sentence under section 195 of the 1995 Act, before sentence is pronounced; and
- (b) in summary proceedings, following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.

Status: *Point in time view as at 24/03/2003.*
Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

(4) If the prosecutor knows or reasonably suspects the identity of a person (other than the accused) as being the owner of, or otherwise having an interest in, the property to which the suspended forfeiture order relates, he shall intimate that fact to the court on making the application and the order shall name that person as a person having an interest or suspected of having an interest in the property.

(5) Any reference in this Part of this Act to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(6) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (2)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.

(7) Subject to subsection (8) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making a suspended forfeiture order in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.

(8) Subsection (7) above shall not apply—

(a) if the enactment concerned expressly excludes the application of this section; or

(b) to any property which has been used or has been intended to be used as mentioned in subsection (2)(a) or (b) above in relation to the offence of which the accused has been convicted, if the enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.

(9) Where the court makes both a suspended forfeiture order and a compensation order under section 249 of the 1995 Act against the same accused in the same proceedings, it may order that, in the event of the property subject to the suspended forfeiture order being forfeited under section 24 of this Act, the proceeds of sale of that property shall be first directed towards satisfaction of the compensation order.

(10) As soon as may be after a suspended forfeiture order has been made, the prosecutor—

(a) shall notify in writing any person named in the order in pursuance of subsection (4) above that the order has been made, and that the person so notified may be entitled to apply to the court for—

(i) the order to be recalled under section 25 of this Act; or

(ii) a direction under section 26 of this Act; and

(b) if the property in respect of which the order has been made includes heritable property in Scotland, shall cause a certified copy of the order to be recorded in the General Register of Sasines or as the case may be registered in the Land Register of Scotland; and

(c) if the court directs him to do so, shall insert a notice in the Edinburgh Gazette or in such other newspaper or journal as appears to the court to be appropriate specifying the terms of the suspended forfeiture order.

(11) Any property in respect of which a suspended forfeiture order is made shall be taken into the possession of or placed under the control of the clerk of court until—

(a) the order is recalled; or
(b) the property is forfeited to the Crown and disposed of under section 24 of this Act or forfeited to another person under that section.

(12) For the purposes of any appeal or review a suspended forfeiture order is a sentence.

(13) In this section "the court" does not include a district court, whether or not constituted by a stipendiary magistrate.

22 Forfeiture: district court.

(1) Where, in respect of any offence tried in the district court, the accused is convicted or (without proceeding to conviction) an order is made discharging him absolutely the court may, if it is satisfied on the application of the prosecutor that any moveable property which was at the time of the offence or of the accused's apprehension in his ownership or possession or under his control—
(a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
(b) was intended to be used for that purpose,
order that the property shall be forfeited to and vest in the Crown or such other person as the court may direct.

(2) Any application under subsection (1) above shall be made following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.

(3) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (1)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.

(4) Subject to subsection (5) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making an order under subsection (1) above in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.

(5) Subsection (4) above shall not apply—
(a) if the enactment concerned expressly excludes the application of this section; or
(b) to any property which has been used or has been intended to be used as mentioned in subsection (1)(a) or (b) above in relation to the offence of which the accused has been convicted, if the enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.

(6) Where the court makes—
(a) an order under subsection (1) above that property shall be forfeited to the Crown; and
(b) a compensation order under section 249 of the 1995 Act,
against the same accused in the same proceedings, it may order that the proceeds of sale of the property forfeited by virtue of subsection (1) above shall be first directed towards satisfaction of the compensation order.

Status: *Point in time view as at 24/03/2003.*
Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

(7) For the purposes of any appeal or review an order under subsection (1) above is a sentence.

(8) In this section "the court" means the district court.

23 Warrant to search for and seize property.

(1) Where—

(a) the sheriff is satisfied, on an application being made to him by the prosecutor—

(i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence; and

(ii) that there is reasonable cause to believe that property specified in the application is to be found in a place or in premises specified in the application; and

(b) it appears to him that there are reasonable grounds for thinking that in the event of the person being convicted of the offence a suspended forfeiture order might be made in relation to the property,

he may grant a warrant authorising a person named therein to enter and search the place or premises and seize the property.

(2) Where a court has made a suspended forfeiture order in respect of any property, if it is satisfied on the application of the prosecutor—

(a) that there is reasonable cause to believe that the property is to be found in any place or premises; and

(b) that admission to the place or premises has been refused or that it is reasonably believed that such admission will be refused,

it may grant a warrant authorising a person named therein to enter and search the place or premises and seize the property.

(3) An application for a warrant under subsection (2) above may be made at the same time as an application for a suspended forfeiture order.

24 Forfeiture of property subject to suspended forfeiture order.

(1) Subject to the following provisions of this section, property in respect of which a suspended forfeiture order has been made shall be forfeited to and vest in the Crown, or such other person as the court may direct, as follows—

(a) heritable property situated in Scotland shall be forfeited at the end of the period of 6 months commencing with the date on which a certified copy of the suspended forfeiture order is recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland;

(b) heritable property situated outside Scotland shall be forfeited at the end of the period of six months commencing with the date of the making of the suspended forfeiture order;

(c) moveable property shall be forfeited at the end of the period of 60 days commencing with the date of the making of the suspended forfeiture order.

(2) Notwithstanding subsection (1)(c) above, moveable property which is certified by the prosecutor as being—

(a) of a perishable or dangerous nature;

(b) of no commercial value; or

(c) property which cannot lawfully be sold, supplied or possessed,

shall be forfeited immediately after the making of the suspended forfeiture order.

(3) If an application for recall or variation of the suspended forfeiture order concerned has been made under section 25 of this Act, there shall be no forfeiture of property mentioned in paragraph (a), (b) or (c) of subsection (1) above unless and until whichever is the later of the following occurs—

(a) the application is finally disposed of in favour of the prosecutor; or

(b) the period mentioned in that paragraph has expired.

(4) Without prejudice to subsection (2) above, in the event of an appeal against conviction or sentence, there shall be no forfeiture of property until whichever is the later of the following occurs—

(a) the appeal, if it is proceeded with, is determined in favour of the prosecutor; or

(b) the period mentioned in paragraph (a) or, as the case may be, (b) or (c) of subsection (1) above has expired.

(5) Property which has been forfeited to the Crown under this section shall be dealt with by the Crown in such manner as seems to it to be appropriate.

(6) A certificate by the clerk of court that property was forfeited to and vested in the Crown, or another person, under this section on the date specified in the certificate shall be conclusive evidence of that fact; and, in the case of a certificate in respect of heritable property situated in Scotland, the prosecutor shall, forthwith, cause a certified copy of the certificate to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

25 Recall or variation of suspended forfeiture order.

(1) The court shall, on an application being made to it under this section by a person other than the accused, recall a suspended forfeiture order in relation to any property or an interest in property if—

(a) it is satisfied by the applicant on the balance of probabilities that he is the owner of the property or otherwise has an interest in it; and

(b) subsection (2) or subsection (3) below is applicable.

(2) This subsection applies if the court is not satisfied by the prosecutor that—

(a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order was made, he—

(i) knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and

(ii) did not take all the steps which were reasonable for him to take to prevent such intended use; or

(b) where he has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, the applicant knew or ought to have known that the property had been intended to be, or had been, so used.

Status: *Point in time view as at 24/03/2003.*
Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

(3) This subsection applies if the court is satisfied as mentioned in subsection (2) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.

(4) Where an order ("a recalling order") recalling a suspended forfeiture order relates to heritable property situated in Scotland, the prosecutor shall, as soon as may be after the recalling order has been made, cause a certified copy of the recalling order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

(5) Where the prosecutor believes that the person named in the suspended forfeiture order in pursuance of section 21(4) of this Act is not the owner of, or does not otherwise have an interest in, the property concerned then—

(a) if he does not know who the true owner is, or who otherwise truly has the interest, he may apply to the court under this section for an order varying the suspended forfeiture order by deleting that name from it;

(b) if he does know or reasonably suspects the identity of the true owner or the person who otherwise truly has the interest ("the correct person"), he may apply to the court under this section for an order varying the suspended forfeiture order by substituting the name of the correct person for that of the person so named.

(6) Where no person is named in the suspended forfeiture order in pursuance of section 21(4) of this Act but the prosecutor later comes to believe that a person is, or may be, the owner of, or otherwise has or may have an interest in, the property concerned, he may apply to the court for an order varying the suspended forfeiture order by naming that person as a person having or being suspected of having such an interest.

(7) The court shall grant any application made in pursuance of subsection (5) or (6) above; and sections 21(10) and 24 of this Act shall apply in relation to an order varying a suspended forfeiture order in accordance with an application under subsection (5) or (6) above as they apply in relation to a suspended forfeiture order.

(8) An application under this section may be made at any time before the property concerned is forfeited to the Crown or another person under section 24 of this Act.

(9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any probation order or order of discharge made, in respect of the offence concerned otherwise than as provided by this section.

(10) In this section "the court" means the court which made the suspended forfeiture order.

26 Property wrongly forfeited: return or compensation.

(1) Where the court, on an application being made to it by a person other than the accused—

(a) is satisfied by the applicant on the balance of probabilities that in relation to any property forfeited to the Crown or another person under section 24 of this Act or by virtue of an order for forfeiture made under any other enactment he was the owner of, or a person otherwise having an interest in, the property immediately before such forfeiture; and

(b) subsection (3) or (4) below is applicable,

it shall make an order under subsection (2) below.

(2) An order under this subsection shall direct the Crown or, as the case may be, the other person, if the applicant—

(a) was the owner of the property, to return it to him if reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (5) below; or

(b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.

(3) This subsection applies if the court is not satisfied that—

(a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order or order for forfeiture was made, he knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and did not take all the steps which were reasonable for him to take to prevent such intended use; or

(b) where the applicant has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, he knew or ought to have known that the property had been intended to be, or had been, so used.

(4) This subsection applies if the court is satisfied as mentioned in subsection (3) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.

(5) For the purposes of subsection (2) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.

(6) An application under subsection (1) shall be made not later than three years after the date on which the property was forfeited as mentioned in subsection (1)(a) above.

(7) Where, after property has been forfeited by virtue of section 24 of this Act, the prosecutor comes to believe that the person named in the suspended forfeiture order in pursuance of section 21(4) of this Act is not the owner of, or a person otherwise having an interest in, the property concerned, then—

(a) whether he knows who the true owner was, or who the person truly with the interest was, or not, he shall forthwith notify the court in writing of that belief; and

(b) if he does know or reasonably suspects the identity of the person who was the true owner or who truly had the interest, he shall forthwith notify that person in writing that he may be entitled to apply to the court for a direction under this section.

(8) Where no person has been named in the suspended forfeiture order in pursuance of section 21(4) of this Act or in a variation order under section 25(5) of this Act but, after the property concerned has been forfeited under section 24 of this Act, the prosecutor comes to believe that a person was or might have been the owner of, or otherwise had or might have had an interest in, the property concerned, he shall forthwith notify—

(a) the court of his belief; and

(b) that person in writing that he may be entitled to apply to the court for a direction under this section.

(9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any probation order or order of discharge made, in respect of the offence concerned otherwise than as provided by this section.

(10) In this section "the court" means the court which made the suspended forfeiture order or order for forfeiture.

27 Appeal against court decision under section 25(1) or 26(1).

(1) An appeal shall lie to the High Court of Justiciary at the instance of—

(a) the applicant against the refusal;

(b) the prosecutor against the granting,

of an application under section 25(1) or 26(1) of this Act, and the High Court in determining such an appeal may make such order as could have been made by the court on an application under that section.

(2) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.

(3) Where a suspended forfeiture order relating to heritable property situated in Scotland is recalled on appeal to the High Court of Justiciary, the prosecutor shall, as soon as may be after the appeal has been disposed of, cause a certified copy of the interlocutor of the Court to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

PART III

RESTRAINT ORDERS

Modifications etc. (not altering text)

C11 Pt. III modified (1.5.1998) by S.I. 1998/752, **art. 3(1)**
Pt. III (ss. 28-34) applied (with modifications) (1.5.1999) by S.I. 1999/673, art. 4, **Sch. 3 paras. 13-17**
Pt. III (ss. 28-34) applied (with modifications) (1.5.1999) by S.I. 1999/675, art. 4, **Sch. 3 paras. 8-12**

28 Restraint orders.

(1) The court may, on the application of the prosecutor, make an order (in this Part of this Act referred to as a "restraint order") in the circumstances mentioned in—

(a) [F7] . . . . . .

(b) section 30(1) of this Act interdicting any person named in the order from dealing with any property which is, or is liable to be, the subject of a suspended forfeiture order.

(2) [F8] . . . . . .

(3) A restraint order shall—

(a) be made on an *ex parte* application which shall be heard in chambers; and

(b) without prejudice to the time when it becomes effective, be intimated to each person affected by it.

(4) For the purposes of this Part of this Act, dealing with property includes (without prejudice to the generality of the expression)—
  (a) making a payment to any person in reduction of the amount of a debt;
  (b) removing the property from the jurisdiction of the court; and
  (c) transferring or disposing of the property.

(5) Where the court has made a restraint order [F9]. . . , a constable or a person commissioned by the Commissioners of Customs and Excise may, for the purpose of preventing any property subject to the order being removed—
  (a) in the case of a restraint order made in connection with a drug trafficking offence (including a drug trafficking offence within the meaning of the 1994 Act) from Great Britain;
  (b) in any other case, the jurisdiction of the court,

  seize that property.

(6) Property seized under subsection (5) above shall be dealt with in accordance with the directions of the court which made the order.

(7) In this Part of this Act, "the court" means where, as regards the criminal proceedings in question, a trial diet or a diet fixed for the purposes of section 76 of the 1995 Act is intended to be held, is being or has been held—
  (a) in the High Court of Justiciary, the Court of Session;
  (b) in the sheriff court, a sheriff of that court exercising his civil jurisdiction.

(8) The court may, where it has granted a restraint order, interdict a person not subject to that order from dealing with property affected by it while it is in force.

(9) **[**[F10]Subsection**]**(3)(a) above shall apply in relation to an interdict under subsection (8) above as they apply in relation to subsection (1) above; and subsections (1), (2), (4) and (5) of section 31 of this Act shall apply in relation to an interdict under subsection (8) above as they apply in relation to a restraint order.

(10) Without prejudice to the time when it becomes effective, an interdict under subsection (8) above shall be intimated to each person affected by it.

Textual Amendments

F7 S. 28(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F8 S. 28(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F9 Words in s. 28(5) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F10 Words in s. 28(9) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1), **Sch. 11 para. 28(5)**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C12 S. 28 extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

C13 S. 28(1) applied (1.12.1998) by 1982 c. 45, **Sch. 2A** par. para. 8 (as inserted by 1998 c. 37, s. 24(4), **Sch. 1**; S.I. 1998/2327, **art. 4(1)(h)(j)**)

29 Restraint orders in relation to realisable property.

F11 . . . . . .

Textual Amendments

F11 S. 29 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(c), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

30 Restraint orders in relation to forfeitable property.

(1) A restraint order may be made in respect of a person under section 28(1)(b) where—

(a) proceedings have been instituted against him in Scotland for an offence;

(b) the proceedings have not been concluded; and

(c) a suspended forfeiture order has been made in respect of the property concerned or it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a suspended forfeiture order may be made in those proceedings.

(2) A restraint order may also be made where the court is satisfied that it is proposed to institute proceedings in respect of an offence within 28 days and it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a suspended forfeiture order may be made in those proceedings.

(3) Where the court has made a restraint order by virtue of subsection (2) above, and no proceedings have been instituted within 28 days as mentioned in that subsection, the prosecutor shall forthwith apply to the court for the recall of the order and the court shall grant the application.

(4) When proceedings for the offence are concluded, the prosecutor shall forthwith apply to the court for recall of the order and the court shall grant the application.

(5) For the purposes of this section, proceedings are concluded as regards an offence where—

(a) the trial is deserted*simpliciter*;

(b) the accused is acquitted or, under section 65 or 147 of the 1995 Act, discharged or liberated;

(c) the High Court of Justiciary or, as the case may be, the sheriff sentences or otherwise deals with him without making a suspended forfeiture order;

(d) his conviction is quashed;

(e) a suspended forfeiture order made in the proceedings is recalled or varied so as to exclude from forfeiture any property to which the restraint order relates; or

(f) the property, or part of the property, to which the restraint order relates is forfeited.

Modifications etc. (not altering text)

C14 S. 30 extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

31 Variation and recall of restraint orders.

(1) Subject to subsections (2) and (3) below, the court may, at the instance of—

(a) the prosecutor, at any time vary or recall a restraint order in relation to any person or to any property;

(b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property.

(2) [F12]. . . . . .

(3) Where an application has been made under subsection (1) above for the variation or recall of a restraint order, any property in relation to which the restraint order was made shall not be realised during the period beginning with the making of the application and ending with the determination of the application by the court.

(4) The court may, where it has recalled a restraint order as mentioned in subsection (1)(b)[F13]. . . above, order that property of the person at whose instance it was recalled shall cease to be realisable or, as the case may be, liable to forfeiture.

(5) The prosecutor or any person having an interest may reclaim or appeal to the Court of Session against an interlocutor refusing, varying or recalling or refusing to vary or recall a restraint order, within such period as may be prescribed by Act of Sederunt.

(6) Where, in relation to a restraint order which is recalled, interdict has been granted under section 28(8) of this Act, the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.

Textual Amendments

F12 S. 31(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(d), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F13 Words in s. 31(4) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(d), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

32 Inhibition of property affected by restraint order or by interdict.

(1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order (whether such property generally or particular such property) grant warrant for inhibition against any person interdicted by the order or, in relation to that property, under section 28(8) of this Act; and subject to the provisions of this Part of this Act, the warrant—

(a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly; and

(b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.

(2) Section 155 of the [M13]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) above as that section applies to an inhibition by separate letters or contained in a summons.

Status: *Point in time view as at 24/03/2003.*
Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

(3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an 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) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Act in respect of that property.

(5) No inhibition 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 the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—

(a) apply for the recall, or as the case may be restriction, of the inhibition; and

(b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.

Marginal Citations

M13 1868 c.101.

33 Arrestment of property affected by restraint order.

(1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(2) A warrant under subsection (1) above 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.

(3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Act in respect of that property.

(4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.

Modifications etc. (not altering text)

C15 S. 33(1) extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

C16 S. 33(2) extended (1.4.1996) by 1995 c. 43, **ss. 14(3)**, 50(2)

34 Administrators.

Schedule 1 to this Act shall have effect as regards the appointment of administrators under this Act.

Modifications etc. (not altering text)

C17 S. 34 extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

PART IV

RECIPROCAL ARRANGEMENTS FOR ENFORCEMENT OF ORDERS

35 Recognition and enforcement of orders made in England and Wales.

F14 . . . . . .

Textual Amendments

F14 S. 35 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(e), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

36 Provisions supplementary to section 35.

F15 . . . . . .

Textual Amendments

F15 S. 36 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(e), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

37 Inhibition of Scottish property affected by order registered under section 35.

F16 . . . . . .

Textual Amendments

F16 S. 37 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(e), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

38 Arrestment of Scottish property affected by order registered under section 35.

F17 . . . . . .

Textual Amendments

F17 S. 38 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1)(3), Sch. 11 para. 28(2)(e), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

39 Enforcement of Northern Ireland orders.

F18 . . . . . .

Textual Amendments

F18 S. 39 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(e), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

40 Enforcement of orders made outside United Kingdom.

(1) Her Majesty may by Order in Council—

(a) F19 . . . . . .

(b) make—

(i) such provision as to evidence or proof of any matter for the purposes of this section and section 41 of this Act; and

(ii) such incidental, consequential and transitional provision,

as appears to Her Majesty to be expedient.

(2) F20 . . . . . .

(3) An Order in Council under this section may make different provision for different cases or classes of case.

(4) F21 . . . . . .

(5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F19 S. 40(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(f), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F20 S. 40(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(f), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F21 S. 40(4) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(f), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

41 Registration of external confiscation orders.

(1) On an application made by or on behalf of the Government of a designated country, the Court of Session 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 Scotland 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.

(3) The Court of Session 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.

42 Enforcement of Scottish orders in England and Wales.

(1) Her Majesty may by Order in Council make such provision as Her Majesty considers expedient for the purpose—
  (a) [F22] . . . . . .
  (b) [F23] . . . . . .
  (c) of enabling the enforcement in England and Wales of restraint orders, suspended forfeiture orders and forfeiture orders under any enactment other than the **[**[F24]Terrorism Act 2000**]** .

(2) Without prejudice to the generality of the power conferred by subsection (1) above, an Order in Council under this section may—
  (a) provide that, subject to any specific conditions, such description of orders made under or for the purposes of **[**[F25]Part**]**II or III of this Act so far as it relates to realisable property shall have effect in the law of England and Wales;
  (b) provide that, subject to any specified conditions, the functions of a person appointed under Schedule 1 to this Act shall have effect in the law of England and Wales;
  (c) make provision—
    (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of **[**[F26]Part**]** II or III of this Act so far as it relates to realisable property as may be specified; and
    (ii) for the High Court to have, in relation to the enforcement of orders made under or for the purposes of **[**[F27]Part**]** Part II or III of this Act so far as it so relates which are so registered, such powers as may be specified; and
  (d) make provision as to the proof in England and Wales of orders made under or for the purposes of **[**[F28]Part**]** II or III of this Act so far as it so relates.

(3) In subsection (2) above "specified" means specified in an Order in Council under this section.

(4) An Order in Council under this section may amend or apply, with or without modifications, any enactment.

(5) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(6) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F22 S. 42(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(g), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

F23 S. 42(1)(b) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(g), **Sch. 12**; S.I. 2003/333, **art. 2**, Sch. (with transitional provisions in arts. 3-13) (as amended by S.I. 2003/531)

F24 Words in s. 42(1)(c) substituted (19.2.2001) by 2000 c. 11, s. 125, **Sch. 15 para. 11**; S.I. 2001/421, **art. 2**

F25 Words in s. 42(2)(a) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1), **Sch. 11 para. 28(6)**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F26 Words in s. 42(2)(c)(i) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1), **Sch. 11 para. 28(6)**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F27 Words in s. 42(2)(c)(ii) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1), **Sch. 11 para. 28(6)**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F28 Words in s. 42(2)(d) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1), **Sch. 11 para. 28(6)**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

43 Order in Council as regards taking of action in designated country.

(1) Her Majesty may by Order in Council make such provision in connection with the taking of action in a designated country in consequence of the making of a restraint order [F29]. . . or suspended forfeiture order under this Act or a forfeiture order under any other enactment as appears to Her Majesty to be expedient.

(2) [F30]. . . . . .

(3) An Order in Council under this section may amend or apply, with or without modifications, any enactment.

(4) Subsections (1)(b), (3) and (5) of section 40 of this Act shall apply in respect of Orders in Council under this section as they apply in respect of Orders in Council under that section.

Textual Amendments

F29 Words in s. 43(1) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(h), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F30 S. 43(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(h), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

PART V

MISCELLANEOUS AND GENERAL

Modifications etc. (not altering text)

C18 Pt. V (ss.44-50) applied (with modifications) (S.) (1.5.1999) by S.I. 1999/675, art. 4, **Sch. 3 paras. 13-17**

44 Sequestration etc of person holding realisable or forfeitable property.

(1) Schedule 2 to this Act shall have effect in relation to the sequestration, bankruptcy, winding up or receivership of persons or, as the case may be, companies holding realisable or forfeitable property.

(2) In this section and in that Schedule "forfeitable property" means property which is or is liable to be the subject of a suspended forfeiture order.

45 Disposal of family home under Part I or II.

(1) This section applies where —

(a) F31 . . . . . .

(b) a person's family home has been forfeited to the Crown under section 24 of this Act.

(2) Where this section applies, then, before the Crown disposes of any right or interest in the person's family home it shall—

(a) obtain the relevant consent; or

(b) where it is unable to do so, apply to the court for authority to carry out the disposal.

(3) On an application being made to it under subsection (2)(b) above, the court, after having regard to all the circumstances of the case including—

(a) the needs and financial resources of the spouse or former spouse of the person concerned;

(b) the needs and financial resources of any child of the family;

(c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b) above,

may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.

(4) Subsection (3) above shall apply—

(a) to an action for division and sale of the family home of the person concerned; or

(b) to an action for the purpose of obtaining vacant possession of that home,

brought by the Crown as it applies to an application under subsection (2)(b) above and, for the purposes of this subsection, any reference in the said subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action.

(5) In this section—

"family home", in relation to any person (in this subsection referred to as "the relevant person") means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person's spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family;

"child of the family" includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and

"relevant consent" means in relation to the disposal of any right or interest in a family home—

(a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person;

(b) where paragraph (a) above does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.

Textual Amendments

F31 S. 45(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(i), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

46 Forfeiture of property where accused has died.

(1) This section applies where at any time after criminal proceedings have been instituted against an accused for an offence to which Part I of this Act applies and before the accused has been sentenced or otherwise dealt with in the proceedings he dies.

(2) The Court of Session, if it is satisfied beyond reasonable doubt on an application being made to it by the Lord Advocate—

(a) that the accused committed the offence; and

(b) that there is property—

(i) which the accused had obtained, directly or indirectly, in connection with the commission of the offence or, as the case may be, in connection with drug trafficking; or

(ii) which is a gift caught by Part I of this Act or, as the case may be, an implicative gift,

may, subject to subsection (5) below, make an order which shall have the effect of forfeiting that property.

(3) The Court of Session may, without prejudice to any other power available to it, at any time before the determination of the case, allow an amendment of the application under subsection (2) above if the amendment is of a type which could competently have been made in an indictment or complaint under section 96 or 159 of the 1995 Act in the criminal proceedings.

(4) An application under subsection (2) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the Lord Advocate, but, in any event, within 6 years commencing with the date of death of the accused.

(5) An application under subsection (2) above in relation to property such as is mentioned in paragraph (b)(ii) of that subsection shall be served on the recipient of the gift and, if he satisfies the Court on the balance of probabilities—

(a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or, if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and

(b) that he was not associated with the giver in the commission of the offence; and

(c) that he would suffer hardship if the application were granted,

the Court may refuse to make an order as mentioned in that subsection; and in the application of this subsection to an implicative gift, any reference to the commission of the offence shall be construed as a reference to the drug trafficking and the reference in paragraph (b) above to the earlier or earliest of more than one offence shall be construed as a reference to the beginning of the drug trafficking.

(6) Where property has been forfeited under this section, then, if the Court of Session, on an application being made to it is satisfied by the applicant on the balance of probabilities that he was the owner of, or otherwise had an interest in, the property immediately before such forfeiture, it shall make an order under subsection (7) below.

(7) An order under this subsection shall direct the Crown, if the applicant—

(a) was the owner of the property, to return it to him if it is reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (8) below; or

(b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.

(8) For the purposes of subsection (7) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.

(9) Property which has been forfeited under this section shall be dealt with by the Crown in such manner as seems to it to be appropriate.

(10) Where a restraint order is not in force in respect of a person when he dies in the circumstances mentioned in subsection (1) above, the Court of Session may, on the application of the Lord Advocate, in so far as the property concerned is—

(a) heritable property in Scotland, make an order inhibiting any person; and

(b) moveable property, grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(11) Paragraphs (a) and (b) of subsection (1) and subsections (2) to (5) of section 32 of this Act shall, subject to any necessary modifications, apply for the purposes of subsection (10)(a) above as they apply for the purposes of that section.

(12) Subsections (2) to (4) of section 33 of this Act shall, subject to any necessary modifications, apply for the purposes of subsection (10)(b) above as they apply for the purposes of that section.

(13) Proceedings under this section are civil proceedings for the purposes of section 10 of the [M14]Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

Marginal Citations

M14 1968 c.70.

47 Construction of certain enactments.

F32 . . . . . .

Textual Amendments

F32 S. 47 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(2)(j), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

48 Service and notice.

Subject to the provisions of this Act, provision may be made by rules of court as to the giving of notice required for the purposes of this Act in so far as it is connected with drug trafficking 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.

49 Interpretation.

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

F33 . . . . . .

F34 . . . . . .

F35 . . . . . .

"the 1995 Act" means the [M15]Criminal Procedure (Scotland) Act 1995;

"accused" includes a person against whom criminal proceedings have been instituted in relation to the commission of an offence and a person convicted of an offence;

"clerk of court" includes the sheriff clerk;

F36 . . . . . .

"interest", in relation to property, includes right;

"property" has the meaning assigned by section 2 of this Act;

"realisable property" has the meaning assigned by section 4 of this Act;

"restraint order" means an order made under section 28 of this Act;

"suspended forfeiture order" means an order made under section 21(2) of this Act.

(2) In this Act, "drug trafficking" means, subject to subsections (3) and (4) below, doing or being concerned in any of the following, whether in Scotland or elsewhere—

(a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the [M16]Misuse of Drugs Act 1971;

(b) transporting or storing such a drug where possession of it contravenes section 5(1) of that Act;

(c) importing or exporting such a drug where the importation or exportation is prohibited by section 3(1) of that Act;

(d) producing, supplying, transporting, storing, importing or exporting such a drug in contravention of a corresponding law ("corresponding law" having the meaning assigned by section 36(1) of that Act);

(e) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section;

(f) acquiring, having possession of or using property in contravention of section 37 of the [M17]Criminal Law (Consolidation) (Scotland) Act 1995;

(g) concealing or transferring the proceeds of drug trafficking in contravention of section 14 of the said Act of 1990;

(h) using any ship for illicit traffic in controlled drugs in contravention of section 19 of the said Act of 1990.

(3) Drug trafficking also includes, whether in Scotland or elsewhere, entering into or being otherwise concerned in any arrangement whereby—

(a) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated, or

(b) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment.

(4) [F37]. . . . . .

(5) In this Act a "drug trafficking offence" means any of the following—

(a) an offence under—

(i) section 4(2) (production, or being concerned in production, of controlled drug);

(ii) section 4(3) (supply of, or offer to supply, or being concerned in supply of, controlled drug);

(iii) section 5(3) (possession of controlled drug with intent to supply); or

(iv) section 20 (assisting in, or inducing commission of, certain drug related offences punishable under foreign law),

of the [M18]Misuse of Drugs Act 1971;

(b) in connection with a prohibition or restriction on importation and exportation having effect by virtue of section 3 of the said Act of 1971, an offence under section 50(2) or (3) (improper importation), 68(2) (improper exportation) or 170 (fraudulent evasion of duty etc.) of the [M19]Customs and Excise Management Act 1979;

(c) an offence under section 37 of the Criminal Law (Consolidation) (Scotland) Act 1995;

(d) an offence under section 38 of the said Act of 1995;

(e) an offence under section 12, 14 or 19 of the [M20]Criminal Justice (International Co-operation) Act 1990;

(f) an offence of conspiring, inciting or attempting to commit an offence mentioned in paragraph (a), (b), (c) or (e) above.

(6) For the purposes of this Act proceedings for an offence are instituted against a person—

(a) on his arrest without warrant;

(b) when he is charged with the offence without being arrested;

(c) when a warrant to arrest him is granted;

(d) when a warrant to cite him is granted;

(e) in summary proceedings, on the first calling of the case; or

(f) when a petition is intimated to him or an indictment or a complaint is served on him,

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

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

Textual Amendments

F33 In s. 49(1) the definition of "the 1988 Act" repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1)(3), Sch. 11 para. 28(2)(k), **Sch. 12**; S.S.I. 2003/210, {art. 2}, Sch. (subject to arts. 3-7)

F34 S. 49(1): definition of "the 1989 Act" repealed (19.2.2001) by 2000 c. 11, s. 125, Sch. 15 paras. 11(4), **Sch. 16 Pt. I**; S.I. 2001/421, **art. 2** (with art. 3)

F35 In s. 49(1) the definition of "the 1994 Act" repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1)(3), Sch. 11 para. 28(2)(k), **Sch. 12**; S.S.I. 2003/210, {art. 2}, Sch. (subject to arts. 3-7)

F36 In s. 49(1) the definition of "confiscation order" repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1)(3), Sch. 11 para. 28(2)(k), **Sch. 12**; S.S.I. 2003/210, {art. 2}, Sch. (subject to arts. 3-7)

F37 S. 49(4) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1)(3), Sch. 11 para. 28(2)(k), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Marginal Citations

M15 1995 c.46.

M16 1971 c.38.

M17 1995 c.39.

M18 1971 c.38.

M19 1979 c.2.

M20 1990 c.5.

50 Short title, commencement and extent.

(1) This Act may be cited as the Proceeds of Crime (Scotland) Act 1995.

(2) This Act shall come into force on 1 April 1996.

(3) Subject to subsections (4) and (5) below, this Act extends only to Scotland.

(4) Section 44 of and Schedule 2 to this Act and this section extend to England and Wales as well as to Scotland.

(5) Section 42 of this Act extends only to England and Wales.

Status: *Point in time view as at 24/03/2003.*
Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

SCHEDULES

SCHEDULE 1

Section 34.

ADMINISTRATORS

Appointment of administrators

1 (1) On the application of the prosecutor the [M21]court may as regards property—

(a) affected by a restraint order or a suspended forfeiture order, appoint a person to manage, or otherwise deal with, the property; or

(b) where a suspended forfeiture order [F38]. . . has been made, appoint a person (or empower an appointee under paragraph (a) above) to realise the property,

in accordance with the court's directions and may (whether on making the appointment or from time to time) require any person having possession of the property to give possession of it to the appointee (any such appointee being in this Act referred to as an "administrator").

(2) A requirement under sub-paragraph (1) above—

(a) [F39]. . . may relate to the property generally or to particular such property and may be subject to such exceptions and conditions as may be specified by the court;

(b) [F40]. . . . . .

(3) On a requirement being imposed under sub-paragraph (1) above—

(a) the clerk of court shall forthwith notify—

(i) the person in respect of whom the restraint order, or as the case may be the suspended forfeiture order [F41]. . . , has been made; and

(ii) any other person named in the requirement as being subject to it; and

(b) any dealing of or with such person in relation to the property shall be of no effect in a question with the administrator unless whoever dealt with the person had, at the time when the dealing occurred, no knowledge of the appointment.

(4) The court, at the instance of any person having an interest, may at any time—

(a) vary or withdraw a requirement imposed under sub-paragraph (1) above; or

(b) without prejudice to paragraph 4 below or to the powers and duties of an administrator pending a decision under this sub-sub-paragraph, on cause shown, remove the administrator from office.

(5) On the death or resignation of the administrator, or on his removal from office under sub-paragraph (4)(b) above or paragraph 5 below, the court shall appoint a new administrator.

(6) Such of the property (if any) as was, by virtue of paragraph 2(3) below, vested in the administrator who has died, resigned or been removed shall forthwith vest in the new administrator; and any requirement imposed under sub-paragraph (1) above shall, on

the person subject to the requirement being notified in writing of the appointment by the appointee, apply in relation to the appointee instead of in relation to his predecessor.

(7) The administration of property by an administrator shall be deemed continuous notwithstanding any temporary vacancy in that office.

(8) Any appointment under this paragraph shall be on such conditions as to caution as the accountant of court may think fit to impose; but the premium of any bond of caution or other security thereby required of the administrator shall be treated as part of his outlays in his actings as such.

(9) Without prejudice to paragraph 5 below, section 6 of the [M22]Judicial Factors (Scotland) Act 1889 (supervision of judicial factors) shall not apply in relation to an appointment under this section.

Textual Amendments

F38 Words in Sch. 1 para. 1(1)(b) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss.456- 458(1), Sch. 11 para. 28(3)(a), {Sch. 12}; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F39 Words in Sch. 1 para. 1(2)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(a), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F40 Sch. 1 para. 1(2)(b) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(a), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F41 Words in Sch. 1 para. 1(3)(a)(i) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(a), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C20 Sch. 1 para. 1 extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

Marginal Citations

M21 1995 c. 39.

M22 1889 c. 39.

Functions of administrators

2 (1) Subject to paragraph 5 below, an administrator—

(a) shall be entitled to take possession of [F42]. . . shall as soon as practicable take possession of, the property as regards which he has been appointed and of any document which both—

(i) is in the possession or control of the person (in this paragraph referred to as "A") in whom the property is vested (or would be vested but for an order made under sub-paragraph (3) below); and

(ii) relates to the property or to A's assets, business or financial affairs;

(b) shall be entitled to have access to, and to copy, any document relating to the property or to A's assets, business or financial affairs and not in such possession or control as is mentioned in sub-sub-paragraph (a) above;

(c) may bring, defend or continue any legal proceedings relating to the property;

(d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;

(e) may, if the administrator considers that to do so would be beneficial for the management or realisation of the property—
  (i) carry on any business of A;
  (ii) exercise any right of A as holder of securities in a company;
  (iii) grant a lease of the property or take on lease any other property; or
  (iv) enter into any contract, or execute any deed, as regards the property or as regards A's business;

(f) may, where any right, option or other power forms part of A's estate, make payments or incur liabilities with a view to—
  (i) obtaining property which is the subject of; or
  (ii) maintaining,

  the right, option or power;

(g) may effect or maintain insurance policies as regards the property on A's business;

(h) where he has been appointed under paragraph 1(1)(b) above may, where A has an uncompleted title to any heritable estate, complete title thereto;

Provided that completion of title in A's name shall not validate by accretion any unperfected right in favour of any person other than the administrator;

(j) may sell, purchase or exchange property or discharge any security for an obligation due to A:

Provided that it shall be incompetent for the administrator or an associate of his (within the meaning of section 74 of the [M23]Bankruptcy (Scotland) Act 1985) to purchase any of A's property in pursuance of this paragraph;

(k) may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor;

(l) may discharge any of his functions through agents or employees;

Provided that the administrator shall be personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator by virtue of paragraph 6(1) and (3) below;

(m) may take such professional advice as he may consider requisite for the proper discharge of his functions;

(n) may at any time apply to the court for directions as regards the discharge of his functions;

(o) may exercise any power specifically conferred on him by the court, whether such conferral was at the time of his appointment or on his subsequent application to the court in that regard; and

(p) may do anything incidental to the above powers and duties.

(2) Subject to the proviso to sub-paragraph (1)(j) above—

(a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that subsection; and

(b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.

(3) The exercise of a power mentioned in any of sub-paragraphs (1)(c) to (k) above shall be in A's name except where and in so far as an order made by the court under this

sub-paragraph (either on its own motion or on the application of the administrator) has vested the property in the administrator (or in his predecessor in that office).

Textual Amendments

F42 Words in Sch. 1 para. 2(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C21 Sch. 1 para. 2(3) extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

Marginal Citations

M23 S.I. 1981/1675 (N.I. 26).

Money received by administrator

3 (1) Subject to sub-paragraph (2) below, all money received by an administrator in the exercise of his functions shall be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 2(3) above) of the holder of the property realised, in an appropriate bank or institution.

(2) The administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Secretary of State by regulations made by statutory instrument.

(3) In sub-paragraph (1) above, "appropriate bank or institution" means a bank or institution mentioned in section 2(1) of the [M24]Banking Act 1979 or for the time being specified in Schedule 1 to that Act.

Marginal Citations

M24 1979 c. 37.

Application of proceeds of realisation and other sums

4 [F43] . . . . . .

Textual Amendments

F43 Sch. 1 para. 4 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(c), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C22 Sch. 1 para. 4 extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

Supervision of administrators

5 (1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by [F44]. . . this Act; and in particular an administrator

proposing to exercise functions conferred by any of paragraphs 2(1)(c) to (p) above shall first obtain the consent of the accountant of court to such exercise.

(2) If it appears to the accountant of court that an administrator has, without reasonable cause, failed to perform a duty imposed on him by any provision of section 16 of this Act or of this Schedule, he shall report the matter to the court which, after giving the administrator an opportunity to be heard as regards the matter, may remove the administrator from office, censure him or make such other order as the circumstances of the case may appear to the court to require.

Textual Amendments

F44 Words in Sch. 1 para. 5(1) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(d), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Accounts and remuneration of administrator

6 (1) The administrator shall keep such accounts in relation to his intromissions with the property as regards which he is appointed as the court may require and shall lodge these accounts with the accountant of court at such times as may be fixed by the court in that regard; and the accountant of court shall audit the accounts and issue a determination as to the amount of outlays and, on the basis mentioned in sub-paragraph (3) below, remuneration payable to the administrator in respect of those intromissions.

(2) Not later than two weeks after the issuing of a determination under sub-paragraph (1) above, the administrator or the Lord Advocate may appeal against it to the court.

(3) The basis for determining the amount of remuneration payable to the administrator shall be the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.

(4) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

Effect of appointment of administrator on diligence

7 Without prejudice to sections 32 and 33 of this Act—

(a) no arrestment or **[**[F45]attachment**]** of property executed on or after an appointment as regards the property under paragraph 1 above shall be effectual to create a preference for the arrester or poinder and any such property so arrested or poinded, or the proceeds of sale thereof, shall be handed over to the administrator;

(b) no poinding of the ground in respect of property on or after such appointment shall be effectual in a question with the administrator except for the interest on the debt of a secured creditor, being interest for the current half-yearly term and arrears of interest for one year immediately before the commencement of that term;

(c) it shall be incompetent on or after such appointment for any other person to raise or insist in an adjudication against the property or to be confirmed as executor-creditor on that property; and

(d) no inhibition on property which takes effect on or after such appointment shall be effectual to create a preference for the inhibitor in a question with the administrator.

Textual Amendments

F45 Word in Sch. 1 para. 7(a) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), **Sch. 3 para. 24**

Further provision as to administrators

8 (1) Where an administrator takes any action—

(a) in relation to property as regards which he has not been appointed, being action which he would be entitled to take if he had been so appointed,

(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 an administrator appointed under this Schedule shall [F46]. . . be paid by the Lord Advocate.

(3) Any disposal of property under paragraph 1 above to a person taking in good faith shall vest the ownership of the property in that person.

Textual Amendments

F46 Words in Sch. 1 para. 8(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(e), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Discharge of administrator

9 After an administrator has lodged his final accounts under paragraph 6(1) above, he may apply to the accountant of court to be discharged from office; and such discharge, if granted, shall have the effect of freeing him from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising the functions conferred on him by this Act.

Compensation

10 (1) Where the court, on an application made to it by a person other than the accused [F47]. . . , is satisfied on the balance of probabilities that in relation to any property realised under paragraph 1 above he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.

(2) [F48]. . . . . .

(3) [F49] . . . . . .

Textual Amendments

F47 Words in Sch. 1 para. 10(1) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(f), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F48 Sch. 1 para. 10(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(f), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F49 Sch. 1 para. 10(3) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(f), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Rules of court as regards accountant of court's supervision etc of administrators

11 Without prejudice to section 5 of the [M25]Court of Session Act 1988 (power to regulate procedure etc. by Act of Sederunt), provision may be made by rules of court as regards (or as regards any matter incidental to) the accountant of court's powers and duties under this Act in relation to the functions of administrators.

Marginal Citations

M25 1988 c.36.

Power to facilitate realisation

12 (1) Without prejudice to any enactment or rule of law in respect of the recording of deeds relating to heritable property or the registration of interests therein, the court, to facilitate realisation under paragraph 1 above, may—

(a) order any person (in this paragraph referred to as "A") holding an interest in property, not being such person (in this paragraph referred to as "B") as is mentioned in [F50]. . . section 21 of this Act, to make such payment to an administrator appointed to realise estate comprising an interest of B in that property as the court may direct and may, subject to such payment being made—

(i) authorise the administrator to transfer B's interest to A or to discharge it in favour of A; or

(ii) itself by order transfer or discharge B's interest; or

(b) by order—

(i) transfer A's interest to B; or

(ii) discharge it in favour of B,

on the administrator making such payment to A out of that estate in respect of A's interest as the court may direct.

(2) The court may make such incidental provision in relation to any exercise of powers conferred on it by sub-paragraph (1) above as it considers appropriate; but it shall not exercise those powers without giving such persons as hold an interest in the property reasonable opportunity to make representations to it in that regard.

Status: *Point in time view as at 24/03/2003.*
Changes to legislation: *There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995. (See end of Document for details)*

Textual Amendments

F50 Words in Sch. 1 para. 12(1)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(3)(g), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C23 Sch. 1 para. 12 extended (E.W.) (17.4.2001) by S.I. 2001/953, **art. 3(4)(a)(i)**

SCHEDULE 2

Section 44.

SEQUESTRATION ETC. OF PERSONS HOLDING REALISABLE OR FORFEITABLE PROPERTY

Sequestration of person holding realisable or forfeitable property

1 (1) Where the estate of a person who holds realisable or forfeitable property is sequestrated—

(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the 1985 Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration; and

(b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph,

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 by sections 28 to 33 [F51]. . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule 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, 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,

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 section 2(5) 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 a gift caught by Part I of this Act or an implicative gift—

(a) no decree shall, at any time when proceedings as regards an offence to which Part I of this Act applies or, as the case may be, 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 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.

Textual Amendments

F51 Words in Sch. 2 para. 1(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(a), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C25 Sch. 2 para. 1(2)(3) modified (S.) (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(4)**

Bankruptcy in England and Wales of person holding realisable or forfeitable property

2 (1) Where a person who holds [F52]. . . forfeitable property is adjudged bankrupt—

(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made; and

(b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph,

is excluded from the bankrupt's estate for the purposes of Part IX of the [M26]Insolvency Act 1986.

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 28 to 33 [F53]. . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule 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, 308 or 308A of the Insolvency Act 1986 (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement 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) [F54] . . . . . .

Textual Amendments

F52 Words in Sch. 2 para. 2(1) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F53 Words in Sch. 2 para. 2(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F54 Sch. 2 para. 2(5) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(b), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C26 Sch. 2 para. 2(2)-(5) modified (S.) (1.4.1996) 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(5)**

Marginal Citations

M26 1986 c. 45.

Winding up of company holding realisable or forfeitable property

3 (1) Where realisable or forfeitable 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—

(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time; and

(b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph.

(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 by sections 28 to 33 [F55]. . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule shall not be exercised in relation to any realisable or forfeitable property held by the company in relation to which the functions of the liquidator are exercisable—

(a) 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

(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 the powers so conferred.

(4) [F56] . . . . . .

(5) [F57] . . . . . .

(6) In this paragraph—

"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.

Textual Amendments

F55 Words in Sch. 2 para 3(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(c), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F56 Sch. 2 para. 3(4) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(c), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F57 Sch. 2 para. 3(5) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(c), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C27 Sch. 2 para. 3(2)-(6) modified (S.) (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(6)**

Property subject to floating charge

4 (1) Where any property held subject to a floating charge by a company is realisable or forfeitable 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, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such appointment; and

(b) any proceeds of property realised by virtue of paragraph 1 of Schedule 1 to this Act for the time being in the hands of an administrator appointed under that paragraph.

(2) Where, in the case of a company, such an appointment has been made, the powers conferred on the court by sections 28 to 33 [F58]. . . of and the said Schedule 1 to this Act or on an administrator appointed under paragraph 1 of that Schedule 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 [M27]Insolvency Act 1986, shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.

(4) In this paragraph—

"company" has the same meaning as in paragraph 3 above; and

"floating charge" includes a floating charge within the meaning given by section 462 of the [M28]Companies Act 1985 (power of incorporated company to create floating charge).

Textual Amendments

F58 Words in Sch. 2 para. 4(2) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(d), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Modifications etc. (not altering text)

C28 Sch. 2 para. 4(2)-(4) modified (S.) (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 3 Pt. II para. 15(7)**

Marginal Citations

M27 1986 c. 45.

M28 1985 c. 6.

Insolvency practitioners dealing with property subject to restraint order

5 (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 has 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 realisable property as is mentioned in sub-paragraph (1)(a) 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 realisable 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 sub-paragraph (1) above) to payment of those expenses under paragraph 4(2) or (4)(a) of Schedule 1 to this Act.

(3) In the foregoing provisions of this paragraph, 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 a sequestration and subsection (5) of that section shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

Interpretation

6 (1) In this Schedule "the 1985 Act" means the [M29]Bankruptcy (Scotland) Act 1985.

(2) References in this Schedule to the conclusion of proceedings, except for the purposes of paragraph 2(5) above, shall be construed—

(a) [F59] . . . . . .

(b) as regards property subject to a restraint order under section 28(1)(b) of this Act, in accordance with section 30(5) of this Act.

(3) References in this Schedule 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 liquidation.

Textual Amendments

F59 Sch. 2 para. 6(2)(a) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456-458(1), Sch. 11 para. 28(4)(e), **Sch. 12**; S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

Marginal Citations

M29 1985 c. 66.

TABLE OF DERIVATIONS

Notes:

1 This Table shows the derivation of the provisions of the Act.

2 The following abbreviations are used in the Table:—

ACTS OF PARLIAMENT

1987	= Criminal Justice (Scotland) Act 1987 (c. 41)
1988	= Criminal Justice Act 1988 (c. 33)
1993	= Criminal Justice Act 1993 (c. 36)
1994	= Drug Trafficking Act 1994 (c. 37)

1995	= Criminal Justice (Scotland) Act 1995 (1995 c. 20)
1995CP	= Criminal Procedure (Consequential Provisions) (Scotland) Act (1995 c. 40)
1995CLC	= Criminal Law (Consolidation) (Scotland) Act 1995 (1995 c. 39)

Provision	**Derivation**
1(1)	1987 s.1(1); 1995 s.70(1), Sch.5 §.2
(2)	1987 s.1(2); 1995 s.70(2), Sch.5 §.2
(3)	1987 s.1(2B); 1995 s.70(3), Sch.5 §.2
(4)	1995 s.70(4)
(5)	1987 s.1(1); 1995 s.70(5), Sch.5 §.2
(6)	1987 s.1(2A); 1995 s.70(6), Sch.5 §.2
(7)	1987 s.1(4); 1995 s.70(7)
2	1995 s.71
3	1987 s.3; 1994 Sch.1 §.12; 1995 Sch.5 §.4
4(1)	1987 s.5(1); 1995 s.72(1), Sch.5 §.6
(2)	1987 s.5(2); 1995 s.72(2), Sch.5 §.6
(3)	1987 s.5(4); 1995 s.72(3), Sch.5 §.6
(4)	1987 s.5(5); 1995 s.72(4), Sch.5 §.6
(5)	1987 s.5(5); 1995 s.72(5), Sch.5 §.6
(6)	1987 s.5(7); 1995 Sch.5 §.6
5(1)	1995 s.73(1)
(2)	1995 s.73(2)(part)
(3)	1995 s.73(6)
(4)	1995 s.73(7)
(5)	1995 s.73(8)
6(1)	1987 s.6(1); Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) Sch.8 §.37; 1995 Sch.5 §.7
(2)	1987 s.6(2)(part); 1995 Sch.5 §.7
(3)	1987 s.5(7A); 1995 Sch.5 §.6
(4)	1987 s.5(7B); 1995 Sch.5 §.6
(5)	1987 s.5(7C); 1995 Sch.5 §.6

7(1)	1987 s.6(2)(part); 1995 s.73(2)(part), Sch.5 §.7
(2)	1987 s.6(2)(part); 1995 s.73(2)(part), Sch.5 §.7
(3)	1987 s.6(2)(part); 1995 s.73(2)(part), Sch.5 §.7
(4)	1987 s.6(3); 1995 s.73(3), Sch.5 §.7
(5)	1987 s.6(3A); 1995 s.73(4), Sch.5 §.7
(6)	1995 s.73(5)
8(1)	1987 s.1(2C); 1995 s.74(1), Sch.5 §.2
(2)	1987 s.1(2D); 1995 s.74(2), Sch.5 §.2
(3)	1987 s.1(5); 1995 s.74(3), Sch.5 §.2
(4)	1987 s.1(2E); 1995 s.74(4), Sch.5 §.2
9(1)	1987 s.4(1)(part); 1995 s.75(1), Sch.5 §.5
(2)	1987 s.4(1)(part); 1995 s.75(2), Sch.5 §.5
(3)	1987 s.4(2); 1995 s.75(3), Sch.5 §.5
(4)	1987 s.4(3); 1995 s.75(4)
(5)	1987 s.4(4); 1995 s.75(5), Sch.5 §.5
(6)	1987 s.4(6); 1995 s.75(6), Sch.5 §.5
(7)	1995 s.75(7)
(8)	1987 s.4(5)
10	1987 s.2; 1995 s.76, Sch.5 §.3
11	1987 s.6A; 1995 s.77, Sch.5 §.8
12	1987 s.25; 1995 s.78, Sch.23
13(1)	1987 s.6B(1); 1995 s.79(1), Sch.5 §.8
(2)	1987 s.6B(2); 1995 s.79(2), Sch.5 §.8
(3)	1987 s.6B(3); 1995 s.79(3), Sch.5 §.8
(4)	1987 s.6B(4); 1995 s.79(4), Sch.5 §.8
(5)	1987 s.6B(7); 1995 s.79(5), Sch.5 §.8
(6)	1987 s.6B(6); 1995 s.79(6), Sch.5 §.8
(7)	1987 s.6B(9); 1995 s.79(7), Sch.5 §.8
(8)	1987 s.6B(8); 1995 s.79(8), Sch.5 §.8
(9)	1987 s.6B(5); 1995 Sch.5 §.8
(10)	1987 s.6B(10); 1995 s.79(9), Sch.5 §.8

14	1987 s.7; 1994 Sch.1 §.13; 1995 s.80, Sch.5 §.9
15	Criminal Justice (International Co-operation) Act 1990 (c. 5) s.15; 1995 s.81
16	1987 s.23; 1995 s.82, Sch.5 §.21
17(1)	1987 s.26(1); 1995 s.83(1), Sch.5 §.24
(2)	1987 s.26(1A); 1995 s.83(2), Sch.5 §.24
(3)	1987 s.26(2); 1995 s.83(3), Sch.5 §.24
(4)	1987 s.26(3); 1995 s.83(4), Sch.5 §.24
(5)	1987 s.26(4); 1995 s.83(5), Sch.5 §.24
(6)	1987 s.26(6), 47(5); 1995 s.83(6), Sch.5 §.24
(7)	1987 s.47(1); 1995 s.83(7), Sch.5 §.33
18	1995 s.18
19	1995 s.19
20	1995 s.20
21	1995 s.84
22	1995 s.85
23	1995 s.86
24	1995 s.87
25	1995 s.88
26	1995 s.89
27	1995 s.90
28(1)	1987 s.8(1); 1995 s.91(1), Sch.5 §.11
(2)	1987 s.8(2); 1995 s.91(2), Sch.5 §.11
(3)	1987 s.8(7); 1995 s.91(3), Sch.5 §.11
(4)	1987 s.8(8); 1995 s.91(4), Sch.5 §.11
(5)	1987 s.10(1); 1994 Sch.1 §.14; 1995 s.91(5)
(6)	1987 s.10(2); 1995 s.91(6)
(7)	1987 s.8(9); 1995 s.91(7), Sch.5 §.11
(8)	1987 s.12(1); 1995 s.91(8), Sch.5 §.14
(9)	1987 s.12(2); 1995 s.91(9)
(10)	1987 s.12(3); 1995 s.91(10), Sch.5 §.14
29(1)	1995 s.92(1); Drafting
(2)	1987 s.8(3); 1995 s.92(2), Sch.5 §.11

(3)	1987 s.8(4); 1995 s.92(3), Sch.5 §.11
(4)	1987 s.8(5); 1995 s.92(4), Sch.5 §.11
(5)	1987 s.8(6); 1995 s.92(5), Sch.5 §.11
(6)	1987 s.47(5); 1995 s.92(6), Sch.5 §.33
(7)	1987 s.8(10); 1995 s.92(7), Sch.5 §.11
30	1995 s.93
31	1987 s.9; 1995 s.94, Sch.5 §.11
32	1987 s.11; 1995 s.95, Sch.5 §.12
33	1987 s.11A; 1995 s.96, Sch.5 §.13
34	1995 s.97; Drafting
35	1987 s.27; 1994 Sch.1 §.18; 1995 s.98
36	1987 s.28; 1994 Sch.1 §.19; 1995 s.99
37	1987 s.28A; 1995 s.100, Sch.5 §.25
38	1987 s.28B; 1995 s.101, Sch.5 §.25
39(1)	1987 s.29(1); 1995 s.102(1)
(2)	1987 s.29(2); 1995 s.102(2)
(3)	1987 s.29(3); 1995 s.102(3)
(4)	1987 s.29(3A); 1993 s.22(2)
(5)	1987 s.29(4); 1993 s.21(3); 1995 s.102(4)
40	1987 s.30; Law Reform Miscellaneous Provisions (Scotland) Act 1990 (c. 40) s.63; 1993 s.21(3); 1995 s.103
41	1987 s.30A; Law Reform Miscellaneous Provisions (Scotland) Act 1990 (c. 40) s.63; 1995 s.104
42	1995 s.105
43	1987 s.32; 1995 s.106, Sch.5 §.27
44	1995 s.107; Drafting
45	1987 s.7A; 1995 s.108, Sch.5 §.10
46	1987 s.37A; 1995 s.109, Sch.5 §.32
47(1)	1987 s.45(1); 1995 s.110(4)
(2)	1987 s.45(2); 1995 s.110(5)
(3)	1987 s.45(5); 1995 s.110(7)
(4)	1987 s.45(4); 1995 s.110(6)
48	1987 s.46
49(1)	1995 s.111(1)

(2)	1987 s.1(6); 1988 Sch.5 §.19; 1990 Sch.4 §.5; 1993 s.24(13)
(3)	1987 s.1(6)
(4)	1987 s.1(7); 1993 s.24(15)
(5)	1987 s.1(6); 1990 Sch.4 §.5; 1993 s.24(14)
(6)	1987 ss.5(3), 8(12); 1995 s.111(3), Sch.5 §s.6, 11
(7)	1987 s.47(6); 1995 s.111(4), Sch.5 §.33
50(1), (2)	Drafting
(3) — (5)	1995 s.115(4) — (6)
Sch. 1	
§.1	1987 s.13; 1995 Sch.3 §.1, Sch.5 §.15
§.2	1987 s.14; 1995 Sch.3 §.2, Sch.5 §.16
§.3	1987 s.15; 1995 Sch.3 §.3
§.4	1987 s.16; 1988 Sch.5 §.21; 1995 Sch.3 §.4, Sch.5 §.17
§.5	1987 s.17; 1995 Sch.3 §.5, Sch.5 §.18
§.6	1987 s.18; 1995 Sch.3 §.6, Sch.5 §.19
§.7	1987 s.19; 1995 Sch.3 §.7
§.8	1987 s.20; 1995 Sch.3 §.8, Sch.5 §.20
§.9	1987 s.21; 1995 Sch.3 §.9
§.10	1987 s.26(5), (6), 47(5); 1995 Sch.3 §.10
§.11	1987 s.22; 1995 Sch.5 §.11
§.12	1987 s.24; 1995 Sch.5 §.12
Sch. 2	1
§.1	1987 s.33; Housing Act 1988 (c. 50) Sch.17 §.81; 1995 Sch.4 §.1, Sch.5 §.28
§.2	1987 s.34; 1988 Sch.5 §.22; Housing Act 1988 (c. 50) Sch.17 §.81; 1995 Sch.4 §.2, Sch.5 §.29
§.3	1987 s.35; 1995 Sch.4 §.3, Sch.5 §.30
§.4	1987 s.36; 1995 Sch.4 §.4, Sch.5 §.31
§.5	1987 s.37; 1995 Sch.4 §.5, Sch.5 §.32
§.6	1987 s.47(1), (4); 1995 Sch.4 §.6

Status:
Point in time view as at 24/03/2003.

Changes to legislation:
There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995.