



# Partnerships (Prosecution) (Scotland) Act 2013

## 2013 CHAPTER 21

An Act to make provision about the prosecution in Scotland of partnerships, partners and others following dissolution or changes in membership. [25th April 2013]

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:—

### *Prosecution after dissolution*

#### **1 Prosecution of dissolved partnership**

- (1) This section and sections 2 and 3 apply where—
  - (a) a partnership is dissolved, and
  - (b) an offence is alleged to have been committed by the partnership before dissolution.
- (2) The partnership may be prosecuted, or continue to be prosecuted, for the offence as if it had not been dissolved.
- (3) But it is not competent to commence proceedings against the partnership by virtue of subsection (2) if a period of more than 5 years has elapsed since the partnership was dissolved.
- (4) For the purposes of subsection (3), proceedings are commenced on the date on which an indictment or, as the case may be, a complaint is served on the partnership.
- (5) Subsection (3) is without prejudice to section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences).

- (6) Where a partnership is convicted of an offence by virtue of subsection (2), any enactment or rule of law relating to the liability of partners on the conviction of a partnership applies as if the partnership had not been dissolved.
- (7) But subsection (6) is subject to section 3 (which disapplies provisions restricting payment of fines to partnership assets).

## **2 Dissolution of partnership: proceedings against former partner or other person**

- (1) A person, who could have been prosecuted for the offence committed by the partnership had it not been dissolved, may be prosecuted, or may continue to be prosecuted, despite the dissolution.
- (2) Subsection (1) applies irrespective of whether the partnership has been or is prosecuted for the offence but not where the partnership has been so prosecuted and acquitted.
- (3) In proceedings against a person by virtue of subsection (1), evidence led may include evidence as to the commission of the offence by the partnership.

## **3 Payment of fine where dissolved partnership convicted**

An enactment, in so far as it restricts to payment out of a partnership's assets the payment of a fine imposed on the partnership on its conviction of an offence, does not apply in the case of a partnership which has been dissolved.

### *Prosecution after change in membership*

## **4 Prosecution of partnership after change in membership**

- (1) This section and section 5 apply where—
  - (a) there is a change in the membership of a partnership,
  - (b) the partnership continues to carry on business after the change, and
  - (c) an offence is alleged to have been committed by the partnership before the change.
- (2) The partnership may be prosecuted, or continue to be prosecuted, for the offence.
- (3) For the purposes of this section and section 5, any enactment or rule of law, by virtue of which a change in membership of a partnership results in a new partnership being constituted, does not apply.
- (4) In this section and section 5, there is a change in the membership of a partnership where—
  - (a) a partner dies or, if not an individual, ceases to exist,
  - (b) a partner resigns, retires or is expelled from the partnership, or
  - (c) a person is admitted as a partner into the partnership.

## **5 Change in membership of partnership: proceedings against partner or other person**

- (1) A person, who could have been prosecuted for the offence committed by the partnership had there not been a change in membership, may be prosecuted, or may continue to be prosecuted, for the offence despite the change in membership.
- (2) Subsection (1) applies irrespective of whether the partnership has been or is prosecuted for the offence but not where the partnership has been so prosecuted and acquitted.
- (3) In proceedings against a person by virtue of subsection (1), evidence led may include evidence as to the commission of the offence by the partnership.

### *General and miscellaneous*

## **6 Consequential amendments**

- (1) The Partnership Act 1890 is amended as follows.
- (2) In section 38 (continuing authority of partners for purposes of winding up etc.), after third “dissolution” insert “, and in relation to any prosecution of the partnership by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013”.
- (3) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (4) In section 70 (solemn proceedings against organisations), in subsection (2), after paragraph (a) insert—
  - “(aa) in the case of a partnership prosecuted by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013, the dwelling-house or place of business of any of the partners,”.
- (5) In section 141 (summary proceedings: manner of citation), in subsection (2)—
  - (a) in paragraph (b), after “body of trustees” insert “or a partnership prosecuted by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013”,
  - (b) omit the word “or” immediately after that paragraph, and
  - (c) after paragraph (c) insert “or
    - (d) where the accused is a partnership prosecuted by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013, if the citation is left with any one of the partners who is resident in Scotland;”.
- (6) The Secretary of State may by order made by statutory instrument make such further amendments of any enactment as appear to the Secretary of State to be necessary or expedient in consequence of this Act.
- (7) An order under subsection (6) may not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (8) But an order under subsection (6) which does not contain provisions amending any enactment contained in an Act or an Act of the Scottish Parliament is subject to annulment in pursuance of a resolution of either House of Parliament.

## 7 Interpretation

In this Act—

- (a) references to an offence, in relation to its commission or alleged commission by a partnership, are references to an offence that the partnership is, by virtue of an enactment or rule of law, capable of committing separately from its partners,
- (b) “enactment” includes an enactment contained—
  - (i) in subordinate legislation (within the meaning of the Interpretation Act 1978), or
  - (ii) in, or in an instrument made under, an Act of the Scottish Parliament.

## 8 Short title, commencement and extent

- (1) This Act may be cited as the Partnerships (Prosecution) (Scotland) Act 2013.
- (2) This Act comes into force on the day after the day on which this Act is passed.
- (3) This Act applies where the partnership is dissolved or there is a change in the membership of the partnership on or after the day on which this Act comes into force.
- (4) This Act (other than section 3)—
  - (a) applies irrespective of when the offence mentioned in section 1(1)(b) or 4(1)(c) is alleged to have been committed,
  - (b) applies to any proceedings in relation to such an offence which are ongoing on the day this Act comes into force as it applies in relation to proceedings commenced after that day.
- (5) This Act extends only to Scotland.
- (6) But the amendment made by section 6(2), and any amendment made by an order under section 6(6), has the same extent as the enactment (or the relevant part of the enactment) to which it relates.