



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART I

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

Minor amendments, service, notice and interpretation

45 Minor amendments in relation to drug trafficking. 4 & 5 Geo. 5 c. 59.

- (1) Section 28 of the Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.
- (2) In section 1(2)(a) of the ^{M1}Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or on a conviction does not include a reference to an amount payable under a confiscation order.

^{F1}(3)

- (4) Section 281(4) of the ^{M2}Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

(5) In the ^{M3}1985 Act—

- (a) in section 5(4) (interpretation)—
 - (i) after the words “future debts” there shall be inserted the words “or amounts payable under a confiscation order” and
 - (ii) at the end there shall be added the words “ ; and in the foregoing provisions of this subsection “confiscation order” has the meaning assigned by section 1(1) of the Criminal Justice (Scotland) Act 1987 or by section 1(8) of the Drug Trafficking Offences Act 1986 ”;
- (b) in section 7(1) (constitution of apparent insolvency)—

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- (i) in paragraph (b), at the beginning there shall be inserted the words “not being a person whose property is for the time being affected by a restraint order or subject to a confiscation, or charging order,”;
- (ii) in paragraph (c), after the words “became due” there shall be inserted the words “or that but for his property being affected by a restraint order or subject to a confiscation, or charging, order he would be able to do so”; and
- (iii) at the end there shall be added the words “In paragraph (d) above, “liquid debt” does not include a sum payable under a confiscation order; and in the foregoing provisions of this subsection—

“charging order” has the meaning assigned by section 9(2) of the Drug Trafficking Offences Act 1986;

“confiscation order” has the meaning assigned by section 1(1) of the Criminal Justice (Scotland) Act 1987 or by section 1(8) of the said Act of 1986; and

“restraint order” has the meaning assigned by section 9 of the said Act of 1987 or by section 8 of the said Act of 1986.”; and

- (c) section 55(2) (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

(6) In section 231 of the ^{M4}1975 Act (intimation of intention to appeal)—

- (a) in subsection (1), after the words “236B(2) of this Act” there shall be inserted the words “and to section 2(2) of the Criminal Justice (Scotland) Act 1987 (postponed confiscation orders)”;
- (b) in subsection (4), at the beginning there shall be inserted the words “Subject to subsection (5) below,”; and
- (c) after subsection (4) there shall be added the following subsection—

“(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987, the reference in subsection (4) above to “the day on which sentence is passed in open court” shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made (whether or not a confiscation order is then made or any other sentence is then passed).”.

^{F1}(7)

Textual Amendments

F1 S. 45(3)(7) repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**

Marginal Citations

- M1** 1974 c. 53.
- M2** 1986 c. 45.
- M3** 1985 c. 66.
- M4** 1975 c. 21.

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46 Service and notice for purposes of Part I.

Subject to the provisions of this Part of this Act, provision may be made by rules of court as to the giving of notice required for the purposes of this Part of this Act or the 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.

[^{F2}46A Extension of certain offences to Crown servants and exemptions for regulators etc.

- (1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, [^{F3}sections 42 to 43B of this Act] shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.
- (2) Section [^{F3}43A] of this Act shall not apply to—
 - (a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or
 - (b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.
- (3) The Secretary of State may designate, for the purpose of paragraph (a) of subsection (2) above, any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person prescribed by the Secretary of State, for the purpose of paragraph (b) of subsection (2) above, shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.
- (5) In this section—

“the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland; and

“prescribed” means prescribed by regulations made by the Secretary of State.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument.
- (7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F2 S. 46A inserted (1.4.1994) by 1993 c. 36, ss. 77, Sch. 4 paras. 1,2.

F3 Words in s. 46A substituted (1.4.1994) by 1993 c. 36, ss. 77, Sch. 4 para. 2(a)(b).

47 Interpretation of Part I.

- (1) In this Part of this Act (except where the context otherwise requires)—

“administrator” shall be construed in accordance with section 13 of this Act;

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[^{F4}“associate” shall be construed in accordance with section 74 of the 1985 Act;]

“authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947;

[^{F5}“confiscation order” means an order under section 1(1), 6A, 6B or 25 of this Act;]

[^{F6}“the court” means—

- (a) for the purpose of sections 1 to 7A, the High Court of Justiciary or sheriff court;
- (b) for the purposes of sections 8 to 26 and 33 to 37, the Court of Session or the sheriff court;]

“designated country” shall be construed in accordance with section 30(2) of this Act;

“drug trafficking” has the meaning assigned by section 1(6) of this Act;

“implicative gift” shall be construed in accordance with section 6 of this Act;

“realisable property” shall be construed in accordance with section 5 of this Act;

“restraint order” has the meaning assigned by section 9 of this Act; and

“the 1985 Act” means the ^{M5}Bankruptcy (Scotland) Act 1985.

- (2) This Part of this Act shall (except where the context otherwise requires) be construed as one with the ^{M6}1975 Act.
- (3) This Part of this Act applies to property whether it is situated in Scotland or elsewhere.
- (4) References in this Part of this Act—
 - (a) to offences include a reference to offences committed before the commencement of section 1 of this Act; but nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence to which that section relates instituted before the commencement of that section;
 - (b) to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection; and
 - (c) to property held by a person include a reference to property vested in the interim or permanent trustee in his sequestration or in his trustee in bankruptcy or liquidator.
- (5) For the purposes of this Part of this Act (and subject to subsections (8) and (9) of section 30 of this Act), proceedings are concluded as regards an offence where—
 - (a) the trial diet is deserted *simpliciter*;
 - (b) the accused is acquitted or, under section 101 of the 1975 Act, discharged or liberated;
 - (c) the High Court [^{F7}or, as the case may be, the sheriff] sentences or otherwise deals with him without making a confiscation order and without postponing a decision as regards making such an order;
 - (d) after such postponement as is mentioned in paragraph (c) above, the High Court [^{F7}or, as the case may be, the sheriff] decides not to make a confiscation order;
 - (e) his conviction is quashed; or

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- (f) either the amount of a confiscation order made has been paid or there remains no liability to imprisonment in default of so much of that amount as is unpaid.

[^{F8}(6) Any reference in this Part of this Act to a conviction of an offence includes a reference to a finding that the offence has been committed.]

Textual Amendments

- F4** Definition in s. 47(1) repealed (S.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 36(a)(i)**; S.I. 1996/517, **arts. 3(2), 5**
- F5** Definition in s. 47(1) substituted (S.) (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 36(a)(ii)**
- F6** Definition in s. 47(1) inserted (S.) (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 36(a)(iii)**
- F7** Words in s. 47(5)(c) and (d) inserted (S.) (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 36(b)**; S.I. 1996/517, **art. 3(2)**
- F8** S. 47(6) added (S.) (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 36(c)**; S.I. 1996/517, **art. 3(2)**

Marginal Citations

- M5** 1985 c. 66
- M6** 1975 c. 21.

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