



Criminal Justice Act 1988

1988 CHAPTER 33

PART VI

CONFISCATION OF THE PROCEEDS OF AN OFFENCE

Enforcement, etc. of confiscation orders

75 Application of procedure for enforcing fines.

- (1) Where the Crown Court orders the defendant to pay an amount under this Part of this Act, sections 31(1) to (3C) and 32(1) and (2) of the ^{M1}Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if that amount were a fine imposed on him by the Crown Court.
- (2) Where a magistrates' court orders the defendant to pay an amount under this Part of this Act, that amount shall be treated as a fine for the purposes of section 31(3) of the ^{M2}Magistrates' Courts Act 1980 (general limit on the power of a magistrates' court to impose imprisonment not to apply in the case of imprisonment in default).
- (3) Where—
 - (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Part of this Act in respect of an offence; and
 - (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence;the term of imprisonment or of detention under section 9 of the ^{M3}Criminal Justice Act 1982 (detention of persons aged 17 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.
- (4) The reference in subsection (3) above to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or detention in a young offender institution which he is liable to serve in respect of the offence; and for the purposes of this subsection—

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- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded—
 - (i) any sentence suspended under section 22(1) of the ^{M4}Powers of Criminal Courts Act 1973 which has not taken effect at the time the warrant is issued;
 - (ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the ^{M5}Criminal Law Act 1977, any part of the sentence which the defendant has not at that time been required to serve in prison; and
 - (iii) any term of imprisonment or detention fixed under section 31(2) of the Powers of Criminal Courts Act 1973 for which a warrant of commitment has not been issued at that time.
- (5) In the application of Part III of the ^{M6}Magistrates' Courts Act 1980 to amounts payable under confiscation orders—
- (a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines); and
 - (b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.
- (6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1) above to the Crown Court shall be construed accordingly.

Marginal Citations

- M1** 1973 c. 62.
- M2** 1980 c. 43.
- M3** 1982 c. 48.
- M4** 1973 c. 62.
- M5** 1977 c. 45.
- M6** 1980 c. 43.

VALID FROM 01/11/1995

[75A ^{F1}**Interest on sums unpaid under confiscation orders.**

- (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 31(1) of the Powers of Criminal Courts Act 1973 or for the ^{M7}purposes of section 75(1) or (2) of the ^{M8}Magistrates' Courts Act 1980)—
- (a) that person shall be liable to pay interest on that sum for the period for which it remains unpaid, and
 - (b) the amount of the interest shall, for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

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- (2) The Crown Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 31(2) of that Act of 1973 (as it has effect by virtue of section 75 above) if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under section 31(3A) of that Act of 1973.
- (3) The rate of interest under subsection (1) above shall be that for the time being applying to a civil judgment debt under section 17 of the ^{M9}Judgments Act 1838.]

Textual Amendments

F1 S. 75A inserted (1.11.1995) by 1995 c. 11, s.9 (with s. 16(6)); S.I. 1995/2650, art.2

Marginal Citations

M7 1973 c. 62.

M8 1980 c. 43.

M9 1838 c.110.

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

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

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the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.

77 **Restraint orders.**

- (1) The High Court may by order (referred to in this Part of this Act as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.
- (3) A restraint order may apply—
 - (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.
- (5) A restraint order—
 - (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order—
 - (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—
 - (a) to take possession of any realisable property, and
 - (b) in accordance with the court’s directions, to manage or otherwise deal with any property in respect of which he is appointed,
 subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—
 - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Great Britain.
- (10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property.
- (11) Property seized under subsection (10) above shall be dealt with in accordance with the court’s directions.

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- (12) The ^{M10}Land Charges Act 1972 and the ^{M11}Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
 - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

Marginal Citations

M10 1972 c. 61.

M11 1925 c. 21.

78 Charging orders in respect of land, securities, etc.

- (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
 - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Part of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and
 - (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act—
 - (i) in any asset of a kind mentioned in subsection (5) below; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or

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- (b) securities of any of the following kinds—
- (i) government stock;
 - (ii) stock of any body (other than a building society) incorporated within England and Wales;
 - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.
- (8) An application for the discharge or variation of a charging order may be made by any person affected by it.

79 Charging orders: supplementary provisions.

- (1) The ^{M12}Land Charges Act 1972 and the ^{M13}Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgments.
- (2) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.
- (3) Subject to any provision made under section 80 below or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.
- (4) Where a charging order has been protected by an entry registered under the ^{M14}Land Charges Act 1972 or the ^{M15}Land Registration Act 1925, an order under section 78(7) above discharging the charging order may direct that the entry be cancelled.
- (5) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament amend section 78 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- (6) In this section and section 78 above, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the ^{M16}Charging Orders Act 1979.

Marginal Citations

M12 1972 c. 61.

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M13 1925 c. 21.

M14 1972 c. 61.

M15 1925 c. 21.

M16 1979 c. 53.

80 Realisation of property.

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

81 Application of proceeds of realisation and other sums.

- (1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under this Part of this Act or in pursuance of a charging order, that is—
 - (a) the proceeds of the enforcement of any charge imposed under section 78 above;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 77 or 80 above; and
 - (c) any other sums, being property held by the defendant;

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shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 87(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—
 - (a) among such of those who held property which has been realised under this Part of this Act, and
 - (b) in such proportions,
 as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.
- (3) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.
- (4) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 87(2) below but not already paid under subsection (1) above.
- (5) If the money was paid to the justices' clerk by a receiver appointed under this Part of this Act or in pursuance of a charging order, the justices' clerk shall next pay the receiver's remuneration and expenses.
- (6) After making—
 - (a) any payment required by subsection (4) above; and
 - (b) in a case to which subsection (5) above applies, any payment required by that subsection,
 the justices' clerk shall reimburse any amount paid under section 88(2) below.
- (7) The justices' clerk shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 72(7) above.
- (8) Any balance in the hands of the justices' clerk after he has made all payments required by the foregoing provisions of this section shall be treated for the purposes of section 61 of the Justices of the ^{M17}Peace Act 1979 (application of fines, etc.) as if it were a fine imposed by a magistrates' court.
- (9) Where under subsection (3) above a sum falls to be applied in payment both of compensation and of other outgoings—
 - (a) the person entitled to the compensation shall be liable to pay to the Secretary of State such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under section 72(7) above bears to the total amount payable under the confiscation order;
 - (b) the justices' clerk shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a) above;
 - (c) notwithstanding the deduction under paragraph (b) above, the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and

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- (d) the amount deducted shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 as if it were a fine imposed by a magistrates' court.

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

Marginal Citations

M17 1979 c. 55.

82 Exercise of powers by High Court or receiver.

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

83 Variation of confiscation orders.

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

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- (3) Where a certificate has been issued under subsection (1) above, the defendant may apply—
- (a) where the confiscation order was made by the Crown Court, to that court; and
 - (b) where the confiscation order was made by a magistrates' court, to a magistrates' court for the same area,
- for the amount to be recovered under the order to be reduced.
- (4) The Crown Court shall, on an application under subsection (3) above—
- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the ^{M18}Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.
- (5) A magistrates' court shall, on an application under subsection (3) above, substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

Marginal Citations

M18 1973 c. 62.

84 Bankruptcy of defendant etc.

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the bankrupt's estate for the purposes of Part IX of the ^{M19}Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Act;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 [^{F2}308 or 308A] of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement) [^{F3}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 that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or

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- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part of this Act—
- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
 - (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of this Act of property held by the person to whom the gift was made.
- (7) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the ^{M20}Insolvency Act 1986 came into force), this section shall have effect with the following modifications—
- (a) for references to the bankrupt’s estate for the purposes of Part IX of that Act there shall be substituted references to the property of the bankrupt for the purposes of the ^{M21}Bankruptcy Act 1914;
 - (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
 - (c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914; and
 - (d) subsection (2)(b) shall be omitted.

Textual Amendments

F2 Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 83](#)

F3 Words inserted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 83](#)

Marginal Citations

M19 [1986 c. 45](#).

M20 [1986 c. 45](#).

M21 [1914 c. 59](#).

85 Sequestration in Scotland of defendant etc.

- (1) Where the estate of a person who holds realisable property is sequestrated—
- (a) property for the time being subject to a restraint order made before the award of sequestration, and

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- (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above,
- is excluded from the debtor's estate for the purposes of the ^{M22}Bankruptcy (Scotland) Act 1985.
- (2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 77 to 81 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to—
- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of that Act, and
- (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, [^{F4}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 that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the award of sequestration; or
- (b) on property which was subject to a restraint order when the award of sequestration was made.
- (5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Part of this Act—
- (a) no decree shall be granted under section 34 or 36 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when proceedings for an offence to which this Part of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and
- (b) any decree made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.
- (7) In any case in which, notwithstanding the coming into force of the ^{M23}Bankruptcy (Scotland) Act 1985, the ^{M24}Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
- (b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act to be paid to the trustee of

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any estate which, under subsection (1) of that section, vests in the trustee,”;

and subsection (3) above shall have effect as if for the reference therein to the Act of 1985 there were substituted a reference to the Act of 1913.

Textual Amendments

F4 Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, [Sch. 17 para. 83](#)

Marginal Citations

M22 1985 c. 66.

M23 1985 c. 66.

M24 1913 c. 20.

86 Winding up of company holding realisable property.

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
 - (a) property for the time being subject to a restraint order made before the relevant time, and
 - (b) any proceeds of property realised by virtue of section 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 77 to 80 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
 - (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the ^{M25}Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (5) For the purposes of the application of Parts IV and V of the ^{M26}Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order.
- (6) In this section—

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“company” means any company which may be wound up under the Insolvency Act 1986; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

- (7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the ^{M27}Companies Act 1985.

Marginal Citations

M25 1986 c. 45.

M26 1986 c. 45.

M27 1985 c. 6.

87 Insolvency officers dealing with property subject to restraint order.

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

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
 - (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 81(1) or (4) above.

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- (3) In this Part of this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in sequestration and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

88 Receivers: supplementary provisions.

- (1) Where a receiver appointed under this Part of this Act or in pursuance of a charging order takes any action—
- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 81(5) above, be paid by the prosecutor or, in a case where proceedings for an offence to which this Part of this Act applies are not instituted, by the person on whose application the receiver was appointed.

89 Compensation.

- (1) If proceedings are instituted against a person for an offence or offences to which this Part of this Act applies and either—
- (a) the proceedings do not result in his conviction for any such offence, or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—
- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in subsection (5) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Act.
- (3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

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- (4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this section shall be paid—
- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met;
 - (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions;
 - (c) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
 - (d) where the person in default was an officer within the meaning of the ^{M28}Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and
 - (e) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.

Marginal Citations

M28 1979 c. 2.

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