



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART VI

#### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

##### *Enforcement in Scotland*

#### **90 Recognition and enforcement of orders in Scotland**

- (1) An order to which this section applies shall, subject to this section and section 91 below, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.
- (2) A receiver's functions under or for the purpose of section 77, 80 or 81 above shall, subject to this section and section 91 below, have effect in the law of Scotland.
- (3) If an order to which this section applies is registered under this section—
  - (a) the Court of Session shall have, in relation to its enforcement, the same power;
  - (b) proceedings for or with respect to its enforcement may be taken; and
  - (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,as if the order had originally been made in that Court.
- (4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 80(3)(a) above to have effect in the law of Scotland.
- (5) The orders to which this section applies are orders of the High Court—
  - (a) made under section 77, 78 or 81 above;
  - (b) relating to the exercise by that Court of its powers under those sections; or
  - (c) relating to receivers in the performance of their functions under any of them, but not including an order in proceedings for enforcement of any such order.

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- (6) References in this section to an order under section 77 above include references to a discharge under section 76(4) above of such an order.
- (7) In this section and in sections 91 and 93 below, “order” means any order, direction or judgment by whatever name called.
- (8) Nothing in any order of the High Court under section 80(6) above prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

## **91 Supplementary**

- (1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 90 above applies, direct that the order shall, in accordance with such rules, be registered in that Court.
- (2) Subsections (1) and (3) of that section and subsection (1) above are subject to any provision made by rules of court—
  - (a) as to the manner in which and conditions subject to which orders to which that section applies are to be enforced in Scotland;
  - (b) for the sisting of proceedings for enforcement of such an order;
  - (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.
- (3) This section and that section are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court.
- (4) The Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents, etc.) in relation to proceedings brought or likely to be brought under this Part of this Act in the High Court as if those proceedings had been brought or were likely to be brought in the Court of Session.
- (5) The Court of Session may, additionally, for the purpose of—
  - (a) assisting the achievement in Scotland of the purposes of orders to which section 90 above applies,
  - (b) assisting receivers performing functions thereunder or for the purposes of section 77, 80 or 81 above,make such orders and do otherwise as seems to it appropriate.

## **92 Inhibition and arrestment of property in Scotland**

- (1) On the application of the prosecutor, the Court of Session may, in respect of—
  - (a) heritable realisable property in Scotland affected by a restraint order registered under section 90 above (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property;
  - (b) moveable realisable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor;and, subject to the provisions of this section, the warrant—

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

### **93 Proof in Scotland of High Court orders**

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