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STATUTORY INSTRUMENTS

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**1989 No. 485**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Drug Trafficking Offences Act 1986  
(United States of America) Order 1989**

*Made* - - - - *15th March 1989*  
*Coming into force* - - *29th March 1989*

At the Court at Buckingham Palace, the 15th day of March 1989

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 26 of the Drug Trafficking Offences Act 1986(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Title and commencement**

1. This Order may be cited as the Drug Trafficking Offences Act 1986 (United States of America) Order 1989 and shall come into force on the fourteenth day following the date of making of this Order.

**Interpretation**

2. In this Order—

“the Act” means the Drug Trafficking Offences Act 1986;

“a court of the United States of America” means a court of the United States of America or of any of its states or territories.

**Designation of and application of the Act to the United States of America**

3.—(1) The United States of America is hereby designated for the purposes of sections 26 and 26A of the Act.

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(1) 1986 c. 32, amended by the Criminal Justice (Scotland) Act 1987 (c. 41), section 70 and Schedule 2 and the Criminal Justice Act 1988 (c. 33), section 103 and Schedule 5.

(2) The Act shall apply, subject to the modifications set out in Schedule 1 to this Order, in relation to an external confiscation order made by a court of the United States of America and to proceedings which have been or are to be instituted in the United States of America and which may result in an external confiscation order being made there, and, accordingly, in relation to such orders and such proceedings, the Act shall have effect as set out in Schedule 2 to this Order.

#### **Orders made in the United States of America**

4. For the purposes of section 26 of the Act, and of the Act as applied under article 3 above, in any proceedings in the High Court a certificate issued by or on behalf of the Attorney General of the United States of America stating either—

- (a) that an order (however described) made by a court of the United States of America has the purpose of recovering payments or other rewards received in connection with drug trafficking or their value, or
- (b) that proceedings have been instituted against a person in the United States of America and have not been concluded there,

shall be admissible as evidence of the facts so stated.

#### **Satisfaction of confiscation order in the United States of America**

5.—(1) Where—

- (a) a confiscation order has been made under section 1 of the Act; and
- (b) a request has been made by the Secretary of State for the assistance of the government of the United States of America in enforcing that order; and
- (c) in consequence of that request property is recovered in the United States of America which represents, directly or indirectly, proceeds of drug trafficking which were taken into account under section 2 of the Act by the court which made the confiscation order,

the amount payable under the confiscation order shall be treated as reduced by the value of property so recovered.

(2) For the purposes of paragraph (1) above a certificate issued by or on behalf of the Attorney General of the United States of America stating that property has been recovered there in consequence of a request by the Secretary of State and stating the value of the property so recovered shall be admissible as evidence of the facts so stated.

*G.I. de Deney*  
Clerk of the Privy Council

## SCHEDULE 1

Article 3(2)

### MODIFICATIONS OF THE DRUG TRAFFICKING OFFENCES ACT 1986

1. For section 1 there shall be substituted the following section:

#### **“1 Confiscation orders**

(1) An order made by a court of the United States of America for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as a “confiscation order”, and for the purposes of its registration under section 26A of this Act, “external confiscation order” means any such order.

(2) In subsection (1) above the reference to an order includes any order, decree, direction or judgment, however described.

(3) A person against whom a confiscation order has been made or a person against whom proceedings which may result in a confiscation order being made have been, or are to be, instituted in a court of the United States of America, is referred to in this Act as “the defendant”.”.

2. Sections 2 to 4 shall be omitted.

3. In section 5–

- (a) for subsection (1) there shall be substituted the following subsection:

“(1) In this Act “realisable property” means, subject to subsection (2) below–

- (a) in relation to a confiscation order made in respect of specified property, the property which is specified in the order; and
    - (b) in any other case, any property held by the defendant.”

- (b) subsections (3) to (10) shall be omitted.

4. Section 6 shall be omitted.

5. In section 7–

- (a) for subsection (1)(a) there shall be substituted:

“(a) proceedings have been instituted against the defendant in the United States of America,”;

- (b) for subsection (1)(c) there shall be substituted:

“(c) either a confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for thinking that a confiscation order may be made in them”;

- (c) for subsection (2) there shall be substituted the following subsection:

“(2) Those powers are also exercisable where the High Court is satisfied that proceedings are to be instituted against a person in the United States of America and it appears to the court that a confiscation order may be made in them.”;

- (d) subsection (3) shall be omitted; and

- (e) for subsection (4) there shall be substituted the following subsection:

“(4) Where the High Court has made an order under section 8(1) of 9(1) of this Act by virtue of subsection (2) above, it shall discharge the order if the proposed proceedings are not instituted within twenty-eight days.”.

6. In section 8–

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- (a) for subsection (2)(a) and (b) there shall be substituted:
    - “(a) where an application under subsection (4) below relates to a confiscation order made in respect of specified property, to the property which is specified in that order; and
    - (b) in any other case—
      - (i) to all realisable property, whether the property is described in the restraint order or not, and
      - (ii) to realisable property, being property transferred to the defendant after the making of the restraint order.”;
  - (b) in subsection (4) for the words “the prosecutor” there shall be substituted the words “or on behalf of the government of the United States of America”;
  - (c) for subsection (5)(b) there shall be substituted:
    - “(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”;
  - (d) in subsection (7)(b) and in subsection (8) for the words “Great Britain” there shall be substituted the words “England and Wales”;
  - (e) in subsection (11), for the words “the prosecutor” there shall be substituted the words “A person applying for a restraint order on behalf of the government of the United States of America”.
7. In section 9—
- (a) for subsection (1)(a) and (b) there shall be substituted the following:
    - “(a) where a fixed amount is payable under a confiscation order, of an amount not exceeding the amount so payable, and
    - (b) in any other case, of an amount equal to the value from time to time of the property charged.”;
  - (b) in subsection (3) for the words “the prosecutor” there shall be substituted the words “or on behalf of the government of the United States of America”;
  - (c) in subsection (4)(a) the words “or by a person to whom the defendant has directly or indirectly made a gift caught by this Act” shall be omitted;
  - (d) in subsection (7) for the words “for the offence” there shall be substituted the words “against the defendant in the United States of America”.
8. In section 10, subsection (6) shall be omitted.
9. After section 10 there shall be inserted the following section:
- “**10A.** Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965<sup>(2)</sup>, an application under section 8(4) or 9(3) of this Act shall be supported by an affidavit which shall—
- (a) state, where applicable, the grounds for believing that a confiscation order may be made in the proceedings instituted or to be instituted in the United States of America;
  - (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;

(2) S.I.1965/1776. Order 115 was inserted by R.S.C. (Amendment No. 3) 1986 (S.I. 1986/2289).

- (c) where proceedings have not been instituted in the United States of America, indicate when it is intended that they should be instituted there,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.”.

**10.** In section 11–

- (a) for subsection (1) of section 11 there shall be substituted the following subsection:

“(1) Where a confiscation order has been registered in the High Court under section 26A of this Act, the High Court may, on an application by or on behalf of the government of the United States of America, exercise the powers conferred by subsections (2) to (6) below.”; and

- (b) in subsection (6) the words “or, as the case may be, the recipient of a gift caught by this Act” shall be omitted.

**11.** The following section shall be substituted for section 12:

**“Application of proceeds of realisation and other sums.**

**12.—**(1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order, that is–

- (a) the proceeds of the enforcement of any charge imposed under section 9 of this Act,
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 8 or 11 of this Act, and
- (c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 17A(2) of this Act and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be paid to the High Court and applied for the purposes specified in subsections (3) to (5) below and in the order so specified.

(2) Where a fixed amount is payable under the confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums–

- (a) among such of those who held property which has been realised under 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) Any sums paid to the High Court under subsection (1) above shall first be applied to pay the receiver’s remuneration and expenses.

(4) Next, any amount paid under section 18(2) of this Act shall be reimbursed.

(5) Any sums remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid to the Secretary of State and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.”.

**12.** In section 13–

- (a) in subsection (2), for the words from “making available” to the end of the subsection there shall be substituted the words “recovering property which is liable to be recovered under a confiscation order registered in the High Court under section 26A of this Act or, as the case

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may be, with a view to making available for recovery property which may become liable to be recovered under any confiscation order which may be made in the defendant's case.”;

- (b) subsection (3) shall be omitted;
- (c) in subsection (4), the words “or the recipient of any such gift” shall be omitted; and
- (d) in subsection (6), the words “or of the recipient of any such gift” shall be omitted.

**13.** Section 14 shall be omitted.

**14.** In section 15–

- (a) subsection (6) shall be omitted; and
- (b) in subsection (7), for the words “the date on which the Insolvency Act 1986 comes into force” there shall be substituted the words “29th December 1986 (the date on which the Insolvency Act 1986 came into force)”.

**15.** In section 16, subsection (6) shall be omitted.

**16.** In subsection (6) of section 17, for the words “the date on which the Insolvency Act 1986 comes into force” there shall be substituted the words “29th December 1986 (the date on which the Insolvency Act 1986 came into force)”.

**17.** In subsection (2) of section 17A, the words “or (3)(za)” shall be omitted.

**18.** In subsection (2) of section 18, the letter “B” and the words “by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted,” shall be omitted.

**19.** Section 19 and sections 24 to 26 shall be omitted.

**20.** Sections 27 to 32 shall be omitted.

**21.** In section 33–

- (a) in subsection (1), the words “(2) or”, and
- (b) subsections (2) and (3)

shall be omitted.

**22.** Sections 34 to 37 shall be omitted.

**23.** In section 38–

- (a) in subsection (1)–
  - (i) the definitions of “authorised government department”, “drug trafficking offence” and “interest” shall be omitted;
  - (ii) before the definition of “constable” there shall be inserted the following words:  
““a court of the United States of America” means a court of the United States of America or of any of its states or territories;”; and
  - (iii) after the definition of “drug trafficking” there shall be inserted the following words:  
““proceeds of drug trafficking” includes any payments or other rewards received by a person at any time (whether before or after the commencement of the Drug Trafficking Offences Act 1986 (United States of America) Order 1989) in connection with drug trafficking carried on by him or another;”;
- (b) in subsection (2) for the list of expressions and relevant provisions there shall be substituted the following list:

“Expression	Relevant provision
Charging order	Section 9(2)
Confiscation order	Section 1
Dealing with property	Section 8(7)
Defendant	Section 1
Realisable property	Section 5(1)
Restraint order	Section 8(1)”;

- (c) subsections (4) and (10) shall be omitted;
  - (d) in subsection (11), for the words from “are instituted” to the end of the subsection, there shall be substituted the words “the United States when an indictment, information or complaint has been filed against a person in respect of an offence.”; and
  - (e) in subsection (12)(b), for the words from “payment” to the end of the subsection there shall be substituted the words “the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).”.
24. In section 39, subsections (2) and (4) shall be omitted.
25. Section 40 shall be omitted.

## SCHEDULE 2

Article 3(2)

### THE DRUG TRAFFICKING OFFENCES ACT 1986 AS MODIFIED

#### Confiscation orders

1.—(1) An order made by a court of the United States of America for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as a “confiscation order”, and for the purposes of its registration under section 26A of this Act “external confiscation order” means any such order.

(2) In subsection (1) above the reference to an order includes any order, decree, direction or judgment, however described.

(3) A person against whom a confiscation order has been made or a person against whom proceedings which may result in a confiscation order being made have been, or are to be, instituted in a court of the United States of America, is referred to in this Act as “the defendant”.

... ..

#### Realisable property

5.—(1) In this Act “realisable property” means, subject to subsection (2) below—

- (a) in relation to a confiscation order made in respect of specified property, the property which is specified in the order; and
  - (b) in any other case, any property held by the defendant.
- (2) Property is not realisable property if—

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- (a) an order under section 43 of the Powers of Criminal Courts Act 1973<sup>(3)</sup> (deprivation orders),
- (b) an order under section 27 of the Misuse of Drugs Act 1971<sup>(4)</sup> (forfeiture orders), or
- (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975<sup>(5)</sup> (forfeiture of property),

is in force in respect of the property.

... ..

### **Cases in which restraint orders and charging orders may be made**

7.—(1) The powers conferred on the High Court by sections 8(1) and 9(1) of this Act are exercisable where—

- (a) proceedings have been instituted against the defendant in the United States of America,
- (b) the proceedings have not been concluded, and
- (c) either a confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that a confiscation order may be made in them.

(2) Those powers are also exercisable where the High Court is satisfied that proceedings are to be instituted against a person in the United States of America and it appears to the court that a confiscation order may be made in them.

... ..

(4) Where the High Court has made an order under section 8(1) or 9(1) of this Act by virtue of subsection (2) above, it shall discharge the order if the proposed proceedings are not instituted within twenty-eight days.

### **Restraint orders**

8.—(1) The High Court may by order (in this Act referred to 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) A restraint order may apply—

- (a) where an application under subsection (4) below relates to a confiscation order made in respect of specified property, to the property which is specified in that order; and
- (b) in any other case—
  - (i) to all realisable property, whether the property is described in the restraint order or not, and
  - (ii) to realisable property, being property transferred to the defendant after the making of the restraint order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 9 of this Act.

(4) A restraint order—

- (a) may be made only on an application by or on behalf of the government of the United States of America,

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(3) 1973 c. 62.

(4) 1971 c. 38.

(5) 1975 c. 21.



- (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.
  - (5) A restraint order—
    - (a) may be discharged or varied in relation to any property, and
    - (b) shall be discharged when the proceedings in relation to which the order was made are concluded.
  - (5A) An application for the discharge or variation of a restraint order may be made by any person affected by it.
  - (6) 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.
- (7) 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 England and Wales.
  - (8) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from England and Wales, seize the property.
  - (9) Property seized under subsection (8) above shall be dealt with in accordance with the court's directions.
  - (10) The Land Charges Act 1972<sup>(6)</sup> and the Land Registration Act 1925<sup>(7)</sup> shall apply—
    - (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purposes of enforcing judgments or recognisances; and
    - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
  - (11) A person applying for a restraint order on behalf of the government of the United States of America 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.

### **Charging orders in respect of land, securities etc.**

- 9.—**(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a fixed amount is payable under a confiscation order, of an amount not exceeding the amount so payable, and
  - (b) in any other case, of an amount equal to the value from time to time of the property charged.

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<sup>(6)</sup> 1972 c. 61.

<sup>(7)</sup> 1925 c. 21.

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(2) For the purposes 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 or on behalf of the government of the United States of America;
- (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—
  - (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
- (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 against the defendant in the United States of America are concluded or the amount payment of which is secured by the charge is paid into the High Court.

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

### **Charging orders—supplementary provisions**

**10.—**(2) The Land Charges Act 1972 and the 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.

(3) 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.

(4) Subject to any provisions made under section 11 of this Act 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 by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(5) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 9(7) of this Act discharging the charging order may direct that the entry be cancelled.

... ..

(7) In this section and section 9 of this Act, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the Charging Orders Act 1979<sup>(8)</sup>.

**10A.** Notwithstanding anything in rule 3(2) of Order 115 of the Rules of the Supreme Court 1965<sup>(2)</sup>, an application under section 8(4) or 9(3) of this Act shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for believing that a confiscation order may be made in the proceedings instituted or to be instituted in the United States of America,
- (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property,
- (c) where proceedings have not been instituted in the United States of America, indicate when it is intended that they should be instituted there,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

### **Realisation of property**

**11.—**(1) Where a confiscation order has been registered in the High Court under section 26A of this Act, the High Court may, on an application by or on behalf of the government of the United States of America, 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 8 of this Act or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 9 of this Act 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 9 of this Act, 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 as the court may

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<sup>(8)</sup> 1979 c. 53.

<sup>(2)</sup> S.I.1965/1776. Order 115 was inserted by R.S.C. (Amendment No. 3) 1986 (S.I. 1986/2289).

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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 9 of this Act.

(8) The court shall not in respect of any property exercise the powers conferred by subsections (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.

### **Application of proceeds of realisation and other sums**

**12.**—(1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 9 of this Act,
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 8 or 11 of this Act, and
- (c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 17A(2) of this Act and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be paid to the High Court and applied for the purposes specified in subsections (3) to (5) below and in the order so specified.

(2) Where a fixed amount is payable under the confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums—

- (a) among such of those who held property which has been realised under 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) Any sums paid to the High Court under subsection (1) above shall first be applied to pay the receiver's remuneration and expenses.

(4) Next, any amount paid under section 18(2) of this Act shall be reimbursed.

(5) Any sums remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid to the Secretary of State and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.

### **Exercise of powers by High Court or receiver**

**13.**—(1) The following provisions apply to the powers conferred on the High Court by sections 8 to 12 of this Act, or on a receiver appointed under section 8 to 11 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 recovering property which is liable to be recovered under a confiscation order registered in the High Court under section 26A of this Act or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any confiscation order which may be made in the defendant's case.

... ..

(4) The powers shall be exercised with a view to allowing any person other than the defendant 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 which conflict with the obligation to satisfy the confiscation order.

... ..

### **Bankruptcy of defendant etc.**

**15.—**(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 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act,

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986<sup>(9)</sup>.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 8 to 12 of this Act or on a receiver so appointed 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,
- (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 or 308 of that Act (after-acquired property and tools, clothes etc exceeding value of reasonable replacement), 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
- (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—

- (a) 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.

... ..

(7) In any case in which a petition in bankruptcy is presented, or a receiving order or adjudication in bankruptcy is made, before 29th December 1986 (the date on which the Insolvency Act 1986 came into force) this section has effect with the following modifications—

- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there are substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914,
- (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there are 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) is omitted.

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(9) 1986 c. 45

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### **Sequestration in Scotland of defendant, etc.**

16.—(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
- (b) any proceeds of property which was held by him and realised by virtue of section 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act,

is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985.

(2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 8 to 12 of this Act or on a receiver so appointed 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,
- (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 (6) of that section, 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.

... ..

(7) In any case in which, notwithstanding the coming into force of the Bankruptcy (Scotland) Act 1985 the 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 or 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 was substituted a reference to the Act of 1913.

### **Winding up of company holding realisable property**

17.—(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 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act.
- (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 8 to 12 of this Act or on a receiver so appointed 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 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) In this section—
  - “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 has 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.
- (6) In any case in which a winding up of a company has commenced, or is treated as having commenced, before 29th December 1986 (the date on which the Insolvency Act came into force) this section has effect with the substitution for references to that Act of references to the Companies Act 1985.

### **Insolvency officers dealing with property subject to restraint order**

**17A.—**(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—

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- (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 12(1) of this Act.

(3) In 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 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.

### **Receivers: supplementary provisions**

**18.—**(1) Where a receiver appointed under section 8 or 11 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 not 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 12(3) of this Act, be paid by the person on whose application the receiver was appointed.

... ..

### **Registration of confiscation order**

**26A.—**(1) On an application made by or on behalf of the Government of a designated country, the High Court 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 England and Wales 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 High Court 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.



## Miscellaneous and Supplemental

**33.—**(1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the Land Registration Act 1925 which relates to the person or property so specified.

... ..

(4) An application may be made by a receiver appointed under section 8 or 11 of this Act and on an application under this subsection there shall be given to the registrar—

- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver, and
- (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.

(5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.

## General interpretation

**38.—**(1) In this Act—

“a court of the United States of America” means a court of the United States of America or of any of its states or territories;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“corresponding law” has the same meaning as in the Misuse of Drugs Act 1971;

“drug trafficking” means doing or being concerned in any of the following, whether in England and Wales or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;

and includes a person doing the following, whether in England and Wales or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—

- (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
- (ii) 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;

“proceeds of drug trafficking” includes any payments or other rewards received by a person at any time (whether before or after the commencement of the Drug Trafficking Offences Act 1986 (United States of America) Order 1989) in connection with drug trafficking carried on by him or another; and

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

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(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Charging order	Section 9(2)
Confiscation order	Section 1
Dealing with property	Section 8(7)
Defendant	Section 1
Realisable property	Section 5(1)
Restraint order	Section 8(1)

(3) This Act applies to property whether it is situated in England and Wales or elsewhere.

... ..

(5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(6) The following provisions shall have effect for the interpretation of this Act.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator.

(9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

... ..

(11) Proceedings for an offence are instituted in the United States when an indictment, information or complaint has been filed against a person in respect of an offence.

(12) Proceedings for an offence are concluded—

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

(b) on the satisfaction of a confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

**39.—**(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.

... ..

(3) In section 1(2)(a) of the 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 imposed on a conviction does not include a reference to an amount payable under a confiscation order.

... ..

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(5) Section 281(4) of the 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.

(6) Section 55(2) of the Bankruptcy (Scotland) Act 1985 (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.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes the provision necessary for the operation in England and Wales of the provisions relating to the restraint and confiscation of proceeds of drug trafficking in the Agreement between the government of the United Kingdom and the government of the United States of America concerning the investigation of drug trafficking offences and the seizure and forfeiture of proceeds and instrumentalities of drug trafficking done at London on 9th February, 1988 (Cm. 340).

The Order provides that where property is liable to be recovered under an order made by a court in the United States of America for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value it can be confiscated in England and Wales under the Drug Trafficking Offences Act 1986. It also provides, in Article 5, that the value of any property recovered in the United States of America in response to a request by the government of the United Kingdom for assistance in the enforcement of an order is to be treated as reducing the amount payable in England and Wales under a confiscation order made by the Crown Court.

*Article 3* of the Order designates the United States of America for the purposes of enforcement of its confiscation orders, and applies the provisions of the Drug Trafficking Offences Act, with appropriate modifications, to confiscation orders of courts in the United States of America and proceedings which may lead to such an order being made. The modifications to the Act are set out in *Schedule 1* to the Order, and *Schedule 2* sets out in full that Act as so modified. *Article 4* makes provision for proof of the purpose of an order made in a court of the United States of America and of the fact that proceedings have been instituted against a person there.