



Drug Trafficking Act 1994

1994 CHAPTER 37

PART I

CONFISCATION ORDERS

Insolvency of defendants etc

32 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 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act,is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986 ("the 1986 Act").
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court or a county court by sections 26 to 30 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 Part IX of the 1986 Act;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of that Act (after-acquired property and tools, clothes etc. exceeding value of reasonable replacement, 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;but nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (3) Subsection (2) above does not affect the enforcement of a charging order—

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- (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.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of the 1986 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.
- (5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act—
- (a) no order shall be made under section 339 or 423 of the 1986 Act (avoidance of certain transactions), in respect of the making of the gift, at any time when—
 - (i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;
 - (ii) an application has been made in respect of the defendant under section 13, 14, 15, 16 or 19 of this Act and has not been concluded; or
 - (iii) 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 section 339 or 423 after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

33 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
 - (b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act,
- is excluded from the debtor’s estate for the purposes of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”).
- (2) Where an award of sequestration has been made, the powers conferred on the High Court or a county court by sections 26 to 30 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 the 1985 Act; and
 - (b) any income of the debtor which has been ordered, under section 32(2) of that Act, to be paid to the permanent trustee or any estate which, under section 31(10) or 32(6) 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 the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers mentioned in subsection (2) above.
- (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—
- (a) an interim trustee stands appointed under section 2(5) of the 1985 Act, and
 - (b) 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 Act—
- (a) no decree shall be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences), in respect of the making of the gift, at any time when—
 - (i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;
 - (ii) an application has been made in respect of the defendant under section 13, 14, 15, 16 or 19 of this Act and has not been concluded; or
 - (iii) 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 section 34 or 36 after the conclusion of the proceedings or of the application 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 1985 Act, the Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) there were substituted—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913; and
 - (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 in that subsection to the 1985 Act there were substituted a reference to the Act of 1913.

34 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 of the company, 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 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 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 or a county court by sections 26 to 30 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—

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- (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;

but nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

- (3) 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.

- (4) 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—
 - (i) such an order has been made, but
 - (ii) 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.